

British Virgin Islands Financial Services Commission

Fund Financials Guidelines



Approved by the Board of Commissioners – 30 December, 2019
Issued by the Financial Services Commission - 31 December, 2019

Published - 31 December, 2019

Commencement Date - 31 December, 2019

TABLE OF CONTENTS

INTRODUCTION	3
INTERPRETATION.....	5
PART I	
EXEMPTION FROM SUBMITTING AUDITED FINANCIAL STATEMENTS.....	6
Application for an Exemption.....	6
Timeframes for submitting applications for exemptions	7
Considerations for exemptions	7
General Information	8
Additional Information	8
PART II	
EXEMPTION FROM THE REQUIREMENT TO APPOINT AN AUDITOR	10
Application for an Exemption from the Requirement to Appoint an Auditor.....	10
Considerations for Exemptions.....	10
General Information	11
Additional Information	11
Conditional approval.....	11
PART III	
EXTENSION OF TIME FOR SUBMISSION OF FINANCIAL STATEMENTS.....	13
Application for an Extension	13
Considerations for Extensions	13
General Information	14
Additional Information	14
Maximum extension time	15
PART IV	
APPROVAL OF AUDITING STANDARDS ON A CASE BY CASE BASIS.....	16
Auditing Standards.....	16
Application for Consideration of Auditing Standards	16
APPENDIX.....	18

INTRODUCTION

(i) The Commission requires that mutual funds and private investment funds, prepare and submit financial statements to the Commission. Financial statements aid the Commission in understanding the financial capabilities of a mutual fund or private investment fund. Submitted financial statements form part of the Commission's ongoing assessment of a fund's financial soundness and serves as one of the key indicators that a fund may be in financial distress, which may negatively affect its investors. The requirements of funds that relate to the preparation and submission of financial statements are as follows:

- section 75 of the Securities and Investment Business Act ("SIBA") requires public funds to prepare and submit financial statements, within 6 months after the fund's financial year end;
- regulations 10 of the Mutual Funds Regulations (" the MF Regulations") and the Private Investment Funds Regulations, 2019 ("the PIF Regulations") require private and professional funds and private investment funds respectively to prepare and submit financial statements, within 6 months after the fund's financial year end; and
- Regulation 17 of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 requires incubator and approved funds to submit financial statements within 6 months after the fund's financial year end.

(ii) In addition, public funds, private and professional funds are required by SIBA and the Mutual Funds Regulations respectively to have an auditor appointed at all times.

(iii) While noting that the preparation of financial statements are core to the assessment of a fund's financial health, the Commission recognises that there are certain circumstances where it may be impractical or unfeasible for a fund to have its financial statements audited, have its financial statements prepared and submitted within the specified timeframe or to maintain an auditor. On this basis, the Financial Services (Miscellaneous Exemptions) Regulations ("the Miscellaneous Exemptions Regulations"), allow funds to apply to the Commission for a grant of an exemption from the requirement to prepare and submit financial statements. The MF Regulations in addition, allows for private and professional funds to seek exemptions from the requirement to appoint an auditor. SIBA, the MF Regulations and the PIF Regulations also permit the Commission to grant public funds, incubator and approved funds, private and professional funds and private investment funds an extension of time to submit financial statements.

(iv) SIBA, the MF Regulations and the PIF Regulations establish the auditing standards against which an auditor must prepare its audit report. Notwithstanding, these legislation allow the Commission to approve an auditing standard on a case by case basis.

(v) These Guidelines are issued in accordance with section 41A of the Financial Services Commission Act and elaborate on applications for fund exemptions and extensions as it relates to the preparation and submission of financial statements, the appointment of an auditor and the approval of an auditing standard. These Guidelines encompass considerations in relation to private, professional, public funds, private investment, incubator and approved funds. These Fund Financials Guidelines detail the circumstances under which the Commission may consider

granting an exemption from the requirement to prepare and submit financial statements, an exemption from the requirement to appoint an auditor, an extension of time for the preparation and submission of audited financial statements and approval of new auditing standards. The Guidelines also stipulate the information required when making relevant applications. An Appendix to the Guidelines also outlines the applicable fees payable when submitting an application for an exemption or an extension.

