

NEW START-UP FUNDS PRODUCTS IN THE BVI: INCUBATOR FUND AND APPROVED FUND

Jeffrey Kirk

With the 1 June 2015 coming into force of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the **New Fund Regulations**), the British Virgin Island (**BVI**) Financial Services Commission (**FSC**) has reinforced its commitment to ensuring that the BVI remains a pre-eminent, dynamic and attractive domicile for investment funds products.

The introduction of the two new, lightly regulated fund products reflect the FSC's awareness of global funds market trends and are designed to meet the needs of the asset management industry.

The Incubator and Approved Funds will appeal to start-up managers. The new fund structures are designed to facilitate rapid and cost-efficient set-up, with reduced requirements as to fund service providers and an accelerated FSC approval process.

INCUBATOR FUND

The "Incubator Fund" is designed for start-up investment managers. It provides the ability to set-up and run a cost-efficient legal entity for trading an investment strategy with limited on-going obligations. This product will appeal to the increasing number of pioneer managers who are looking to gain a track record before converting the Incubator Fund to a more sophisticated fund product.

The key features of an Incubator Fund are:

- (a) it can have a maximum of 20 investors, each of whom must be invited to invest in the Incubator Fund and must make a minimum initial investment thresholds of US\$20,000, and the fund cannot exceed a cap of US\$20 million in relation to the aggregate value of its investments – these features can be summarized as the "20-

20-20 criteria";

- (b) provided it continues to meet the 20-20-20 criteria, the Incubator Fund can operate for a period of two years (which may, on application to the FSC, be extended by one additional year) before it needs to either convert to a more sophisticated structure, such as an Approved Fund (see below) or a private or professional fund, or wind-up its operations;
- (c) there are no requirements to appoint fund functionaries (administrator, custodian or manager), and there is no requirement to have an auditor;
- (d) there is no requirement for an offering memorandum, accordingly we anticipate that the Incubator Funds will adopt a short-form term sheet that contain the relevant investor warnings prescribed in the New Fund Regulations;
- (e) the approval process is fast and the Incubator Fund can commence business two business days following receipt of the application by the FSC;
- (f) there are limited on-going obligations, including:
 - (i) submission of annual unaudited financial statements to the FSC;

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- (ii) submission of semi-annual returns to the FSC by 31 January and 31 July which summarise pertinent information regarding the fund’s status, including the number of investors, total investments, aggregate subscriptions and redemptions, NAV and details of any significant investor complaints and how such complaints were dealt with. Each return will contain a confirmatory declaration which the directors will need to make confirming that the fund is not in breach of the New Fund Regulations;
 - (iii) similar to other BVI fund products, the requirement to have at least two directors, one of whom must be an individual, and a locally-based authorized representative; and
 - (iv) notification to the FSC within 14 days of any changes to the information provided in the application for approval or in relation to any matter which is likely to have a material impact on the fund.
- (b) there is no maximum period of operation however if it exceeds its number of investors or maximum cap on aggregate investors for a period of more than two consecutive months, it needs to either remedy this breach within seven days of the end of such two-month period, or convert to a more sophisticated product such as a private or professional fund, or wind-up its operations;
 - (c) although it must appoint an administrator, it is not required to have a custodian, manager or an auditor;
 - (d) there is no requirement for an offering memorandum, accordingly, as with Incubator Funds, we anticipate that the Approved Funds will likely have a short-form term sheet which contains the relevant investor warnings prescribed in the New Fund Regulations;
 - (e) the approval process provides for unprecedented speed of establishment; the Approved Fund can commence business two business days following receipt of the application by the FSC;
 - (f) there are limited on-going obligations which are substantially similar to those set out above for Incubator Funds.

These new fund products have been welcomed by the BVI’s financial services industry. The Incubator and Approved Fund reinforce the BVI’s reputation as a leading global jurisdiction for fund managers looking for a flexible, dynamic, reputable and cost-efficient solution for new fund launches.

APPROVED FUND

An “Approved Fund” is similar to a BVI private fund, it is, however, subject to less stringent regulation, has no requirement for an auditor, has lower on-going costs, and targets investment managers originating out of the family office/friends and family market.

The key features of an Approved Fund are:

- (a) it can have a maximum of 20 investors, has no minimum initial investment thresholds and has a maximum cap of US\$100 million in relation to the value of investments in the fund;



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