VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS ACT
Statutory Instruments

Revised Edition
showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

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S.I. 54/2012 .. in force 10 December 2012 (S.I. 61/2012)
Amended by S.I.: 88/2013 .. In force 2 January 2014

INVESTMENT BUSINESS (REGISTERS) REGULATIONS 15
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INVESTMENT BUSINESS (APPROVED MANAGERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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INVESTMENT BUSINESS (APPROVED MANAGERS) REGULATIONS –
SECTIONS 40C(1) AND 62

(S.I.s 54/2012 and 88/2013)

Commencement

[10 December 2012]

PRELIMINARY PROVISIONS

Short title

1. These Regulations may be cited as the Investment Business (Approved Managers) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

"Act" means the Securities and Investment Business Act;

"applicant" means a person who has applied to the Commission to be an approved investment manager;

"approved investment manager" means a person who is approved as such by the Commission under regulation 7;

"authorised representative" means a person who has been certified as such by the Commission under section 64 of the Act;

"closed-ended fund" bears the meaning provided in the guidelines issued under regulation 9(3);

"Commission" means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

"legal practitioner" means a person who has been admitted to practice as a legal practitioner under Part IV of the Eastern Caribbean Supreme Court Act;

"relevant business" means any type of investment business referred to in regulation 9 which may be carried on by an approved investment manager; and

"prescribed" means prescribed by the Commission.

(2) Nothing contained in these Regulations shall be construed as preventing a person from applying to be licensed as an investment manager or investment adviser under the Act instead of being approved as an investment manager under these Regulations.

(3) Any reference in these Regulations to an applicant, approved investment manager or any other person being fit and proper shall be construed in accordance with the fitness and propriety criteria established in Schedule 1A of the Regulatory Code.

Application of these Regulations

3. (1) The provisions of these Regulations apply to a person who—

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(a) is a BVI business company; or

(b) is a limited partnership registered under the Partnership Act; and

(c) submits an application under regulation 4 to be approved as an investment manager; and

(d) is approved by the Commission under regulation 7(1). *(Amended by S.I. 88/2013)*

(2) Save as may be otherwise provided in these Regulations, where a person is approved as an investment manager under regulation 7, the provisions of section 4(1) of the Act and the Regulatory Code shall not apply in his or her case.

Application for approval as an investment manager

4. (1) A person who wishes to be considered for approval as an investment manager may submit an application to the Commission in the prescribed form.

(2) An application under subregulation (1) must be submitted to the Commission at least 7 days prior to the intended date for the commencement of relevant business, unless the Commission accepts in writing a shorter period.

(3) Subject to subregulation (4), where an application is made pursuant to subregulation (1) within the period specified in subregulation (2), the person to whom the application relates may commence and carry on relevant business for a period of up to 30 days from the date of submission of the application.

(4) The Commission may, either on its own volition or on the application of an applicant in the prescribed form, extend the period specified in subregulation (3) for an additional period of up to 30 days.

(5) A person who commences and carries on relevant business in accordance with subregulation (3) is deemed to be approved as an investment manager for the period in which he or she carries on relevant business in reliance on subregulation (3) and, where applicable, subregulation (4).

(6) If the Commission does not grant approval to an application made under subregulation (1) within the period specified in subregulation (3) or, where an extension has been granted under subregulation (4), within the extended period, the person carrying on relevant business as an investment manager shall cease carrying on relevant business upon the expiry of the specified period or extended period, as the case may be.

(7) During the period in which a person carries on relevant business as an investment manager in accordance with this regulation, he or she does not commit an offence or a breach and shall not be liable to any enforcement action.

Required information

5. (1) An application for approval as an investment manager under regulation 4 shall be signed by a director or general partner of the applicant, accompanied by the following—

(a) a copy of the applicant's constitutional documents;

(b) the details of each director or general partner and senior officer of, and each person who owns or holds an interest in, the applicant; *(Amended by S.I. 88/2013)*

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(c) a written declaration by the applicant that each director or general partner and senior officer of, and each person who owns or holds a significant interest in, the applicant is fit and proper in accordance with Schedule 1A of the Regulatory Code;

(d) the number and details of the funds that the applicant intends to act for upon commencement of relevant business;

(e) the date on which the applicant intends to commence relevant business;

(f) a copy of the investment advisory or investment management agreement between the applicant and each person that the applicant intends to act for upon commencement of relevant business;

(g) a written confirmation as to which individual will be carrying out the day-to-day investment business functions of the applicant;

(h) a written confirmation as to whether or not the applicant has delegated or intends to delegate any of its relevant business functions;

(i) a written confirmation from the applicant's legal practitioner that the legal practitioner has agreed to act for the applicant; and

(j) a written declaration by the applicant's authorised representative or legal practitioner that the application for approval as an investment manager is complete and meets the application requirements of these Regulations.

