BVI Incubator Funds

Under the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 ("**Regulations**"); the incubator fund has been added as a new type of fund in the British Virgin Islands. The Regulations enable incubator funds to be set up and launched on a fast track, cost effective basis with minimal regulatory oversight by the BVI Financial Services Commission ("**Commission**").

Eligibility

An incubator fund has a minimum investment requirement of US$20,000, a cap on net assets of US$20M and limit of 20 investors. An incubator fund does not need to appoint an administrator, custodian, investment manager or auditor. Service provider requirements are minimal.

The fund is required to appoint an authorized representative in the BVI. However, there are no mandatory custody requirements.

There is no requirement for the issuance of an offering document and where the fund determines not to issue one, the required investor warnings can be set forth in a separate term sheet.

Application

Applications for an incubator fund are made to the Commission and must be accompanied by:

- the constitutional documents;
- details of the investment strategy;
- a prescribed form of investor warning; and
- an application fee of US$1,500.

An incubator fund can commence business 2 days from the date of receipt of the application by the Commission.

Duration

An incubator fund has a limited life of 2 years which can be extended for up to 12 months. An incubator fund can convert to an approved fund, a private or professional fund, or may wind up at the end of its term. An incubator fund can convert to a private or professional fund or to an approved fund by making an appropriate application to the Commission.

Valuation

Amendments to legislation made in 2020, now require incubator funds to 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 and to ensure that the person responsible for controlling the fund's valuation process adheres to these policies. The requirements require the valuation policy and procedures to:

- be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
- be consistent with the provisions concerning valuations contained in the fund's constitutional documents and offering documents;
- require valuations to be undertaken at least on an annual basis;
- include procedures for preparing reports on the valuation of fund property; and
- specify the mechanisms in place for the dissemination of valuation information and reports to investors.

To the extent that there is either no independence between the investment function and the person having responsibility for the fund valuation process there is an express requirement for a fund to identify, manage and monitor any potential conflicts of interest which may arise and disclose to investors the existence of a potential conflict of interest and how any potential conflict of interest will be managed.

Safekeeping

While this is likely already done as a matter of good practice, the legislation now requires incubator funds to have in place arrangements for the safekeeping of fund property, including the segregation of fund property.

Accounting

The legislation now also sets out applicable accounting standards required to be followed for the fund's financial statements, namely requiring US GAAP; International Standards on Accounting (UK); International Standards on Auditing; Hong Kong Standards on Auditing; Canadian Auditing Standards; or such other recognised international auditing standard as may be approved by the Commission on a case by case basis.

Ongoing Obligations

Otherwise, an incubator fund is required by the Regulations to:

- pay an annual fee of US$1,000 on or before 31 March of each year;
- have a minimum of two directors at all times, one of whom must be an individual;

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- notify the Commission of any change to any of the information submitted to the Commission in its application; for instance in relation to it or its conduct (which has or is likely to have a material impact or significant regulatory impact), directors, etc;

- prepare and file annual financial statements to the Commission (with no requirement for an independent audit); and

- file bi-annual returns with the Commission.

The introduction of the incubator fund has proved attractive to start up managers, family offices and others looking for a simple, quick and cost effective way to establish a lightly regulated investment vehicle.

What can Waterford do for you?

We have played a leading role in establishing numerous incubator funds in the BVI since they came into existence in 2015. As part of our service in establishing and launching an incubator fund we will provide advisory and drafting services with respect to the formation of an incubator fund in the BVI and attend to the recognition process. Our services will include:

1. Establishing the fund as a BVI business company and drafting memorandum and articles to conform to the offering document (corporate structure is by far the most common);
2. Drafting the offering document;
3. Drafting the subscription documents;
4. Drafting the redemption notices;
5. Drafting corporate launch minutes;
6. Drafting application for recognition with Commission and lodging same;
7. Attending to payment of government fees on BVI company formation and recognition of Fund
8. Acting as liaison with Commission; and
9. Attending to all incidental and related matters.

Please contact us on info@waterford.sg to arrange a consultation or request a detailed estimate of fees.