

# **British Virgin Islands Financial Services Commission**

## **Private Investment Funds Regime Guidelines**

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## **INTRODUCTION**

- (i) In 2019, the Securities and Investment Business Act (“SIBA”) was amended to bring private investment funds (traditionally known as closed ended funds) under the regulatory remit of the Commission. Private investment funds are similar in operation to BVI private and professional funds. Private investment funds however do not offer investors a right to redemption of their interest on demand.
- (ii) The regulatory requirements for private investment funds are similar to those imposed on private and professional funds. The regulatory requirements for recognition as private investment funds are set out via provisions in SIBA and the Private Investment Funds Regulations, 2019 (“the PIF Regulations”).
- (iii) These Guidelines, which are issued in accordance with section 41A of the Financial Services Commission Act, provide an overview of the Private Investment Funds Regime. The Private Investment Funds Regime Guidelines describe the requirements for recognition as a private investment fund, as well as ongoing obligations to which these funds must adhere. Appendix I of these Guidelines contains the application form for recognition as a private investment fund and Appendix II outlines of the fees applicable.

# **APPLICATION FOR RECOGNITION AS A PRIVATE INVESTMENT FUND**

## **1. Application Process**

1.1 An entity (“the applicant”) seeking recognition as a private investment fund must complete and submit to the Commission (Director, Investment Business Division) a Private Investment Fund Application Form (Form IB/PIF-1), attached as Schedule I of these Guidelines. The application must be submitted via the applicant’s local representative (i.e. authorised representative, registered agent or legal representative).

1.2 A properly filed application must include:

- i. a completed Form IB/PIF-1, meaning that all sections the form must be completed;
- ii. all supporting documentation, as detailed in paragraph 1.3 below; and
- iii. relevant application fee, as detailed in Appendix II of these Guidelines.

1.3 Copies of the following documentation must be submitted in support of an application for recognition as a private investment fund:

- i. a certificate of incorporation, formation, registration or equivalent document;
- ii. constitutional documents (i.e. Memorandum and Articles of Association, Partnership Agreement, Trust Deed);
- iii. a Register of Directors (if applicant is a company);
- iv. a résumé or biography for each director, general partner, trustee, or underlying individual(s) where director, general partner or trustee is a corporate entity (*see paragraphs 3.2.1 – 3.2.3*);
- v. the Offering Document or Term Sheet; and
- vi. the fund valuation policy.

1.4 Form IB/PIF-1 contains a declaration which must be completed, signed and dated by a director (in the case of company), general partner (in the case of a limited partnership) or trustee (in the case of a unit trust) of the applicant. Where the general partner or trustee is a corporate entity, a representative of the corporate entity may complete, sign and date the declaration.

1.5 The application form also necessitates details of the contact person in relation to the application. This person must be affiliated with a local representative of the Applicant (i.e. authorised representative, registered agent or legal representative).

1.6 Notwithstanding the filing of a complete application, the Commission may require additional information or clarification to complete its assessment, based on the information presented in the application and/or the circumstances of an applicant.

1.7 Where an application for recognition as a private investment fund has been approved, the fund will be issued a Certificate of Recognition as a Private Investment Fund, which will remain valid until cancelled or revoked by the Commission.

1.8 Where an application for recognition as a private investment fund has been denied, this decision will be notified to the applicant.

## **2. Transitional Provisions**

A transitional period for private investment funds is in place from 31<sup>st</sup> December 2019 to 1<sup>st</sup> July 2020. Entities operating as private investment funds within the transitional period must make an application for recognition before or by 1<sup>st</sup> July 2020. After the transitional period has expired, the requirements of the Act will be fully enforced and any fund operating as a private investment fund that has not sought recognition as a private investment fund by 1<sup>st</sup> July 2020, will be considered to be conducting unauthorised financial services business and will be subject to enforcement action.

# **REQUIREMENTS OF PRIVATE INVESTMENT FUNDS**

3. A private investment fund is subject to a number of initial and ongoing requirements as are detailed below.

### **3.1 Requirement to Appoint an Authorised Representative**

- 3.1.1 A private investment fund must appoint and at all times retain an Authorised Representative, certified by the Commission in accordance with section 64 of SIBA. The Authorised Representative's role is to act as a liaison between the fund and the Commission.
- 3.1.2 Where a private investment fund changes its Authorised Representative, it must notify the Commission within **14 days** of this change.

### **3.2 Requirements in relation to Directors, General Partner or Trustee**

Depending on the constitution type of a private investment fund, the entity will have directors, a general partner or a trustee. The requirements in relation to directors, general partners and trustees are detailed below:

#### *Directors*

- 3.2.1 Where a private investment fund is a company, it must have a minimum of **2 appointed directors**, one of whom must be an individual. A company's application for recognition as a private investment fund, must be accompanied by the following, in relation to its directors:
  - i. a copy of the applicant's Register of Directors;
  - ii. a résumé or biography of each director; and
  - iii. where the applicant has corporate directors:

- a copy of the Registers of Directors of each corporate director; and
- résumé or biography of each underlying individual director of any corporate director.