(2) For the purposes of—

(a) subregulation (1)*(b)*, the required details of each director or general partner, senior officer and shareholder shall be in the prescribed form;
(Amended by S.I. 88/2013)

(b) subregulation (1)*(c)* and *(j)*, the written declaration shall be in accordance with the prescribed form;

(c) subregulation (1)*(d)*, the details of the funds shall comprise the name, address and place of incorporation or registration of each of the funds;

(d) subregulation (1)*(g)* and *(h)*, the written confirmation shall be in the prescribed form; and

(e) subregulation (1)*(i)*, the written confirmation shall be in the form of a letter addressed to the Commission.

(3) Where in relation to subregulation (1)*(g)* the applicant has delegated or intends to delegate any of its relevant business functions, he or she shall—

(a) outline the functions that have been delegated or that he or she intends to delegate;

(b) indicate the person to whom the functions have been delegated or are intended to be delegated; and

(c) provide a copy of the agreement relating to the delegation.

(4) Where an application does not comply with the requirements of this regulation or is not accompanied by the requisite fee required under regulation 6, the application shall be considered incomplete.

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(5) An application that is considered incomplete by virtue of subregulation (4) may be denied by the Commission.

Fees

6. (1) Every application for approval as an investment manager shall be accompanied by such fee as may be prescribed in accordance with section 62 of the Financial Services Commission Act.

(2) The continued approval of an approved investment manager may, subject to compliance with regulation 16(1), be renewed annually upon payment of the requisite fee ("the renewal fee").

(3) Where an approved investment manager fails to pay the renewal fee referred to in subregulation (2) after the renewal has become due and payable, the approved investment manager shall be liable to the penalty prescribed for late payment of fee under Schedule 2 of the Financial Services (Administrative Penalties) Regulations as if the approved investment manager were a licensee.

(4) Where an approved investment manager becomes liable to the maximum penalty prescribed in Schedule 2 of the Financial Services (Administrative Penalties) Regulations, he or she shall—

(a) cease to function as an approved investment manager under regulation 8(1); and

(b) not carry on relevant business as an approved investment manager,

if, within 30 days after he or she has become liable to the maximum penalty, he or she fails to pay the renewal fee and the applicable maximum penalty.

(5) The processes and procedures outlined in the Financial Services (Administrative Penalties) Regulations in relation to the payment of penalty for late payment of the renewal fee shall not apply in relation to an approved investment manager.

Decision by the Commission

7. (1) Where the Commission, upon—

(a) receipt of an application under regulation 4; and

(b) being satisfied that—

(i) the required information under regulation 5 has been provided;

(ii) the required fee payable pursuant to regulation 6 has been paid;

(iii) the applicant is fit and proper and will, upon approval, be in compliance with these Regulations; and

(iv) approval of the applicant is not against the public interest,

it may approve the applicant as an approved investment manager.

(2) If the Commission approves an applicant as an approved investment manager under subregulation (1), it shall—

(a) register the applicant in the register of approved investment managers maintained under regulation 18; and

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(b) issue the applicant with a certificate of approval as an approved investment manager in the approved form.

(3) If the Commission, in dealing with an application, forms the view that—

(a) the applicant is not fit and proper or, if approved, will not be in compliance with these Regulations;

(b) the application is incomplete in a material particular; or

(c) it is not in the public interest to approve the application,

it may deny the application for approval by issuing a notice of such denial to the applicant.

(4) Where an application for approval is denied under subregulation (3), the Commission shall, in conveying its decision, provide the applicant with the Commission's reason for the decision.

(5) Where an applicant is denied approval under subregulation (3), he or she shall, if he or she has been carrying on relevant business pursuant to regulation 4(3), cease carrying on such relevant business immediately.

(6) For the purposes of subregulation (3)*(b)*, the question as to whether or not an application is incomplete in a material particular shall be determined by the Commission.

Effect of approval

8. (1) An approved investment manager shall—

(a) be treated as if he or she were a licensee for the purposes of the Financial Services Commission Act; and

(b) be liable to the powers exercisable by the Commission under that Act in relation to licensees.

(2) Where an applicant is approved by the Commission as an approved investment manager, he or she may carry out any of the relevant business outlined in regulation 9.