INTERPRETATION

1. For the purpose of these Guidelines,

“good regulatory standing” means:

- (i) the fund’s regulatory fees and fees at the Registry of Corporate Affairs, prudential returns (where applicable) and any other filing and reporting requirement in respect of the fund are up to date;
- (ii) all of the fund’s directors and functionaries requiring approval or notification are so approved or notified; and
- (iii) there are no outstanding regulatory or enforcement concerns with respect to the fund that have not been addressed by the Commission and the fund;

“mutual fund” means a public fund registered or a private or professional fund recognised under the Securities and Investment Business Act or an incubator fund or approved fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations; and

“relevant financial year” means the specific financial year for which a fund is:

- (i) seeking an exemption from preparing and submitting financial statements; or
- (ii) seeking an extension of time for preparing and submitting financial statements.

PART I
EXEMPTION FROM SUBMITTING AUDITED FINANCIAL
STATEMENTS

2. This Part applies to all mutual funds and private investment funds that are seeking exemptions from the requirement to prepare and submit financial statements for a relevant financial year.

Application for an Exemption

2.1 A mutual fund or a private investment fund that wishes to be exempted from the requirement to prepare and submit financial statements for a relevant financial year must make an application in writing to the Commission.

2.2 The legislative basis for the submission and consideration of such applications are contained within the Miscellaneous Exemptions Regulations under the following:

- i. paragraphs 2 (1) and 2 (2) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to a public fund;
- ii. paragraph 2 (3) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to private and professional funds and incubator and approved funds; and
- iii. paragraph 2 (3A) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to private investment funds.

2.3 In order for an application to be considered, it must:

- i. be submitted to the Commission (Director, Investment Business Division) within the relevant timeframe specified in paragraph 2.4;
- ii. contain the information detailed under paragraphs 2.7 and 2.8 (where relevant); and
- iii. be accompanied by the relevant application fee as detailed in the Appendix.

Timeframes for submitting applications for exemptions

2.4 Table 1 below details the timeframes in which a public fund, private and professional fund, incubator fund and approved fund and private investment fund must submit its application, based on the particular circumstance of the fund:

Table 1

FUND TYPE	CIRCUMSTANCE	TIMEFRAME
Public Fund	Never Commenced Business	Within 6 months after the relevant financial year end
Public Fund	Conducted business within the financial year	Within 3 months after the relevant financial year end
Private Fund Professional Fund Private Investment Fund Incubator Fund Approved Fund	All circumstances	Within 6 months after the relevant financial year end

2.5 Where a fund submits its application after the relevant timeframe, the application will not be considered. The fund will be required to submit its financial statements within 6 months of the relevant financial year end, or will be considered to be in breach of its requirements and subject to enforcement action.

Considerations for exemptions

2.6 The Commission may consider a fund's application for an exemption from the requirement to prepare and submit financial statements under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:

- 2.6.1 The fund never commenced or has not conducted any business during the relevant financial year;
- 2.6.2 The fund has limited business activities (generally has a NAV of less than \$US1 million) with a small number of investors (generally less than 30 investors);
- 2.6.3 The fund is a feeder fund that invests all of its assets into a master fund, where the audits are prepared and consolidated through the master fund;
- 2.6.4 The fund has no assets or liabilities and all investors have been redeemed and/or is closed to new investors;
- 2.6.5 The fund was approved to commence liquidation during the relevant financial year;
- 2.6.6 The fund was in voluntary liquidation or insolvent liquidation during the relevant financial year;
- 2.6.7 The fund suspended or was in the process of suspending its NAV calculations during the relevant financial year; or

2.6.8 The fund wishes to change its financial year end.

General Information

2.7 An application for an exemption from the requirement to prepare and submit audited financial statements must contain the following information:

- 2.7.1 The relevant financial year for which the fund is seeking an exemption;
- 2.7.2 The rationale for the fund's application for an exemption;
- 2.7.3 A copy of the fund's unaudited financial statements for the relevant financial year (where it has conducted business);
- 2.7.4 Confirmation that the fund is in good regulatory standing;
- 2.7.5 Evidence that investors were made aware of the fund's decision to seek the exemption, as well as their consent (where a fund has investors); and
- 2.7.6 Details of the circumstances of the fund, as at the end of the relevant financial year (i.e. total assets, total # of investors, NAV and NAV per share).