*General Partners*

- 3.2.2 Where a private investment fund is a limited partnership, it must provide details of its general partner within its application for recognition, which includes:
- i. a copy of the applicant's partnership agreement, which includes the name(s) and address(es) of the general partner(s);
  - ii. a résumé or biography of the applicant's general partner(s); and
  - iii. where the general partner(s) of the applicant is (are) a corporate entity(ies), a résumé/ biography of the underlying individual(s) responsible for the general partner(s).

*Trustees*

- 3.2.3 Where a private investment fund is a unit trust, it must provide details of its trustee by submitting the following:
- i. a copy of the fund's trust deed;
  - ii. a biography of the trustee; and
  - iii. where the trustee is a corporate entity, the names and biographies of key personnel within the trustee.
- 3.2.4 The private investment fund must notify the Commission, where there are any changes to its directors, general partners or trustee within **14 days** of the change.

### **3.3 Requirement to have Appointed Persons**

3.3.1 In accordance with regulation 6 of the PIF Regulations, private investment funds are required to maintain 3 appointed persons, responsible for the management, valuation and safekeeping (including segregation) of the fund's assets respectively.

3.3.2 An appointed person may be the private investment fund's director, general partner or trustee, an independent third party with relevant experience in performing the relevant function, or an entity licensed by the Commission or any other regulatory authority as an investment manager, administrator or custodian respectively.

3.3.3 When making a decision on the appointed person responsible for the safekeeping of fund property, a private investment fund must give due consideration to the Fund Safekeeping Arrangements Guidelines. The fund should ensure that this appointed person has adequate arrangements in place for the segregation of the private investment fund's assets from its or any other assets it may have or hold.

3.3.4 Ideally, the appointed person responsible for undertaking the management of fund property should not be the same person as the appointed person responsible for the valuation of fund

property. Where the private investment fund considers that these functions should be carried out by a single appointed person, the fund must:

- identify, manage and monitor any potential conflicts of interest that may arise from such an arrangement; and
- disclose this arrangement to its investors, along with details of how any conflicts will be managed.

3.3.5 Where any of the 3 appointed persons ceases to act for the fund, the private investment fund must notify the Commission of this fact and provide an explanation as to why the appointed person no longer undertakes the function. This notification must be provided within **7 days** after the appointed person ceases to act for the private investment fund.

3.3.6 Where an appointed person ceases to act as an appointed person, a private investment fund must notify the Commission of the proposed replacement it intends to appoint to perform the relevant function. This notification must be provided within **7 days** after the previous appointed person ceased to act on behalf of the fund.

#### **3.4 Requirement to Prepare and Submit Financial Statements**

3.4.1 Private investment funds are required to prepare financial statements for each financial year in accordance with one of the accounting standard outlined below:

- the International Financial Reporting Standards;
- UK Generally Accepted Accounting Principles;
- US Generally Accepted Accounting Principles;
- Canadian Generally Accepted Accounting Principles; or
- any other internationally recognised and generally accepted accounting standards equivalent to those listed.

3.4.2 The financial statements of a private investment fund must be audited by an auditor in accordance with one of the following standards:

- US Generally Accepted Auditing Standards;
- International Standards on Auditing (UK);
- International Standards on Auditing;
- Hong Kong Standards on Auditing; or
- Canadian Auditing Standards.

3.4.3 Regulation 10 (2) of the Regulations includes a provision that allows an auditor to audit a private investment fund's financial statements in accordance with another internationally recognised auditing standard that may be approved by the Commission on a case by case basis. This approval is based on an application process that is only considered in exceptional circumstances. Information on this process can be found in Part IV of the Fund Financials Guidelines.

3.4.4 Audited financial statements must be submitted **within 6 months** after the private investment fund's financial year end, unless granted an exemption from the requirement for a particular financial year or an extension of time to submit the financial statements for a particular year. The Parts I and III of the Fund Financial Guidelines describe the circumstances under which the Commission may consider an application for an exemption or extension accordingly, and detail the information that must be submitted with such applications.

### **3.5 Requirement for Offering Document or Term Sheet**

3.5.1 Where a private investment fund intends to make an offer or invitation to an investor or potential investor, the invitation must be contained in an Offering Document or Term Sheet. The Offering Document or Term Sheet should also serve to inform investors or potential investors of pertinent information that relates to making an investment in the fund.

3.5.2 The Commission understands that there are circumstances where it may not be necessary or feasible for a private investment fund to issue an Offering Document or Term Sheet. In such an instance, the fund must indicate in section 9.2 of the Form IB IB/PIF-1:

- i. the reason why the fund does not intend to issue an offering document or term sheet; and
- ii. how pertinent information in relation to investments in the fund will be communicated to investors or potential investors, in the absence of an offering document or term sheet.

3.5.3 A private investment fund must notify the Commission the Commission of any changes in its Offering Document or Term Sheet, within **7 days** after the issuance of an amended or new Offering Document or Term Sheet.

### **3.6 Valuation Policy**

3.6.1 A private investment fund is required to maintain a valuation policy. The requirements of the valuation policy are detailed under regulation 9 of the Regulations. The appointed person responsible for the valuation of fund property must value the private investment fund's assets in accordance with the valuation policy.

