

# British Virgin Islands



## BVI CLOSED ENDED FUNDS REGIME

### Regulatory regime for closed-ended funds in the BVI

In line with other offshore jurisdictions and in order to comply with commitments to the EU, the BVI has introduced a 'private investment fund' regime by enacting the Securities and Investment Business (Amendment) Act, 2019 (the Act) and the accompanying Private Investment Funds Regulations, 2019 (the **PIF Regulations**).

A 'private investment fund' is an entity that:

- collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets.

#### Timing for Recognition

The Act and the PIF Regulations came into force on 31 December 2019 and apply as follows to entities:

- **Existing entities** that are private investment funds – must apply for recognition on or before 30 June 2020
- **All new private investment funds** – application to be submitted to FSC within 14 days of commencing business

#### Criteria

To classify for recognition as a private investment fund, an entity must fulfil the following criteria:

- be lawfully incorporated, registered, formed or organised under the laws of the BVI or under the laws of a country outside the BVI
- the entity's constitutional documents must specify that:

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- the fund is not authorised to have more than 50 investors;
  - an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only; or
  - the fund interests of the fund shall be issued only to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than USD100,000.
- it must meet the requirements specified in the PIF Regulations.

## Going Forward

In order to constitute to operate as a closed ended fund or indeed set up a new one, that entity will need to seek recognition and obtain a licence from the BVI Financial Services Commission (**FSC**) and comply with the following ongoing obligations:

- have at least two directors (at least one of whom shall be an individual)
- have an 'appointed person' at all times responsible for undertaking:
  - the management of fund property;
  - the valuation of fund property; and
  - the safekeeping of fund property
- have an authorised representative
- have its offering document or term sheet meet the criteria set out in the PIF Regulations
- maintain a clear and comprehensive policy for the valuation of fund property (to be carried out by the 'appointed person')
- maintain financial records
- prepare and file audited financial statements with the FSC within six months of the end of the financial year
- notify the FSC of specific matters set out in the PIF Regulations.

Private investment companies should assess their structures as to whether they should consider recognition under the new private investment funds regime.

For further information on any aspect of this guide please contact your usual Marbury adviser.