

**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**



APPROVED INVESTMENT MANAGERS GUIDELINES

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SCHEDULE

FORM IB-A1: Approved Investment Manager Application Form

INTRODUCTION

Under the Securities and Investment Business Act, 2010 (“SIBA”) persons wishing to carry out any form of investment business in or from within the Virgin Islands are required to be licensed by the Financial Services Commission (“the Commission”). This includes persons providing investment management or investment advice for mutual funds and other collective investment schemes. Once licensed, persons are required to adhere to the tenets of SIBA, the Regulatory Code and all other applicable financial services legislation. The Commission recognises, however, having regard to risk, nature and complexity of certain business activities, that adherence to these provisions, while required by law, is not always practical nor does it achieve any risk reduction from a regulatory perspective.

2. The Commission, being cognizant of the need to maintain some flexibility in respect of its investment business regime, without compromising proper and effective regulation, has developed a framework through the Investment Business (Approved Managers) Regulations, 2012 (“the Regulations”), which establishes a system that will allow investment managers and advisers who meet the established criteria to provide such services through a simple approval process separate and apart from the licensing regime outlined in SIBA.

3. Persons who qualify as approved investment managers under the Regulations will not be required to obtain a licence under SIBA or be subject to the Regulatory Code. Qualifying as an Approved Investment Manager, however, does not prevent a person from applying for and obtaining a licence under SIBA if they so desire. In order for an application as an Approved Investment Manager to be considered it must be made in written form and submitted to the Commission in accordance with regulation 7(2) of the Regulations.

4. These Guidelines seek to provide guidance on the application process by outlining the requirements for qualifying as an Approved Investment Manager, information that should be submitted when completing the application, the types of services that may be provided by an Approved Investment Manager, determinations with respect to closed-ended funds, the obligations of an Approved Investment Manager including the requirement to file annual returns and other documents specified in the Regulations and other miscellaneous matters. It is essential therefore for applicants to adhere as closely as possible to the guidelines set out herein as the Commission will rely on them in processing applications for approval to act as an Approved Investment Manager.

APPROVAL AS AN APPROVED INVESTMENT MANAGER

1. Application for Approval as an Approved Investment Manager

1.1 Completing the Application Form

- 1.1.1 A person wishing to carry out the investment activities of managing investments or providing investment advice, as described in regulation 9 of the Regulations, may apply for approval as an Approved Investment Manager pursuant to the Regulations. Persons seeking such approval must prepare and submit a written application in accordance with **Form IB-A1** of the Schedule to these Guidelines.
- 1.1.2 In order for an application to be considered complete all relevant sections of **Form IB-A1** must be completed and submitted, along with all necessary supporting documents, to the Commission no less than seven days prior to the intended commencement date of the relevant activities unless the Commission agrees, in writing, to a shorter period.
- 1.1.3 Every application contains a declaration which must be properly completed by the authorised representative or legal practitioner submitting the application on behalf of applicant.
- 1.1.4 An application under this section must comply with the requirements of regulation 4 of the Regulations.

1.2 Processing of application

- 1.2.1 Upon receipt of a completed application, the Commission will endeavour to process such application and communicate its decision to the applicant or its representative within 30 days from submission of the application as specified in regulation 4(3) or, where an extension has been granted pursuant to regulation 4(4), within the period of that extension.

1.3 Payment of Application Fee

- 1.3.1 Every application filed must be accompanied by the requisite fee applicable in relation to the application. No application shall be processed by the Commission unless the fee payable is received. The fees payable are prescribed in the Financial Services (Securities and Investment Business Fees) (Amendment) Regulations, 2012.

1.4 Application considered properly filed

- 1.4.1 The Commission will consider an application received to be fully completed when all the required applicable information in respect of the application is provided. However, this does not derogate from any request the Commission may make under paragraph 2.2.1.

