

VIRGIN ISLANDS
PRIVATE INVESTMENT FUNDS REGULATIONS, 2019

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2019 NO. 80

**SECURITIES AND INVESTMENT BUSINESS ACT, 2010
(No. 2 of 2010)**

Private Investment Funds Regulations, 2019

[Gazetted 20th December, 2019]

The Cabinet, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by section 63A of the Securities and Investment Business Act, 2010 (No. 2 of 2010), makes these Regulations.

Citation and commencement.

1. (1) These Regulations may be cited as the Private Investment Funds Regulations, 2019.

(2) These Regulations shall come into force on the date that the Securities and Investment Business (Amendment) Act, 2019 is brought into force.

Interpretation.

2. In these Regulations, unless the context otherwise requires,

No.2 of 2010

“Act” means the Securities and Investment Business Act;

“Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act;

“fund property”, in relation to a private investment fund, means

(a) where the fund is a BVI business company or a partnership, the assets of the fund; and

(b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“offering document” or “term sheet” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private investment fund, and includes an amended offering document or term sheet.

Application for Recognition

Application for recognition as a private investment fund.

3. (1) An application to the Commission for the recognition of a private investment fund shall be in the approved form and shall specify the following:

- (a) the address of the fund's place of business in the Virgin Islands;
- (b) the name and address of each of the fund's directors;
- (c) the name and address of the fund's authorised representative;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) if the fund is a limited partnership, the name and address of the general partners;
- (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
- (g) the name and address of each appointed person; and
- (h) such other information as may be required by the approved form.

(2) An application under sub-regulation (1) shall be accompanied by the following:

- (a) a copy of the fund's constitutional documents;
- (b) a copy of the fund's certificate of incorporation, formation, registration or equivalent document;
- (c) if the private investment fund has issued, or intends to issue an offering document or a term sheet, a copy of the offering or term sheet, or the proposed offering document or term sheet; and
- (d) a copy of the fund's valuation policy.

(3) The Commission may require any documents submitted under sub-regulation 2 (a) and (b) to be certified in such manner as it considers appropriate.

Matters required to be prescribed.

4. (1) For the purposes of the definition of “professional investor” in section 63A of the Act, the specified sum is \$1,000,000.

(2) For the purposes of section 63F (2) (b) (iii) of the Act, the minimum initial investment of each investor, other than an exempted investor or, in a private investment fund that is suitable for professional investors, is \$100,000 or its equivalent in another currency.

Directors.

5. (1) A private investment fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.

(2) Where a private investment fund is in breach of sub-regulation (1), it shall immediately notify the Commission of that fact within 7 days after the breach occurred.

Appointed persons of private investment funds.

6. (1) A private investment fund shall at all times have a person (hereafter referred to as the “appointed person”) responsible for undertaking

- (a) the management of fund property;
- (b) the valuation of fund property; and
- (c) the safekeeping of fund property, including the segregation of fund property.

(2) Subject to sub-regulations (3) and (4), an appointed person under sub-regulation (1) may be

- (a) a person licensed by the Commission or a regulatory authority in a recognised jurisdiction to perform the specified functions;
- (b) an independent third party with experience in performing the specified functions; or
- (c) a director, partner or trustee of the private investment fund.

(3) Subject to sub-regulation (4), no person shall be appointed as an appointed person of a private investment fund unless the fund has provided the Commission with the proposed appointment at least 7 days prior to the appointment.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

Appointed person
ceasing to hold
office.

7. (1) A private investment fund shall give notice to the Commission within 7 days, or such other period as the Commission may specify, after an appointed person of the fund

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as a an appointed person to the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the appointed person ceasing to act as such, and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where an appointed person of a private investment fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 6 (1) if another person is appointed to act as an appointed person within 7 days of the original appointed person ceasing to hold office.

Offering
documents or term
sheet.

8. (1) Subject to sub-regulation (2), an offer or an invitation to an investor or a potential investor to purchase or subscribe for fund interests in a private investment, shall be made within an offering document or a term sheet.

(2) Where a private investment fund has not issued or does not intend to issue an offering document or a term sheet, it shall provide to the Commission, the reason for not issuing the offering document or term sheet including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors or potential investors.

(3) An offering document or a term sheet shall clearly indicate that the fund is recognised by the Commission as a private investment fund and shall contain the following:

- (a) an indication as to whether
 - (i) the fund is suitable for private investors only and that the fund is limited to 50 investors, or any invitation to subscribe for fund interests may be made on a private basis only;
 - (ii) the fund is only suitable for professional investors, as defined in the Act and the minimum investment

of \$100,000 (or such larger sum as may apply with respect to the fund) is required;

- (b) the investment objective of the fund;
- (c) a written statement that investors do not have the right to redeem or withdraw fund interests on demand;
- (d) the names and addresses of the appointed persons responsible for the management, valuation and safekeeping of fund property; and
- (e) any fees to be paid by the fund.

Valuation, Financial Statements and Audit

Valuation of fund property.

9. (1) A private investment fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A private investment fund shall ensure that the appointed person values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a private investment fund shall

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation contained in its constitutional documents and offering document or term sheet;
- (c) require valuations to be undertaken at least on an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a private investment fund shall ensure that the appointed person responsible for the fund's management function, is independent from the appointed person responsible for the valuation process.

(5) Where a private investment fund determines that the appointed person responsible for the fund's management function must be the same person as the appointed person responsible for the valuation of fund property, the private investment fund shall

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund
 - (i) that the appointed person responsible for the fund's management function is also the appointed person responsible for the valuation of fund property; and
 - (ii) details of how any potential conflicts of interest will be managed.

Preparation and
audit of financial
statements.

10. (1) A private investment fund shall prepare financial statements that
comply with

- (1) A private investment fund shall prepare financial statements that
 - (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
 - (b) UK GAAP;
 - (c) US GAAP;
 - (d) Canadian GAAP; or
 - (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in sub-paragraphs (a) to (d).
- (2) The financial statements of a private investment fund shall
 - (a) be audited by an auditor, who prepares his or her report in accordance with
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;

- (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
- (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

(3) A private investment fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (4), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.

(4) The Commission shall not grant an extension under sub-regulation (3) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

Notifications.

11. (1) A private investment fund shall provide written notice to the Commission, in accordance with these Regulations, of

- (a) the appointment of a director, authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;

- (e) any amendment to its constitutional documents;
- (f) the issuance of an offering document or a term sheet that was not provided to the Commission with the fund's application for recognition;
- (g) the amendment of any offering document or term sheet previously provided to the Commission, whether with its application or in accordance with paragraph (f); and
- (h) any amendment to the fund's valuation policy.

(2) Notification of the matters specified in sub-regulation (1) shall be provided within 14 days after the occurrence of the matter in respect of which notice is given.

Miscellaneous Provisions

Registers.

12. (1) The Registers maintained by the Commission and the information contained in any document filed may be kept and maintained in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The registers required to be maintained under the Act shall

- (a) specify the following information with respect to each fund
 - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition ("the applicant");
 - (ii) the applicant's authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of recognition of the fund;

- (v) the status of the recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate; and
- (b) be open to public inspection.

Made by Cabinet this 20th day of December, 2019.

(Sgd.) Vicki Samuel- Lettsome,
Acting Cabinet Secretary.