

British Virgin Islands Regulatory Obligations and Filing Deadlines 2019

Key Dates

- **AUDITED ACCOUNTS – 30 JUNE 2019 (FOR FUNDS AND LICENSEES WITH 31 DECEMBER FINANCIAL YEAR END)**
- **FUND ANNUAL RETURN – 30 JUNE 2019**
- **RECORD KEEPING – ONGOING**
- **REGISTER OF DIRECTORS - ONGOING**
- **AEOI – 31 MAY 2019 (REPORTING DEADLINE)**

Pursuant to the Securities and Investment Business Act, 2010 ("SIBA") and the Mutual Funds Regulations, 2010, all BVI private, professional and public funds ("Funds") and all BVI investment business licence holders ("Licensees") are required to appoint, and at all times have, an auditor for the purposes of auditing their financial statements, unless expressly exempted from this requirement.

All Funds and Licensees are required to submit a copy of their audited financial statements to the Financial Services Commission (the "Commission") within six months of the end of each financial year. Funds and Licensees with a financial year ending on 31 December are therefore required to submit their audited financial statements for the 2018 financial year to the Commission on or before 30 June 2019.

Funds and Licensees are likely to be faced with administrative penalties and / or enforcement action if they fail to meet the deadline.

Accounting Standards

Funds, Licensees, Approved Funds, Incubator Funds and Approved Managers must prepare financial statements for each financial year in accordance with one of the prescribed accounting standards¹ or internationally recognised and generally accepted accounting standards equivalent to such prescribed accounting standards.

Exemptions and Extensions

Funds and Licensees which have not appointed an auditor will need to make a written application to the Commission for an exemption from the requirement to appoint an auditor and submission of audited financial statements. Alternatively, Funds and Licensees which are not in a position to file the audited financial statements by the annual filing deadline may apply to the Commission for an extension. The Commission may, in normal circumstances, grant a maximum extension of up to nine months following the end of the relevant financial year. Please note that in respect of a Licensee an application for exemption must be submitted to the Commission

¹ Meaning:

- (a) The International Financial Reporting Standards, promulgated by the International Accounting Standard Board;
- (b) UK GAAP;
- (c) US GAAP;
- (d) Canadian GAAP; or
- (e) Such other recognised international accounting standards as may be approved by the Commission on a case by case basis.

at least three months prior to the relevant filing deadline.

Approved Funds, Incubator Funds and Approved Managers

All Approved and Incubator Funds under the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015, and all Approved Managers under the Investment Business (Approved Managers) Regulations, 2012 (as amended), are required to submit a copy of their financial statements to the Commission within six months of the end of each financial year. Approved Funds, Incubator Funds and Approved Managers with a financial year ending on 31 December are therefore required to submit their financial statements for the 2018 financial year to the Commission on or before 30 June 2019.

Approved Funds, Incubator Funds and Approved Managers are not required to appoint an auditor but must submit financial statements to the Commission in accordance with SIBA and which comply with required accounting standards as noted above.

In addition, all Approved Funds and Approved Managers are required to submit an annual return to the Commission, in the prescribed form, no later than 31 January each year and an Incubator Fund is required to submit semi-annual reports to the Commission, in the prescribed form, no later than 31 January and 31 July each year.

Non-Licensed Entities

Other types of funds that are not registered or recognised under SIBA, for example closed-ended funds domiciled in the BVI, are not required to prepare or submit audited financial statements to the Commission.

Procedure for Submission

Funds, Licensees, Approved Funds, Incubator Funds and Approved Managers should submit their financial statements to the Commission through their appointed authorised

representative, Maples Authorised Representative Services (BVI) Limited.

ANNUAL RETURNS FOR FUNDS

All Funds are subject to an annual reporting regime under which a mutual fund annual return ("MFAR") must be submitted to the Commission.

Information to be Disclosed in the MFAR

Each Fund must report on the following:

- (a) Basic prudential and governance information, which includes information on its registered agent and functionaries.
- (b) Summary financial information for the relevant reporting period, which includes: opening NAV, total subscriptions, total redemptions, net income / net loss, dividends / distributions, ending NAV and year-end gross assets.

Asset allocation details are also required, but there is no need to set out specific details of individual investments. Details of investors do not have to be disclosed in the MFAR.

When do MFARs need to be filed?

The reporting period for the MFAR is every calendar year, ending on 31 December. Funds are required to submit the MFAR within six months of the end of each reporting period, i.e. on or before 30 June.