1.4.2 Once an application containing all information specified in regulation 5, along with any other additional information that may be requested, has been reviewed and the Commission is satisfied that the application has met the requirements of regulation 7(1)(b), approval to act as an Approved Investment Manager may be granted.

1.5 Payment of Approval Fee

1.5.1 Approval to act as an Approved Investment Manager may only be considered final when the requisite approval fee has been paid to the Commission as prescribed in the Financial Services (Securities and Investment Business Fees) (Amendment) Regulations, 2012.

1.6 Application not considered properly filed

1.6.1 An application that does not contain all of the required applicable information requested in **Form IB-A1**, or is not accompanied by the requisite fee will be considered incomplete and may be denied by the Commission.

1.6.2 An application for which additional information required to be submitted in accordance with paragraph 2.2.1 is not received will be considered incomplete and may be denied by the Commission.

2. Information to be submitted with an application

2.1 General Information Required

2.1.1 The basic information required to be submitted by persons wishing to be approved as an Approved Manager is specified in regulation 5 and outlined in **Form IB-A1**. This information includes, but is not limited to:

- the name of the applicant,
- type of entity (whether business company or partnership),
- date of incorporation or registration,
- incorporation/registration number,
- address of the applicant,
- date of commencement of business,
- relevant details of all underlying principals including:
 - Name
 - Address
 - Whether the principal is an individual or corporate shareholder
 - In the case of a corporate shareholder, the name of the individual representing the corporate shareholder
 - Name of the beneficial owner
 - Percentage of shares held
- relevant details of all senior officers and directors or general partners including:
 - Name

- Address
 - Position held
 - Biography
- the number of persons the applicant intends to act for,
- relevant details of each person the applicant intends to act for including:
 - Name of person
 - Whether it is a new or existing relationship
 - Address of person
 - Place of incorporation or registration
 - Value of current assets if held, or monies intended to be raised for each new person
 - Capacity in which the applicant will act (adviser, manager or adviser and manager)
- details of the persons identified to carry out the entity’s day-to-day investment functions,
- an indication of whether any functions will be delegated, and if so, to whom, and
- a declaration of the fitness and propriety of each director or general partner, senior officer and shareholder with a significant interest in the applicant.

2.1.2 Where information in relation to an application does not apply in respect of the applicant, this should be stated in the application by putting the words “not applicable” or “n/a” in the appropriate place on the form. However, it should be noted that if, upon consideration of the application, the Commission forms the view that the information is indeed required, the applicant or its local representative (i.e. registered agent, authorised representative or legal practitioner as the case may be) will be notified accordingly.

2.1.3 Where information is required that takes the form of a separate document the document is to be attached to the application and submitted at the same time the application form is submitted.

2.1.4 Where information that is required to be provided as an attachment is not included with the application the applicant or the local representative submitting the application on its behalf will be notified accordingly.

2.2 Additional Information

2.2.1 It should be noted that the Commission, in the exercise of its general powers reserves the right to seek clarification or request additional information on any application submitted for processing. Where such clarification is sought or a request for additional information made, this information must be provided within the thirty days provided to carry on relevant business, or any period of extension granted while the application is being reviewed. It is therefore essential that where, for any reason clarification sought or requested information is not available or cannot be provided, that fact is notified to the Commission as quickly as possible in order to enable the Commission to dispose of the application appropriately.

3. *Business Activities/Services to be Provided*

3.1 Approved Investment Business Functions

3.1.1 Persons seeking approval as an Approved Investment Manager may only carry out the investment business functions outlined in regulation 9. If at any time after being approved as an Approved Investment Manager the scope of activities under which that manager had previously qualified changes, the manager will cease to be considered an Approved Investment Manager in accordance with regulation 11.

3.2 Qualifying to be treated as a Closed-ended Fund

3.2.1 A fund qualifies to be treated as a closed-ended fund in accordance with regulation 9(3)(a) if it either:

- a) collects and pools investor funds for the purpose of collective investment, and is not a mutual fund as defined in section 40 of SIBA; or
- b) is otherwise approved by the Commission in writing, on a case-by-case basis to qualify as a closed-ended fund.