3.6.2 A private investment fund must notify the Commission of any amendments to its valuation policy within **7 days** of the amendment.

### **3.7. Other Notifications**

3.7.1 A private investment fund must notify the Commission of the following, within seven 7 days of their occurrence:

- i. any changes in the fund's place of business (inside or outside the Virgin Islands);
- ii. any material changes in the nature and scope of the fund's business (where the fund is incorporated, constituted or formed outside of the Virgin Islands); and

iii. any amendment to the fund's constitutional documents.

### **3.8 Fees**

3.8.1 Once granted recognition, private investment fund is subject to initial and ongoing fees, as detailed in Schedule II.

## APPENDIX I

FORM IB/PIF-1



### Securities and Investment Business Act

### PRIVATE INVESTMENT FUND APPLICATION FORM

**Note:** Please read the Private Investment Fund Regime Guidelines before completing form.

**1. Name of Applicant**

**2. Name of Registered Agent**

**3. Name of Authorised Representative**

**4. Place of Business**

(In the Virgin Islands)

(Outside the Virgin Islands)

**5. Constitution of Applicant**

**5.1 Entity Type:**  BVI Business Company

Limited Partnership

Unit Trust

**5.2 Country or Jurisdiction of Constitution:**

**5.3 Date of Constitution:**

(dd)

(mm)

(yyyy)

**5.4 BVI Business Company / Limited Partnership No.:**

**6. Directors /General Partner(s)/ Trustee Details**

**Name (Last Name, First Name if an Individual)**

**Address**

i.

ii.

iii.

iv.

v.

vi.

vii.

## 7. Details of Appointed Persons

### Appointed Person Responsible for Undertaking Management

Name (*Last Name, First Name if an Individual*)

Address

### Appointed Person Responsible for Undertaking Valuation

Name (*Last Name, First Name if an Individual*)

Address

### Appointed Person Responsible for Undertaking Safekeeping

Name (*Last Name, First Name if Individuals*)

Address

## 8. Proof of Classification

### 8.1 Please indicate the classification type of the Applicant:

- The constitutional documents specify that the fund is not authorised to have more than 50 investors
- The constitutional documents specify that an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only.
- The constitutional documents specify that the fund interests shall be issued only to professional investors with an initial investment of each investor, other than exempted investors, of not less than US100,000 or its equivalent.

### 8.2 Indicate clause in the constitutional documents that specifies classification type:

## 9. Offering Document/Term Sheet

### 9.1 Has the fund issued, or intends to issue an offering document or term sheet?

Yes     No

### 9.2 If response to 9.1 is No, please indicate below the reason no offering document or term sheet is to be offered and provide an explanation of how relevant information concerning the fund and any invitation or offer will be provided to investors and potential investors.

## 10. Financials

### 10.1 Proposed first accounting period

Start: 

(dd)	(mm)

(yyyy)			

 End: 

(dd)	(mm)

(yyyy)			

### 10.2 Proposed financial year end:

(dd)	(mm)

### 10.3 Accounting Standard to be used:

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## 11. Regulatory or Enforcement Action

Indicate your response by ticking Yes or No to each question below.

- |      |   |                              |                             |
|------|---|------------------------------|-----------------------------|
| 11.1 | Has the Applicant ever been refused an application for registration, licensing, recognition or authorisation by any authority in any country or jurisdiction?                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11.2 | Has the Applicant ever been subject to the suspension, cancellation or revocation of its licence or certificate, recognition or authorisation by any other country or jurisdiction? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11.3 | Has the Applicant ever been subject to regulatory or enforcement action by any authority in any country or jurisdiction?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11.4 | Has the Applicant ever been subject to proceedings relating to receivership or creditors' compromise?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**NOTE:** If the answer to any of the above questions is Yes, full details of the matter must be disclosed as a properly marked attachment to the application.

## 12. Contact Person in relation to Application

- |  |                     |
|--|---------------------|
| 12.1 Last Name:  | First Name:         |
| 12.2 Name of Organisation (where applicable)   |                     |
| 12.3 Relationship to Applicant: <input type="checkbox"/> Authorised Representative <input type="checkbox"/> Legal Representative <input type="checkbox"/> Registered Agent |                     |
| 12.4 Address:  |                     |
| 12.5 Tel:  | 12.6 Email Address: |

## 13. Declaration by Applicant

I hereby declare that the information provided in this application is to the best of my knowledge and belief, true and accurate, and that all documents submitted with this application have been verified as authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and may negatively affect any future applications submitted to the Commission involving the Applicant or its directors, general partners or trustee (as the case may be).

Name:

--

Signature:

--

Date:

(dd)	

(mm)	

(yyyy)			

## **APPENDIX II**

### **FEES**

The table below details the application, recognition and annual fees applicable to private investment funds:

<b>Description</b>	<b>Fees</b>
Application for recognition as a private investment fund	\$700
Recognition of a private investment fund on or before June 30 <sup>th</sup>	\$1000
Recognition of a private investment fund after June 30 <sup>th</sup>	\$500
Annual renewal for recognition as a private investment fund	\$1000