Additional Information

2.8 An application for an exemption from the requirement to prepare and submit financial statements must contain the additional information detailed below, where the particular circumstances apply to a fund:

- 2.8.1 Where a fund has not commenced business; the date on which the fund anticipates it will commence business;
- 2.8.2 Where a fund has no assets or liabilities, is inactive and/or closed to new investors; an indication of the fund's intended way forward, including relevant timeframes and confirmation as to whether the fund intends to surrender its authorisation; or
- 2.8.3 Where a fund suspended or was in the process of suspending the calculation of its NAV within the relevant financial year:
 - i. a copy of the board resolution authorising the suspension of the NAV calculations;
 - ii. confirmation as to whether or otherwise investors have been notified of the suspension of NAV calculations and investor redemptions, and if so, evidence of such notification;
 - iii. confirmation as to whether or otherwise there are any legal actions pending in relation to the fund, and if so, details of such actions; and

- iv. an indication as to when the fund anticipates that NAV calculations will resume.

PART II

EXEMPTION FROM THE REQUIREMENT TO APPOINT AN AUDITOR

3. This Part applies only to **private and professional funds** that wish to seek an exemption from the requirement to appoint an auditor.

Application for an Exemption from the Requirement to Appoint an Auditor

3.1 A private or professional fund must at all times have an appointed auditor. Regulation 10(2) of the Mutual Funds Regulations however permits the Commission to grant an exemption to a private or professional fund from the requirement to appoint an auditor.

3.2. A private or professional fund that wishes to be exempted from the requirement to appoint an auditor must make an application in writing to the Commission. The application may be made at any time during the tenure of the private or professional fund and must be accompanied by the relevant application fee as detailed in the Appendix.

Considerations for Exemptions

3.3 The Commission may consider a private or professional fund's application for an exemption from the requirement to appoint an auditor under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:

- 3.3.1 The fund has never commenced business;
- 3.3.2 The fund has limited business activities (generally has an NAV of less than \$US1 million) with a small number of investors (generally less than 30 investors);
- 3.3.3 The fund had no assets or liabilities and all investors have been redeemed and/or is closed to new investors;
- 3.3.4 The fund has ceased conducting regulated business (evidence of cessation of business includes redemption of all its investors, sale of assets, board resolution indicating that the fund has ceased business including the date when this was done) and intends to cancel its Certificate of Recognition within a 3 month period (such intention should be communicated via a board resolution);
- 3.3.5 The fund has been approved to commence voluntary liquidation during the relevant financial year;
- 3.3.6 The fund was in voluntary or insolvent liquidation during the relevant financial year; or
- 3.3.7 The fund has suspended or is in the process of suspending NAV calculations.

General Information

3.4 An application for an exemption from the requirement to appoint an auditor must contain the following information:

- 3.4.1 the rationale for the fund's application for an exemption;
- 3.4.2 evidence that investors were made aware of the fund's decision to seek the exemption, as well as their consent (where the fund has investors);
- 3.4.3 a copy of the fund's latest unaudited financial statements (where it has conducted business); and
- 3.4.4 details of the current circumstances of the fund (i.e. total assets, total investors, latest NAV and NAV per share).

Additional Information

3.5 An application for an exemption from the requirement to appoint an auditor must contain the additional information detailed below, where the particular circumstances apply to a particular private or professional fund:

- 3.5.1 Where a fund has not commenced business; the date on which the fund anticipates it will commence business;
- 3.5.2 Where a fund has no assets or liabilities, is inactive and/or closed to new investors; an indication of the fund's intended way forward, including relevant timeframes and confirmation as to whether the fund intends to cancel its Certificate of Recognition;
- 3.5.3 Where a fund suspended the calculation of its NAV within the relevant year:
 - i. a copy of the board resolution authorising the suspension of the NAV calculations;
 - ii. confirmation as to whether or otherwise investors have been notified of suspension of redemptions, and if so, evidence of such notification;
 - iii. confirmation as to whether or otherwise there are any legal actions pending in relation to the fund, and if so, details of such legal actions; and
 - iv. the date that the fund anticipates that the calculation of NAV will resume.