3.3 Closed-ended Funds with Characteristics of Private or Professional Funds

3.3.1 An Approved Investment Manager may act as an investment adviser or investment manager to a closed-ended fund incorporated, formed or organised under the laws of the Virgin Islands or any recognised jurisdiction as defined in Regulation 9 (2A), where the fund has the following characteristics of a private or professional fund:

- In relation to a private fund,
 - a) the fund is not authorised to have more than fifty investors; or
 - b) the invitation to subscribe for, or purchase, fund interests in the fund must be made on a private basis. Private basis considerations include making shares available to specified persons and issuing invitations on the basis of private or business connections.
- In relation to a professional fund,
 - a) the fund interests of the fund will be issued,
 - (i) in the case of the Virgin Islands, only to professional investors; and

- (ii) in any other case, to professional investors or similarly qualified investors as accepted or recognised in a recognised jurisdiction as defined in Regulation 9 (2A); and
- b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.3A Funds Formed in a Recognised Jurisdiction with Characteristics of Private or Professional Funds

3.3A.1 An Approved Investment Manager may act as an investment adviser or investment manager to any fund incorporated, formed or organised under the laws of a recognised jurisdiction as defined in Regulation 9 (2A), where the fund has the following characteristics of a private or professional fund:

- In relation to a private fund,
 - a) the fund is not authorised to have more than fifty investors; or
 - b) the invitation to subscribe for, or purchase, fund interests in the fund must be made on a private basis. Private basis considerations include making shares available to specified persons and issuing invitations on the basis of private or business connections.
- In relation to a professional fund,
 - a) the fund interests of the fund will be issued,
 - (i) in the case of the Virgin Islands, only to professional investors; and
 - (ii) in any other case, only to professional investors or similarly qualified investors as accepted or recognised in a recognised jurisdiction as defined in Regulation 9 (2A); and
 - b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.4 Persons Affiliated with Private Funds, Professional Funds or Closed-ended Funds

3.4.1 An Approved Investment Manager may act as an investment adviser or investment manager to a person affiliated with a private, professional or closed-ended fund if the affiliated person has been established or formed by, or on the direction of a fund or its

functionaries for the purpose of either making or holding investments for or on behalf of the fund, or all or substantially all of its investors.

3.5 Persons with Equivalent Characteristics

3.5.1 An Approved Investment Manager may act as a manager or adviser to a person that is incorporated as a company, formed as a partnership or organised as a trust, outside of the Virgin Islands in a non-recognised jurisdiction, and who invests all or a substantial part of its assets in a private or professional fund, or a closed-ended fund as specified in paragraph 3.3. above if the person meets the following criteria:

- In relation to a private fund,
 - a) the fund is not authorised to have more than fifty investors; or
 - b) the invitation to subscribe for, or purchase fund interests in the fund must be made on a private basis. Private basis considerations include making shares available to specified persons and issuing invitations on the basis of private or business connections.
- In relation to a professional fund,
 - a) the fund interests of the fund will be issued,
 - (i) in the case of the Virgin Islands, only to professional investors; and
 - (ii) in any other case, only to professional investors or similarly qualified investors as accepted or recognised in a recognised jurisdiction as defined in Regulation 9 (2A); and
 - b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.6 Non-Virgin Islands Incorporated Funds Considered Equivalent to Private or Professional Funds

3.6.1 An Approved Investment Manager may only act for a fund incorporated outside of the Virgin Islands in a non-recognised jurisdiction if that fund has equivalent characteristics to a private, professional or closed-ended fund and invests all, or substantially all, of its assets in a private or professional fund, or a closed-ended fund with the characteristics of a private or professional fund as specified in paragraph 3.3 above.