Functions that may be performed

9. (1) An approved investment manager may carry out any of the following investment business functions—

(a) act as an investment adviser or investment manager to a private fund or professional fund;

(b) act as an investment adviser or investment manager to a closed-ended fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of the Virgin Islands or any recognised jurisdiction and has the characteristics of a private or professional fund; *(Amended by S.I. 88/2013)*

(c) act as an investment adviser or investment manager to a person who is affiliated to a fund structure falling within paragraphs *(a)* or *(b)*;

(ca) act as an investment adviser or investment manager to any fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of a recognised jurisdiction and has equivalent

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characteristics to a private or professional fund; *(Inserted by S.I. 88/2013)*

(d) act as an investment adviser or investment manager to such other person as the Commission may approve on a case by case basis upon application; and

(e) act as an investment manager or investment adviser to a person that—

(i) is incorporated as a company, formed as a partnership or organised as a trust, outside the Virgin Islands in a non-recognised jurisdiction; *(Amended by S.I. 88/2013)*

(ii) has equivalent characteristics to a private fund, professional fund or a closed-ended fund; and

(iii) invests all or a substantial part of its assets in one or more fund structures falling within paragraph *(a)* or *(b)*.

(1A) For the purposes of sub-regulation (1)*(b)* and *(ca)*, a jurisdiction is a recognised jurisdiction if it is listed in the Securities and Investment Business (Recognised Jurisdictions) Notice, and sub-regulation (1)*(e)*(i) shall in that regard be construed accordingly. *(Inserted by S.I. 88/2013)*

(2) In determining, for the purposes of subregulation (1)*(e)*(iii), what constitutes a substantial part of a fund's assets in a fund falling within subregulation (1)*(a)* or *(b)*, account shall be taken of whether the aggregate of the fund's investment in the funds falling within subregulation (1)*(a)* or *(b)* amounts to more than 50% of its total assets.

(3) The Commission, acting in accordance with section 41A of the Financial Services Commission Act, and after liaising with the Securities and Investment Business Advisory Committee, may issue guidelines to—

(a) determine funds that may qualify to be treated as closed-ended funds;

(b) determine the characteristics of a private or professional fund referred to in subregulation (1)*(b)*;

(c) determine a person who is affiliated to a fund structure referred to in subregulation (1)*(c)*;

(d) determine the equivalent characteristics of a person referred to in sub-regulation (1)*(ca)* and *(e)*(ii); *(Substituted by S.I. 88/2013)*

(e) determine a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund referred to in regulation 10(3)*(b)*; and

(f) provide or prescribe such other matter as is required to be provided or prescribed in guidelines.

Restrictions in relation to regulation 9

10. (1) For the purposes of regulation 9(1), an approved investment manager is not, unless otherwise required by the Commission, restricted as to the number of persons he or she may act for.

(2) An approved investment manager shall not, subject to subregulation (3), carry on any other business except the relevant business outlined in regulation 9(1).

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(3) No person shall, unless he or she holds a licence under the Act or is otherwise approved by the Commission upon written application under these Regulations, act as an approved investment manager—

(a) to a professional investor that does not fall within the scope of regulation 9(1); or

(b) to a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund, unless such fund falls under regulation 9(1).

Restrictions generally

11. (1) Where an approved investment manager ceases to qualify as such under these Regulations, he or she shall—

(a) not take on any new relevant business; and

(b) notify the Commission immediately that he or she is no longer qualified to act as an approved investment manager.

(2) Without prejudice to regulations 4(6), 6(4) and 17(1)*(b)*, an approved investment manager who ceases to qualify as such under these Regulations—

(a) has 3 months from the date of disqualification within which to cease carrying on relevant business; and

(b) shall no longer be treated as a licensee as provided in regulation 8(1) after the expiry of the period specified in paragraph *(a)* or, if granted an extension under subregulation (4), within the specified extended period.

(3) A person who ceases to qualify as an approved investment manager may apply to the Commission to be licensed to carry on investment business under Part I of the Act.

(4) Where the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 months to apply for and obtain a licence as mentioned in subregulation (3).

(5) Subregulation (2)*(b)* is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

Restrictions in relation to assets under management

12. (1) Where an approved investment manager has—

(a) in aggregate, assets under management exceeding $400,000,000 or its equivalence in any other currency; or

(b) in relation to a closed-ended fund, such other amount as may be prescribed in the guidelines issued under regulation 9(3),

he or she shall, within 7 days of exceeding that amount or the amount prescribed in relation to the closed-ended fund, notify the Commission in writing of that fact.

(2) Where an investment manager manages both an open-ended fund and a closed-ended fund, the aggregate assets under management in relation to the open-ended

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fund and the amount prescribed for the closed-ended fund shall be segregated and treated separately for the purposes of subregulation (1).

(3) An approved investment manager who exceeds the amount prescribed in, or pursuant to, subregulation (1) shall cease to qualify as an approved investment manager unless, within 3 months of the date he or she ceased to qualify as an approved investment manager—

(a) he or she no longer exceeds the amount prescribed in subregulation (1);

(b) he or she submits an application to be licensed to carry on investment business under Part I of the Act; or

(c) the Commission, having regard to any risk that may be associated with the approved investment manager or any of the persons for which he or she acts, approves in writing that he or she may continue to function as an approved investment manager.

