

The BVI Mutual Funds Act, 1996

(as amended)

Summary of the Main Provisions of the BVI Mutual Funds Act, 1996

We outline below many of the principal provisions of the Mutual Funds legislation that applies in the British Virgin Islands (BVI).

For a full explanation of how the legislation impacts your specific circumstances it is best to discuss your proposal with ATU.

General

The Act regulates both mutual funds and fund administrators operating in or from within the BVI. For funds, it distinguishes between a "Private Fund", a "Professional Fund" and a "Public Fund", with different sets of requirements for each class.

A Private Fund is defined as one where shares are offered on a private basis and are not offered to the general public, or the shares are owned by not more than 50 registered investors.

A Professional Fund is defined as one where shares are made only available to professional investors and the initial investment for the majority of professional investors is not less than US\$ 100,000 (or foreign currency equivalent).

A Public Fund is a fund where shares are offered to the general public, and otherwise a fund which cannot qualify as a Private Fund or a Professional Fund.

The Act provides for the appointment of a Registrar of Mutual funds: who will keep a register of

- registered Public Funds
- recognised Professional Funds
- recognised Private Funds
- licensed Managers and Administrators

The Register will show the date of registration, the status of the registration, the address of the place of business in the BVI, the name and address of the registered agent, the address of any place of business outside the BVI.

The Act does not regulate Closed-ended Funds which do not permit early redemption by investors. Such Closed-ended Funds are outside the terms of the Act.

Public Funds

All Public Funds must be registered. An application consists of a form Schedule I, a statement of scope of operation, the Application fee of \$500 and a copy of Memorandum and Articles of Association.

Accounting records do not have to be maintained in the BVI. However, such accounting records and financial statements must be available for examination by the Registrar in the BVI - i.e. copies of financial records must be maintained in the Territory.

A copy of the audited accounts must be made available to all investors.

The Prospectus must be published prior to the offer, and signed by or on behalf of its officers. A copy of this must be filed with the Registrar. Every Prospectus shall contain a summary of the investors rights as set out in the Act. The Prospectus must be filed in English or with a certified English translation.

Private Funds

Private Funds must be "recognised" under the Act. The application for this needs to prove the fund's lawful constitution, and that it meets the definition of a Private Fund as set forth above. A Private Fund constituted outside the Territory may apply to be recognised under the Act.

Professional Funds

Professional Funds must be "recognised" under the Act. As with Private Funds, the application needs to prove the Funds lawful constitution and that it meets the definition of a Professional Fund. The definition of "professional investor" for this purpose means a person whose ordinary business is investments of the same kind as the fund; or who has signed a declaration that whether solely or jointly with spouse has a net worth in excess of US\$ 1 million and that such person consents to being treated as a professional investor.



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Mutual Fund Managers / Administrators

These must be licensed under the Act as "fit and proper" persons. The annual license fee for which is US\$ 500 p.a.

Non-Resident exemption is available where a person is an established Manager or Administrator of mutual funds under the laws of a recognised jurisdiction and that person receives written authorisation from the Minister to act as a Manager or Administrator of a mutual fund in the BVI.

Annual Government Fees

The annual fees for the first year are due on licensing. For subsequent years they fall due on 31st March.

The annual Government fee for a registered public fund is US\$ 500. For a recognised Private or Professional Fund, the annual Government fee is US\$ 350.

Application Procedure

Application should be made to the Registrar of Mutual Funds. The application fee payable to the BVI Government is US\$ 250 for

Mutual Fund Managers / Administrators. US\$ 350 for an application for recognition and US\$ 500 for an application for registration of a mutual fund.

All types of applications (for Public, Professional and Private Funds) have to be accompanied by the address of the principal place of business in the BVI and address for service in the BVI, the name and address of the responsible person in the BVI and any addresses for business outside the BVI. The Registrar must be informed of any subsequent changes.

Distinguishing Characteristics of BVI Mutual Funds

Type	Offering to	US\$ minimum	Number of Investors	BVI Requirement	Requirements	Fees
Private - BVI or - non BVI domiciled	Private Offering	None	Max. 50	Recognition	Prohibition on offer to public	Application US\$ 350 Annual US\$ 350
Professional - BVI or - non BVI domiciled	Professional Investors or US\$ 1 million net worth investors	US\$ 100,000 majority minimum initial investment	No limit	Recognition	Limited to Professionals or US\$ 1 million net worth individuals who elect Professional Investor Status	Application US\$ 350 Annual US\$ 350
Public - BVI or - non BVI domiciled	General Public	None	No limit	Registration	Prospectus Certificate of Registration Annual Financials Annual Audit	Application US\$ 500 Annual US\$ 500
Family Trust Funds	Group of Family Trusts only	None	No limit	Exemption	No solicitation for sale of shares is permitted	Application Nil Annual Nil

The BVI is an extremely attractive jurisdiction for the regulation of Private and Professional Mutual Funds.



3076 Sir Francis Drake's Highway • P.O. Box 3463 • Road Town • Tortola • British Virgin Islands
Telephone +1 (284) 494 1100 • Fax +1 (284) 494 1199
E-mail: atu@atubvi.com • www.atubvi.com