4. Restrictions

4.1 General Restrictions

- 4.1.1 An Approved Investment Manager who ceases to qualify as such must notify the Commission immediately and cease from taking on any new relevant business.
- 4.1.2 Where a person ceases to qualify as an Approved Investment Manager he must stop carrying on any existing relevant business within three months from the date on which he ceased to qualify as an Approved Investment Manager.
- 4.1.3 A person who ceases to qualify as an Approved Investment Manager may apply to the Commission to be licensed to carry on investment business under SIBA.
- 4.1.4 Where such an application has been made the Commission may, where it considers it appropriate, taking into account the business of the applicant and any other relevant matters, grant the Approved Investment Manager an additional three months from the end of the period specified in paragraph 4.1.2 above to apply for and obtain a license under SIBA.

4.2 Restrictions in Relation to Assets Under Management

- 4.2.1 Assets under management of an Approved Investment Manager may not exceed, in aggregate, four hundred million dollars or its equivalence in any other currency in relation to private or professional funds. In relation to the assets of one or more closed-ended funds, the assets under management may not exceed one billion dollars.
- 4.2.2 An Approved Investment Manager whose assets under management exceed the values specified in paragraph 4.2.1 above must notify the Commission of this fact within seven days of exceeding the prescribed amount.
- 4.2.3 An Approved Manager who exceeds the amounts specified in paragraph 4.2.1 above shall cease to qualify as an Approved Investment Manager unless, within three months of the date on which he ceased to qualify, the Approved Investment Manager no longer exceeds the prescribed amount, or has submitted an application to the Commission to be licensed under SIBA.
- 4.2.4 The Commission may, having regard to any risk associated with the Approved Investment Manager or any of the persons for whom he acts, grant approval for the Approved Investment Manager to continue to function. Any such approval must be given in writing by the Commission.

5. *Assets Under Management*

5.1 Determining Assets Under Management

- 5.1.1 For the purpose of paragraph 4.2.1 above, assets under management shall be determined:
- a) in relation to any person that is not a closed ended fund, as the net asset value (NAV) of the outstanding assets of the person less liabilities as at the valuation date; and
 - b) in relation to a closed-ended fund, as the aggregate amount of capital committed to be invested by the fund's investors.
- 5.1.2 In determining the net asset value of a person under paragraph 5.1.1(a), the valuation policies and procedures used by that person for determining the net asset value upon which the subscription and redemption price for fund interests is based shall be used. The Approved Investment Manager shall not be required to determine the assets under management in respect of a person under paragraph 5.1.1(a) any more frequently than such person is required to determine its net asset value for the purposes of subscribing and redeeming its own fund interests.

5.2 Calculating Assets Under Management

- 5.2.1 Where an Approved Investment Manager acts for more than one person and all or a portion of the assets of one person comprise interests in another person for which the Approved Investment Manager acts the value of the interests of the first person shall be disregarded for the purposes of the calculation of the total assets under management of the Approved Investment Manager.
- 5.2.2 Where a portion of the assets of the first person described in 5.2.1 above falls outside the structure specified in paragraph 5.2.1 above, the portion falling outside the structure should form part of the calculation of the total assets under management.

6 *Ongoing Obligations*

6.1 General Obligations

- 6.1.1 In order for an Approved Investment Manager to retain his or her classification, there are certain obligations that the Approved Investment Manager must adhere to. Every Approved Investment Manager must, at all times, ensure that it retains an authorised representative. Further, if the Approved Investment Manager is a body corporate it must at all times ensure that it has appointed at least two directors, one of whom must be an individual director. In the case of an Approved Investment Manager constituted as a limited partnership, such partnership must, at all times, have at least one general partner.

- 6.1.2 If at any time after being approved, the information provided by an Approved Investment Manager in its application for approval changes, the Approved Investment Manager is required to notify the Commission in writing of the change and provide all relevant details. Such notification must be made within fourteen days of the change and must be accompanied by a written declaration stating whether the change complies with the requirements of the Regulations.
- 6.1.3 An Approved Investment Manager is also required to notify the Commission of any matter related to the Approved Investment Manager or the Approved Investment Manager's conduct of its relevant business activities which may have a material impact or significant regulatory impact on the Approved Investment Manager or its relevant business.