(4) An approved investment manager who ceases to qualify as such by virtue of subregulation (3) and to whom paragraph *(a)*, *(b)* or *(c)* of that subregulation does not apply may, within the period specified in that subregulation, continue to carry on relevant business but shall not take on any new relevant business.

(5) The Commission, acting in accordance with section 41A of the Financial Services Commission Act and after consultation with the Securities and Investment Business Advisory Committee, may issue guidelines in relation to subregulation (1) to—

(a) determine the procedure for assessing assets under management; and

(b) establish the types of asset that may constitute assets under management.

Ongoing obligations

13. (1) An approved investment manager shall at all times have—

(a) at least 2 directors, one of whom shall be an individual; and

(b) an authorised representative.

(2) An approved investment manager shall, within 14 days of the change of any information submitted pursuant to regulation 5, notify the Commission in writing of the change, providing details of the change and a written declaration in the prescribed form as to whether or not the change complies with the requirements of these Regulations.

(3) In addition to notifying the Commission of any change under subregulation (2), an approved investment manager shall notify the Commission of any matter in relation to the approved investment manager or in the approved investment manager's conduct of a relevant business, which has or is likely to have a material impact or a significant regulatory impact with respect to the approved investment manager or the relevant business.

Requirement re submission of financial statements

14. (1) Subject to subregulation (2), an approved investment manager is required to prepare and submit financial statements in accordance with the Act and shall, for that purpose, be treated as if he or she were a relevant licensee under Part IV of the Act.

(2) Sections 71(1)*(b)*, 75, 76, 77, 78 and 79(2) of the Act are disapplied with respect to an approved investment manager, and the Regulatory Code and paragraph

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2(1)*(e)* of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations are modified accordingly.

(3) The definition of "financial statements" in section 69 of the Act shall be construed to apply to the use of that term in subregulation (1).

Requirement re compliance officer, etc.

15. An approved investment manager is exempt from the requirement to appoint a compliance officer and establish and maintain a compliance procedures manual under section 34 Financial Services Commission Act and paragraph 2(1)*(b)* of Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations is modified accordingly.

Filing annual returns

16. (1) An approved investment manager shall, no later than the 31st day of January of each year, file with the Commission a return in the prescribed form—

(a) stating that he or she is not in breach of the requirements of these Regulations that entitle him or her to continue as an approved investment manager;

(b) confirming that each director and senior officer of, and shareholder with a significant interest in, the approved investment manager is fit and proper; and

(c) providing, as at the 31st day of December of the preceding year, details of—

(i) the persons for which he or she provides services;

(ii) the assets under management of each person for which he or she acts;

(iii) the number of investors in each person for which he or she acts; and

(iv) any significant complaints received by the approved investment manager.

(2) Where the Commission is required or considers it necessary to comply with any reporting obligation, whether under an enactment or otherwise, it may require an investment manager to provide the Commission with such further information as the Commission may consider fit.

(3) Any information required by the Commission under subregulation (2) shall be in such form and provided within such period as the Commission may determine.

(4) For the purposes of subregulation (1)*(c)*(iv), what constitutes a significant complaint shall be construed in accordance with section 69B of the Regulatory Code.

Public interest

17. (1) Where the Commission considers it to be in the public interest to do so, it may at any time, by written notice, require an approved investment manager to—

(a) apply for and obtain a licence to carry on investment business under Part I of the Act; or

(b) cease performing any or all of the relevant business outlined in regulation 9.

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(2) An approved investment manager—

(a) has, in the case of a notice under subregulation (1)*(a)*, 3 months from the date of the notice to apply for a licence to carry on investment business under Part I of the Act; and

(b) shall, in the case of a notice under subregulation (1)*(b)*, cease carrying on the relevant business outlined in the notice immediately and shall—

(i) no longer be treated as a licensee as provided in regulation 8(1); and

(ii) cease to act as an approved investment manager immediately and not take on any new relevant business.

(3) Where, in the case of a notice under subregulation (1)*(a)*, the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 month period specified in subregulation (2)*(a)* to apply for and obtain a licence to carry on investment business under Part I of the Act.

(4) Where an approved investment manager to whom a notice has been issued under subregulation (1)*(a)* fails to apply for a licence within the period specified under subregulation (2) or, if granted an extension, within the specified extended period under subregulation (3), he or she shall—

(a) no longer be treated as a licensee as provided in regulation 8(1); and

(b) cease to act as an approved investment manager immediately and not carry on any relevant business.

(5) Subregulation (4)*(a)* is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

Register of approved investment managers

18. (1) The Commission shall keep and maintain a register of approved investment managers under these Regulations.

(2) The register kept and maintained under subregulation (1)—

(a) may be in such form and published in such manner and for such period as the Commission considers fit; and

(b) shall be open to the public for inspection, and any person may request and obtain an extract from the register.

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