

British Virgin Islands

OVERVIEW: A Look at the Approved Manager Regime in the BVI

INVESTMENT FUNDS

Increasingly we find this regime to be of interest to managers of global funds or where managers require an additional leg to their investment advisory function, often for specific investment purposes. Believe it or not, the Approved Fund Manager regime (**AFM**) in the British Virgin Islands has been in force since 2012 and was designed to cater to start-ups, but is equally attractive to established small and medium-sized funds. Until recently we could count the number of AFMs in the structures we administer on one hand. Well this has changed rapidly over the last 6 months.

The AFM permits a BVI company or partnership to conduct business as an investment manager, as an **Approved Manager**, for certain types of funds without a lengthy approval process. Under the Approved Manager Regulations (**AMR**) there is a lighter touch regulatory regime, reducing documentation and cost.

Eligibility for Approved Manager status under the AMR

Approved Managers must:

- be a BVI Business company or partnership
- manage or intend to manage a BVI private or professional fund
- manage or intend to manage a BVI closed-ended fund
- manage or intend to manage a fund from any recognised jurisdiction* (which include Cayman Islands and Bermuda) that has equivalent characteristics to a BVI private or professional fund
- have, under management, assets of not more than USD400 million in respect of open-ended funds and of not more than USD1 billion for closed-ended funds

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Application for Approved Manager status

To become an Approved Manager, the entity must apply to the BVI Financial Services Commission (FSC) for approval at least seven days prior to its intended start of business. Upon submission of a completed application, and if the entity meets the basic eligibility requirements, it can conduct business as an Approved Manager for up to 30 days while waiting for approval (which typically takes two weeks unless there are queries from the FSC).

Specific supporting documents do not include the offering documents to the funds and are generally concerned with matters relating to the principals and managers of the Approved Manager.

Permitted business of an Approved Manager

Once approved by the FSC the Approved Manager may, in addition to its role in respect of BVI funds and accepted foreign funds, act as an investment manager or investment adviser to:

- an affiliate of any of the fund structures referred to above
- such other persons approved by the FSC on a case by case basis (eg for managed accounts).

Regulatory status

The Approved Manager is a licensee for the purpose of the Financial Services Commission Act, 2001, and accordingly subject to FSC supervision.

Ongoing obligations of the Approved Manager

As a regulated entity, the Approved Manager has the following obligations:

- **Two directors.** The Approved Manager must have at least two directors, one of whom must be an individual, or in the case of an Approved Manager constituted as a limited partnership, the partnership must, at all times, have at least one general partner with a minimum of two directors.
- **Authorised representative.** The Approved Manager must at all times maintain an “authorised representative” in the BVI, which is a person or entity licensed in the BVI to act as a liaison between the manager and the FSC.
- **Annual financials.** The Approved Manager must submit annual financial statements to the FSC within six months of the end of the financial year. The financial statements do not require an audit but must comply with prescribed internationally recognised and generally accepted accounting standards (i.e. IFRS, GAAP, etc).
- **Reporting Obligations.** Annual returns must be filed by the Approved Manager with the FSC no later than 31 January each year. The FSC must also be notified in writing of any changes to the information originally submitted in its application along with all relevant details within 14 days of such change. The FSC must also be notified of any matter which may have a material impact or significant regulatory impact on the Approved Manager or its relevant business.
- **AML / FATCA / CRS.** Compliance with BVI’s anti-money laundering regime including an appointment of a money laundering reporting officer (MLRO) and the adoption of appropriate policies and procedures is

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required. Compliance with the BVI regime for Automatic Exchange of Information (AEOI), including FATCA and OECD Common Reporting Standard (CRS), registration with the US Internal Revenue Service, in order to obtain a GIIN, and notification with the BVI International Tax Authority (ITA), adoption of necessary policies and procedures and, if applicable, reporting will also need to be undertaken.

It should be noted that the Approved Manager is not obliged to have an auditor or compliance officer, or to establish and maintain a compliance procedures manual. Nor does the AMR require any regulatory capital / capital adequacy or professional indemnity insurance.

Exception to economic substance rules

Since the activities of an Approved Manager do not require the entity to obtain an investment business licence under the Securities and Investment Business Act (SIBA), the activities do not fall within the definition of “fund management business”. Therefore, there is currently no obligation for an Approved Manager to have substance in the BVI (other than the engagement of its registered office and authorised representative.)

When considering comparable regulated managers in other jurisdictions, with regard to economic substance, the AFM is certainly a more flexible and cost-effective option when comparing similar products.

Application and Annual FSC Fees

The fees for registration as an Approved Manager are currently USD1,500 per annum plus a one-off application fee of USD1,000.

Conclusion

Given the lighter regulatory touch and the simplicity of the application process, the AFM is indeed an attractive proposition in this current climate.

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

Disclaimer

This article provides an overview of the Approved Manager regime and the Approved Manager Regulations in the British Virgin Islands and should not be read as legal advice. For more information please contact Marbury.

* Recognised jurisdictions include Argentina, Australia, Bahamas, Bermuda, Belgium, Brazil, Canada, Cayman Islands, Chile, China, Curacao, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, South Africa, Sweden, Switzerland, UK, and USA.