Conditional approval

3.6 Where the Commission grants an exemption from the requirement to appoint an auditor, the exemption is only valid where the circumstances disclosed continue to exist. Where the

circumstances deviate from those disclosed to the Commission in its application, a private or professional fund must immediately notify the Commission and put measures in place to comply with the requirement to appoint an auditor.

PART III

EXTENSION OF TIME FOR SUBMISSION OF FINANCIAL STATEMENTS

4. This Part applies to all mutual funds and private investment funds that require an extension of time to prepare and submit financial statements.

Application for an Extension

4.1 A mutual fund or a private investment fund that has a reasonable explanation as to why it cannot submit its financial statements within 6 months after a relevant financial year end, may submit an application for an extension of the time to prepare and submit audited financial statements.

4.2 The legislative basis that allows for such extensions are as follows:

- i. regulation 10(4) of the Mutual Funds Regulations, in relation to private and professional funds;
- ii. section 73 of the Securities and Investment Business Act, in relation to public funds, incubator and approved funds; and
- iii. regulation 10(3) of the Private Investment Funds Regulations, in relation to private investment funds.

4.3 In order for an application for an extension to be considered it must be submitted to the Commission (Director, Investment Business Division) **within 6 months** after the fund's relevant financial year end, contain the information detailed under paragraphs 4.5 and 4.6 and be accompanied by the relevant application fee as detailed in the Appendix.

Considerations for Extensions

4.4 The Commission may consider a fund's application for an extension of time to prepare and submit financial statements under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:

- 4.4.1 The fund operates in a fund of funds structure and the auditor of the fund must await the finalisation of the audited accounts of the underlying funds in order to finalise the fund's audit;
- 4.4.2 The fund's auditor encounters accounting difficulties (e.g. errors in accounting calculations, difficulties in accessing information from third parties) which result in a delay in the completion of the auditor's work to opine on the financial statements;
- 4.4.3 There was a change in the fund's auditor or administrator during the relevant financial year which results in a delay in the completion of the fund's audit;

- 4.4.4 The fund's auditor requires additional time for the completion of the fund's audit;
- 4.4.5 the fund's current audit is delayed due to a failure to complete previous years' audits; or
- 4.4.6 the fund has suspended its NAV calculation and redemptions due to issues with its broker (e.g. bankruptcy).

General Information

4.5 An application for an extension of time to submit financial statements must contain the following information:

- 4.5.1 The relevant financial year for which the fund is seeking an extension;
- 4.5.2 The rationale for the fund's application for an extension submitted by the fund's auditor;
- 4.5.3 An indication of the anticipated timeframe for completion and submission of the audited financial statements; and
- 4.5.4 Details of the circumstances of the fund, as at the end of the relevant financial year (i.e. total assets, total # of investors, NAV and NAV per share).

Additional Information

4.6 An application for an extension of time to prepare and submit audited financial statements must contain the additional information detailed below, where the particular circumstances apply to a specific public, private, professional or private investment fund:

- 4.6.1 Where the fund operates in a fund and fund structure and its auditor is awaiting information from the underlying funds:
 - i. details of the investments of the underlying fund(s);
 - ii. confirmation as to whether the investments/assets of the underlying fund(s) are illiquid; and
 - iii. an indication as to whether the auditor is awaiting the completion of the audit of underlying fund(s) or verifications of the fund's valuation as required under the auditor's auditing standard;
- 4.6.2 Where the fund's auditor encountered difficulties in gathering information or there was a change in the fund's auditor or administrator:
 - i. an elaboration from the auditor on the particular issue;
 - ii. an indication as to whether the fund's assets are illiquid; and

