



PORTCULLIS NEWS

MCI (P) 023/06/2019

16 January 2020

AMENDMENTS TO BVI LEGISLATION

KEY POINTS

- ROD required for restored and continued in companies.
- CGS may be requested within the first 6 months and 21 days of incorporation.
- Policy for the annual valuation of fund property.
- New regulatory regime for closed-ended funds.
- Regulations for Recognized Foreign Funds.

Certain amendments were made to the BVI legislation in late December 2019. These included changes to the Business Companies Act, the Securities and Investment Business Act and Regulations, the Insolvency Act, the Mutual Funds Regulations, the Mutual Funds (Foreign Funds) Regulations, the Private Investment Business Regulations and the Limited Partnership Act.

BVI BUSINESS COMPANIES ACT, 2004

The following amendments were made with respect to the filing requirements of the register of directors ("ROD") for companies continued in to the BVI and for companies being restored to the register:

- A company continued in to the BVI shall file the initial copy of the register of directors within 21 days of its continuation.
- A company that is struck off the register of companies but not dissolved, may be restored by the Registrar upon receipt of the required restoration application, a copy of its ROD, payment of the restoration fees and all outstanding fees and penalties.
- A request for a Certificate of Good Standing for a company will be granted if requested (i) during the first 6 months (period by which directors must be appointed) and within 21 days (period by which the Register of Directors must be filed once its first directors are appointed at the end of the 6 month period) and (ii) within 21 days of the company's continuation in to the Virgin Islands.

ANTI-MONEY LAUNDERING (AMENDMENT) REGULATIONS 2019

The definition of "relevant business" now includes a "private investment fund".

LIMITED PARTNERSHIP (AMENDMENT) ACT 2019 ("LPA")

The LPA has been amended to provide for the International Tax Authority ("ITA") to apply to the Court for the winding up of a limited partnership where it has been determined by the ITA that it has been carrying out a relevant activity in breach of the economic substance requirements.



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SECURITIES AND INVESTMENT BUSINESS (INCUBATOR AND APPROVED FUNDS) (AMENDMENT) REGULATIONS 2019

The main amendments made are as follows:

- The definition of “fund property” in relation to an incubator fund or an approved fund means the assets of the fund.
- An incubator fund and an approved fund must maintain a clear and comprehensive policy for the annual valuation of fund property. The policy must be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property.
- The fund must ensure the persons controlling the fund’s investment function are independent from the persons controlling the fund’s valuation process and, where applicable, identify, manage and monitor any potential conflicts of interest that may arise.
- The fund must have arrangements in place for the safekeeping of fund property including provisions for the appropriate segregation of fund property.
- A penalty limit of \$2,000 applies where the fund fails to pay its annual approval fee.

SECURITIES AND INVESTMENT BUSINESS (AMENDMENT) ACT, 2019 PRIVATE INVESTMENT FUND REGULATIONS, 2019

Private Investment Funds

The BVI has historically regulated only open-ended collective investment schemes that have fallen within the definition of a “mutual fund” or “fund” under the Securities and Investment Business legislation. The BVI has now introduced a regulatory regime for closed-ended funds in response to the EU requirements that close-ended collective investment schemes should also be regulated.

A closed ended fund is an entity which:

- (i) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and

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(ii) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the company, partnership, unit trust or other body.

Existing closed-ended funds are required to apply to the BVI Financial Services Commission for recognition as a Private Investment Fund before 1 July 2020.

Recognition as a Private Investment Fund

In order to be recognized as a Private Investment Fund:

- (i) the fund must be lawfully incorporated, registered, formed or organized under the laws of the BVI or elsewhere;
- (ii) the fund's constitutional documents must specify that:
 - a) the fund is not authorized to have more than 50 investors, or
 - b) an invitation to subscribe for or purchase fund interest shall be made on a private only basis; or
 - c) the fund interest shall be issued only to professional investors, with an initial investment of each professional investor, other than an exempted investor, not being less than US\$100,000; and
- (iii) the fund must meet such criteria as may be specified in the Regulations;
- (iv) the fund on recognition will be compliant with the Act, the Regulations and any practice direction applicable to the fund; and
- (v) recognizing the fund is not against the public interest.

Regulatory Obligations

Closed ended funds will be required to have the following:

- (a) a valuation policy;
- (b) "appointed persons" for the management of fund property, valuation of fund property and safekeeping of fund property;
- (c) an auditor;
- (d) an authorized representative;
- (e) at least two directors;

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- (f) audited financial statements which must be submitted to the BVI FSC within 6 months of the financial year end; and
- (g) to pay an annual private investment fund recognition fee of US\$1,000 per year;
- (h) to notify the BVI FSC within 7 days of any change in an appointed person;
- (i) to notify the BVI FSC within 14 days of any change in director, authorized representative, auditor, address, constitutional documents, offering document, valuation policy;
- (j) to maintain financial records.

MUTUAL FUNDS (AMENDMENT) REGULATIONS, 2019

The Amendment introduced the following changes:

- A new definition of “fund property” with respect to a private or professional fund. Where the fund is a BVI business company or a partnership, the fund property is the assets of the fund. Where the fund is a unit trust, the fund property is the assets subject to the trust deed that constitutes the fund.
- A private or professional fund must maintain a clear and comprehensive policy for the annual valuation of fund property. The policy must, among other things, be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property.
- A private or professional fund must ensure that the fund’s manager, or such other person having responsibility for the investment function, the persons controlling the fund’s investment function is independent from the fund’s administrator, or such other persons having responsibility for the valuation process.
- Where a private or professional fund determines that the fund’s manager, or such other person having responsibility for the investment function, must be the same as the administrator or such other person having responsibility for the valuation of fund property, the private or professional fund shall



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- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
 - (b) disclose to investors in the fund
 - (i) that the fund's manager or such other person having responsibility for the investment function is the same as the fund's administrator or such other person having responsibility for the valuation function; and
 - (ii) details of how any potential conflicts of interest will be managed.
- A private or professional fund's financial statements must be prepared in accordance with certain international standards as set out in the Regulations.

MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS, 2019

A fund which is incorporated and already operating in another jurisdiction may apply to become a recognised foreign fund in the BVI. A foreign fund may apply for recognition as a foreign fund in the BVI if it intends to offer its shares to investors in the BVI or otherwise intends to carry out its business in or from within the BVI.

The Mutual Fund Foreign Regulations are intended to cover the application for recognition and regulatory aspects of a recognised foreign funds.

Clients are advised to review their structures in view of these amendments to determine if they meet the new requirements.



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