6.2 Submission of Financial Statements

- 6.2.1 Financial statements, as defined in section 69 of SIBA, must be submitted to the Commission within six months of the end of the financial year to which they relate and must comply with prescribed accounting standards.
- 6.2.2 Financial statements must be signed by a director or, in the case of a partnership, a general partner of the Approved Investment Manager and must be accompanied by a director's certificate, a report on the affairs of the Approved Investment Manager made in respect of the relevant financial year and any other documents that may be prescribed by the Regulations. For the purposes of these Guidelines, a director's certificate may be completed by a general partner where the Approved Investment Manager is established as a partnership and any such certificate shall be construed as a valid certificate. (The directors' certificate form can be found in the Commission's Approved Forms (Amendment) Guidelines).
- 6.2.3 An Approved Investment Manager is not required to appoint an auditor; however, the Approved Investment Manager must submit financial statements in accordance with regulation 14, and where necessary ensure that the notes to the financial statements give a true and fair view of the matters to which they relate.
- 6.2.4 The Commission may require an Approved Investment Manager to resubmit or replace any document it considers to be incomplete, inaccurate or not prepared in accordance with the relevant applicable provisions of SIBA.
- 6.2.5 If an Approved Investment Manager fails to meet the requirements of paragraph 6.2.2 above, the relevant document(s) may be rejected by the Commission.

6.3 Exemption from Submitting Financial Statements

- 6.3.1 An Approved Investment Manager who has not conducted any business activity during a particular year may apply in writing, to the Commission during the period when the financial statements are due, or any period of extension, for an exemption from preparing

and submitting financial statements for that year, in accordance with Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010 as modified by regulation 14 (2).

- 6.3.2 An Approved Investment Manager who has conducted business during a particular year but forms the view that it has good reason not to be required to submit financial statements in respect of that year may apply, in writing to the Commission, at least three months before the financial statements are due, for an exemption from preparing and submitting financial statements for that year.
- 6.3.3 The Commission, upon receipt of a written application specified in paragraph 4.3.1 or 4.3.2 above, may grant an Approved Investment Manager an exemption from preparing and submitting financial statements once it can satisfy itself that the Approved Investment Manager has, in respect of paragraph 4.3.1, not conducted any business activity for the year the exemption is being sought or, in respect of paragraph 4.3.2, provided good reason why it should not be required to prepare and submit financial statements for the year in question.

6.4 Filing of Annual Returns

- 6.4.1 Annual returns must be filed by an Approved Investment Manager no later than 31st January each year in accordance with regulation 16. These returns must be submitted to the Commission and should contain the information specified in the Regulations.

7. *Renewal of Approval to Act as an Approved Investment Manager*

7.1 Payment of Renewal Fee

- 7.1.1 The approval to act as an Approved Investment Manager may be renewed upon payment of the requisite renewal fee.
- 7.1.2 Failure to pay the renewal fee after it becomes due shall result in the Approved Investment Manager being liable to the penalty prescribed for late payment of fee under Schedule 2 of the Financial Services (Administrative Penalties) Regulations, 2006, and shall be subject to any maximum penalty prescribed and further directives issued as specified in regulation 6(4).

SCHEDULE

[Paragraphs 1.1, 1.6 and 2.1]

FORM IB-A1

[Regulation 4]

APPROVED INVESTMENT MANAGER APPLICATION FORM

1. Applicant's Details¹

Name of Applicant: _____

BVI Business Company BVI Limited Partnership

Date of Incorporation/formation: ____/____/____

Registration No: _____

Address: _____

2. Commencement of Business

Date on which applicant intends to commence business activity (dd/mm/yyyy) ____/____/____