- iii. an indication as to whether the auditor is awaiting further verifications of valuations required by the auditor’s auditing standard; or

4.6.3 Where a fund suspended the calculation of its NAV and redemptions due to issues with its broker:

- i. an indication as to whether the fund’s assets are frozen, at the time of application;
- ii. the percentage of the fund’s assets that were exposed due to the broker’s issues;
- iii. confirmation as to whether the fund asset exposure is likely to affect the continued operation of the fund;
- iv. confirmation as to whether the fund intends to appoint a new broker;
- v. an explanation as to how the fund intends to recover its assets;
- vi. confirmation as to whether any investor complaints had been filed as a result of the suspension of NAV calculations and investor redemptions, and if so, an explanation as to how the complaints have been handled; and
- vii. a copy of the fund’s schedule of investments.

Maximum extension time

4.7 Table 2 below details the maximum amount of extended time (in addition to the 6 month period for which funds are allowed to submit financial statements) a fund can be granted to prepare and submit financial statements for a relevant financial year, by type of fund:

Table 2

Fund Type	Maximum Extension Time
Public Fund	6 months
Private Fund Professional Fund Private Investment Fund	9 months

PART IV

APPROVAL OF AUDITING STANDARDS ON A CASE BY CASE BASIS

5. This Part applies to all funds whose auditor wishes to audit the funds' financial statements against a standard that has not been accepted under the Mutual Funds Regulations or the Private Investment Funds Regulation, 2019.

Auditing Standards

5.1 Pursuant to the Mutual Funds Regulations and the Private Investment Funds Regulation, 2019, the auditor of a fund must audit a fund's financial statements in accordance with the following standards:

5.1.1 US Generally Accepted Auditing Standards;

5.1.2 International Standards on Auditing (UK);

5.1.3 International Standards on Auditing;

5.1.4 Hong Kong Standards on Auditing; and

5.1.4 Canadian Auditing Standards.

5.2 The Regulations further allow a fund's financial statements to be audited in accordance with such other auditing standards as may be approved by the Commission on a case-by-case basis. Where a fund's auditor wishes to prepare the fund's audit report in accordance with a standard that has not been specified in the Regulations, the fund must submit an application to the Commission for the approval of the auditing standard. Such application will only be considered on an exceptional basis, where the fund has set out a compelling case as to why the auditing standard should be approved.

Application for Consideration of Auditing Standards

5.3 An application for consideration of an audit standard must contain the following information:

5.3.1 the name of the auditing standard;

5.3.2 the name of the body that issued the auditing standard;

5.3.3 a copy of the auditing standards;

5.3.4 the auditor's assessment as to how the auditing standards are equivalent to one of the auditing standards that have already been accepted by the Commission; and

5.3.5 a case that sets out the reason why the Commission should consider the auditing standard for approval.

5.4 The Commission will only grant approval of an auditing standard where it is satisfied that the auditing standard is equivalent to the standards that the Commission has already accepted and it acknowledges that it would be difficult for the fund to use one of the standards already approved. Where the Commission has considered and approved the auditing standard in relation to a particular fund, the auditing standard will be considered as an approved auditing standard under the Regulations.

**APPENDIX
FEES**

Table 3 below details the fees applicable for seeking an exemption from the requirement to submit financial statements, an exemption from the requirement to appoint an auditor and an extension of time for preparing and submitting audited financial statements.

Table 3

Description	Fund Type	Fees
Application for exemption from preparing and submitting financial statements	Public Funds Private Funds Professional Funds Incubator Funds Approved Funds Private Investment Funds	\$250
Exemption from preparing and submitting financial statements for any given year	Public Funds Private Funds Professional Funds Incubator Fund Approved Fund Private Investment Funds	\$500
Application to be exempted from appointing an auditor	Private Funds Professional Funds	\$500
Application for extension of time for submission of financial statements and reports	Public Funds Incubator Funds Approved Funds	\$750
Approval of extension for the provision of copy of financial statements by a private or professional fund	Private Funds Professional Funds Private Investment Funds	\$500