

BVI MUTUAL FUNDS



- Approach to Recognition of Private and Professional Funds, and
- The Registration of Public Funds



BVI MUTUAL FUNDS

- What is a Mutual Fund ?

- Collective investment vehicle (that raises money from shareholders) which invests in a number of instruments including stocks, bonds, options, commodities and money market instruments.
It provides an element of risk spreading through diversification.



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- What is a Mutual Fund ?

- Open Ended Fund

- ✓ Right to Redemption
 - ✓ Possible infinite life
 - ✓ Typically used for stock, bond, derivative funds

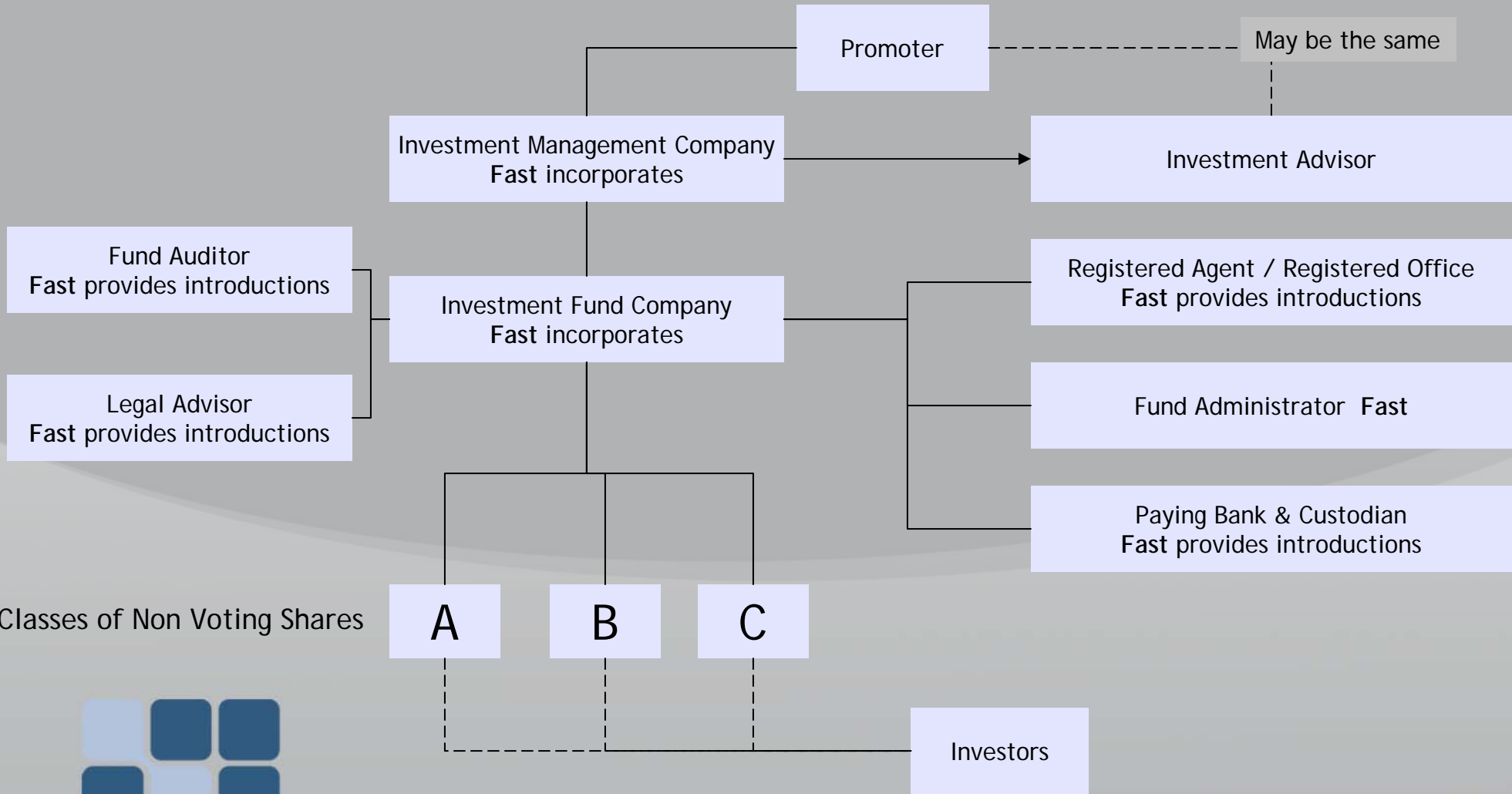
- Closed Ended Fund

- ✓ No right to Redemption
 - ✓ Finite life
 - ✓ Often used for property venture capital and longer term funds



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• What is a Mutual Fund ?



Classes of Non Voting Shares



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- What is a Mutual Fund ?

- A company incorporated, a partnership formed, a unit trust organized or other similar body formed or organized under the laws of the British Virgin Islands or of any other country or jurisdiction which (a) collects and pools investor funds for the purpose of collective investment, and (b) issues shares that entitled the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of the proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be.



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- What is a Mutual Fund ?

- Includes

- ✓ An umbrella fund whose shares are split into a number of different class funds or sub-funds, and
 - ✓ A fund which has a single investor which is a mutual fund not registered or recognized under the Act.