2A. Authorised Representative

Name of applicant's designated authorised representative: _____

**3. Underlying Principals' Details:
(to be completed in relation to each person holding an interest in the applicant)**

Shareholder's/ Controller's Name	Address	Corporate Shareholder YES/NO	Name of individual representing the Corporate Shareholder	Name of Beneficial Owner	% of shares held

4. Details of Directors/General Partners and Senior Officers

Name	Address	Position(s) Held (e.g. Director, Manager, Partner or equivalent position)	Brief Biography of Each Individual (please use additional space as required) ²

5. Details of Persons To Whom Services Will Be Provided³

a) How many persons does the applicant intend to act for? _____

b) Provide details of each person the applicant intends to act for:

Name of Person	Indicate whether (N)ew or (E)xisting Relationship	Address	Place of incorporation or registration	Date of Incorporation or Registration	Value of Current Assets Held or Monies Intended to be Raised (for open ended funds) or capital commitments (for closed ended funds) for Each Person*	Capacity in which Applicant will act (i.e. Adviser, Manager or Adviser and Manager)

* Please indicate current total assets for each existing person, or the total amount of monies intended to be raised for each new person.

6. Investment Functions

Please provide the following details for the individual(s) who will carry out the day-to-day investment business functions:

Name	Address	Position Held	Brief Biography of Each Individual (please use additional space as required) ⁴

7. Delegation of Investment Business Functions⁵:

a) Does the applicant intend to delegate any of its investment business functions? Yes No

b) Please indicate which functions are to be delegated and to whom:

Delegated Function	Entity Responsible for Delegated Function	Jurisdiction In Which Entity is Regulated	Regulatory Authority By Whom Entity is Regulated	Name of Individual Identified to Carry Out Delegated Function	Position of Individual Identified to Carry Out Delegated Function	Brief Biography of Each Individual (please use additional space as required) ⁶

8. Declaration by Applicant of Fitness and Propriety of Directors, General Partners, Senior Officers and Shareholders with Significant Interest

I, _____, of _____ (address), do hereby declare, on behalf of _____ (applicant), that the relevant persons listed in Items 3 and 4 of this application meet the fit and proper criteria in accordance with Schedule 1A of the Regulatory Code, 2009 and, in the case of the directors/general partners* and senior officers of the applicant, are eligible to hold the positions for which they are listed.

Signed by: _____

Name (Print): _____

Date: _____

*Delete as appropriate

9. Declaration by the Local Representative (i.e. registered agent, authorised representative or legal practitioner⁷)

I/We*, _____, in my/our* capacity as registered agent/authorised representative/legal practitioner*, do hereby declare, on behalf of _____ (applicant), that the information provided in this application is, to my/our* knowledge and belief, true and accurate and that all documents submitted with this application with respect to the applicant have been verified as authentic. I/We* understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted on behalf of the applicant, and may further cause the Commission to take enforcement action.

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

*Delete as appropriate

SAMPLE

10. Authorised Signature

.....

[Name]

[Director/General Partner*]

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered By Commission: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable):

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the application to be considered complete:

-
1. Copy of the applicant's constitutional documents:
 - a. Certificate of Incorporation/Limited Partnership;
 - b. Memorandum of Association/Deed of Partnership;
 - c. Charter/Articles of Association
 2. Copy of resume or CV for each director/general partner or senior officer of the applicant listed in Item 4.
 3. Copy of the investment advisory or investment manager agreement between the applicant and each fund the applicant intends to act for.
 4. Copy of resume or CV for each individual listed under Item 6.
 5. Copy of any agreements relating to the delegation of investment business functions
 6. Copy of resume or CV for each individual listed under Item 7.
 7. Written confirmation from the applicant's legal practitioner that the legal practitioner has agreed to act for the applicant (this may be in the form of a letter dated and signed).
 - 7A. The following additional documents should be submitted when acting for persons listed in regulation 9(1)(ca):
 - a. Copy of the person's Certificate of Incorporation/Limited Partnership; and/or
 - b. Copy of the person's Offering Document.
 8. **Application fee: \$1000.00**