

British Virgin Islands Financial Services Commission

Fund Safekeeping Arrangements Guidelines



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INTRODUCTION

(i) The ability of a fund to ensure the protection and security of fund property is core to fund's operations and the preservation of investor interests. It is on this basis that regulation 6 (1) of the Private Investment Funds Regulations, 2019 requires a private investment fund to have at all times, an appointed person responsible for the safekeeping of the fund's assets. In addition, regulation 9(1)(c) of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 requires incubator funds and approved funds to have appropriate arrangements in place for the safekeeping of fund property.

(ii) These Guidelines are issued in accordance with section 41A of the Financial Services Commission Act and serve to inform on the types of arrangements that the Commission considers appropriate for the safekeeping of fund property and the ultimate security of fund assets.

SAFEKEEPING ARRANGEMENTS

1. The safekeeping arrangements that a private investment fund, incubator fund or approved fund must have in place are dependent on the type of assets that the fund may hold. The paragraphs below detail the types of arrangements the Commission considers appropriate for a private investment fund, incubator fund or approved fund based on the particular asset type of the fund. A private investment fund, incubator fund or approved fund is required at the time of authorisation and at all times to be in a position to demonstrate that safekeeping arrangements are in place. Where safe keeping arrangements have ceased or are altered, the fund is required to notify the Commission of such changes.

Investments in Financial Instruments

1.1 Where a fund invests in financial instruments such as stocks, bonds, futures, contracts for difference, options, etc., the fund should maintain appropriate safekeeping arrangements with an appropriately licensed and/or qualified person with expertise in dealing in such assets. Customarily this person can be a traditional custodian. A fund may also establish such an arrangement with a prime broker that establishes custodial arrangements for the transactions being undertaken on behalf of the funds.

Investments in Tangible Assets

1.2 Where a fund invests in tangible assets such as land, real estate, equipment, private equity, etc., a traditional custodian or prime broker is not required. A fund however must ensure that it appoints a person that has the responsibility of ensuring that documentation with respect to the fund's ownership of such assets is maintained and safeguarded. A fund must ensure that such person has sufficient expertise and resources to carry out the function.

Investments in Other Funds

1.3. Where a fund operates as a feeder fund in a master/feeder fund structure or operates in a fund of funds structure and places all its investments in another fund or in a number of funds, the fund must ensure that a person is responsible for ensuring that the underlying fund or funds have appropriate custodial or safekeeping arrangements in place in relation to the underlying fund assets and understand these arrangements. This person would also have responsibility for monitoring of investments in and redemptions from the underlying funds.