Purpose of MFARs

The Commission intends to use the information filed in the MFAR to measure and develop the BVI funds industry while at the same time meeting international reporting standards. We understand that the Commission will not make the MFAR publicly available, but may share information gathered from the MFAR on an aggregate basis.

Filing Procedure for the MFAR

In contrast to previous years, the MFAR may no longer be submitted by email. Instead, submissions must be made through the following the dedicated portal².

If you have not previously filed your MFAR electronically then you will need to register as a new user on the Commission's website and obtain log in details by email. A user manual can be found on the portal which may be of assistance.

ENHANCED RECORD KEEPING REQUIREMENTS

Since 2005, BVI business companies have been required under the BVI Business Companies Act (as amended) (the "BC Act") to keep records that are sufficient to show and explain the company's transactions and that enable the financial position of the company to be determined with reasonable accuracy at any time. These statutory record keeping requirements on companies have also been applied to BVI limited partnerships by way of an amendment to the Partnership Act, which came into force in November 2012. BVI companies and partnerships remain entitled to adopt accounting standards appropriate to them in the jurisdictions in which they operate, provided the minimum transparency standard discussed above is met.

The records and underlying documentation that BVI companies and limited partnerships are required to keep must be kept for a period of at least five years under the BC Act. The five year period starts on the date of completion of the transaction to which the records and underlying documentation relate, or the termination of the business relationship to which they relate.

The records and documentation of a company or a limited partnership are not required to be kept in the BVI. However, the company or limited partnership must notify its registered agent of the

physical location of its records and underlying documentation.

As an additional requirement, all BVI business companies must notify the registered agent of the identity of the natural person who maintains and controls the company's records and underlying documentation. Changes to either the location or person maintaining and controlling the records and documentation must be notified to the registered agent within 14 days of any change. As such, all Funds that are formed as companies or limited partnerships are required to notify their registered agent in the BVI of the location of the financial records and documents of the Fund and, in the case of companies, the person who maintains and controls those records.

If you have not already done so, please notify us of the location of the records and documents and, where relevant, the identity of the person who maintains and controls the records and underlying documentation as soon as possible.

REGISTER OF DIRECTORS

By way of reminder, all newly incorporated BVI companies need to file their register of directors with the Registrar of Corporate Affairs of the BVI (the "Registrar") within 21 days of the appointment of their first director.

Where there is a change made to a filed register of directors, whether due to the appointment of a new director, the resignation of an existing director or the change of an existing director's details, particulars of the amendment to the register of directors must be filed with the Registrar within 30 days of the changes occurring.

Failure by BVI Companies to file on time will incur a penalty payable to the Registrar which will be levied and payable when the register or particulars of the change to the register are filed.

² <https://returns.bvifsc.vg>

AEOI UPDATE

As a reminder, all Financial Institutions ("FIs") have obligations to register and conduct due diligence and report to the BVI's International Tax Authority (the "ITA") under the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended) in respect of Reportable Accounts pursuant to FATCA and the OECD's Common Reporting Standard ("CRS"). We have issued separate updates regarding the detail of the obligations but, in summary, all FIs should ensure that they comply with the following deadlines, as they apply to them:

1 April 2019

- Deadline for enrolment on BVIFARS portal for FATCA

30 April 2019

- Deadline for enrolment on BVIFARS portal for CRS where not enrolled for US FATCA

31 May 2019

- Reporting deadline for US FATCA – reporting on US Reportable Accounts for 2018
- Reporting deadline for CRS – reporting on relevant Reportable Accounts identified as such for 2018

Written Policies and Procedures

Pursuant to the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2018 (the "Amendment Act"), all FIs are now required to establish, implement and maintain written policies and procedures for the purposes of complying with their CRS obligations. Failure to establish and maintain written policies and procedures is an offence with the FI being liable for a fine not exceeding USD100,000. Please let us know if you require any assistance with preparing a comprehensive policies and procedures manual that meets this new requirement.

Nil Returns

The Amendment Act also now requires every FI to register with the ITA for CRS regardless of whether the FI is a reporting or non-reporting FI and to file nil returns for FI where no reportable accounts are maintained. For existing FI's the registration deadline was 30 April 2019 and the reporting deadline is 31 May 2019.

Please liaise with your usual Maples Group contact or one of the individuals listed at the end of this update for further details or if you have any queries regarding the above.

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