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- Types of BVI Mutual Funds

- BVI mutual funds are governed by the Mutual Fund Act, 1996 and fall into three categories :

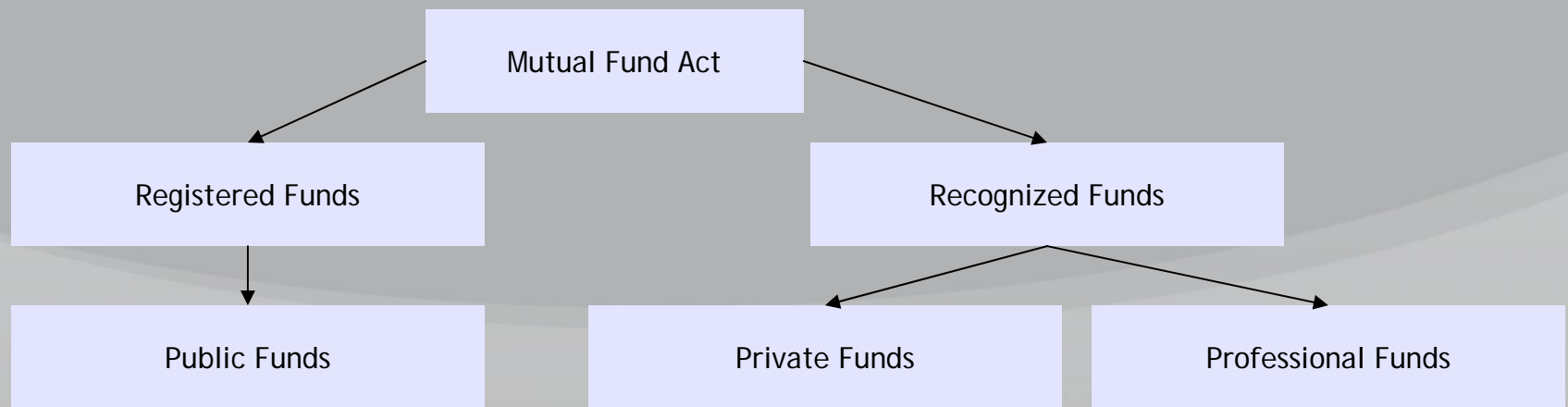
- ✓ Private
 - ✓ Professional
 - ✓ Public



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- Types of BVI Mutual Funds

- All BVI Mutual Funds must be registered or recognized



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- Features of a Private Fund

- No more than 50 investors
- Private business connection
- Specified persons
- An indication of the number of invitations must be provided



- Features of a Professional Fund

- Professional investors only with net worth of US\$ 1 million or whose ordinary business involves acquisition or disposal of property of the same kind of the fund or a substantial part of the fund property
- Minimum subscription US\$ 100,000 or its equivalent in any other currency



- Features of a Public Fund

- Typically issues invitation to the public to purchase its share whether via general prospectus or through an intermediary (selective public fund)
- A mutual public fund which is not a private or professional fund



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- Recognition and Registration

- The key requirements to the registration and recognition of funds are :
 - ✓ Proof of lawful constitution
 - ✓ Proof of classification
 - ✓ Details of local representative
 - ✓ Proof that functionaries are « fit and proper »



BVI MUTUAL FUNDS

• Steps to Recognition or Registration

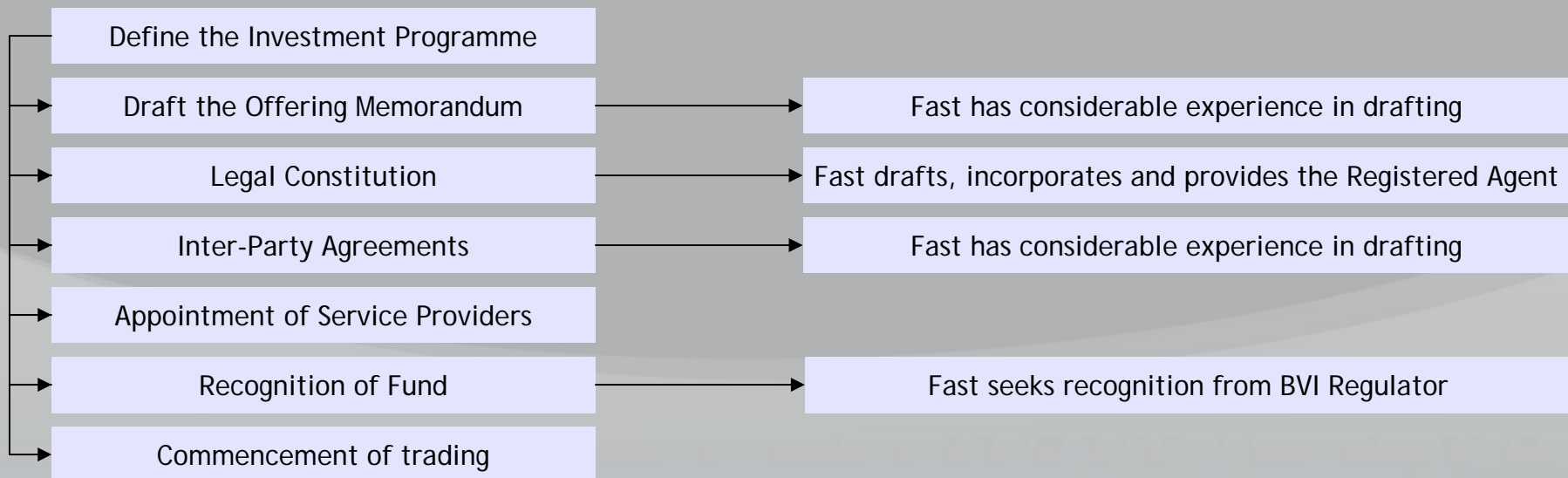
- Constitution of fund
- Preparation of documentation to support fund recognition or registration application
- Complete application form
- Submit to Fast for review & comments
- Submit to FSC for approval



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• Setting up a Mutual Fund in the BVI

- From inception, the average time to set up a BVI Mutual fund is 6/8 weeks



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• Constitution of Funds

▪ Mutual Funds may be lawfully constituted as a :

✓ Company

- Certificate of Incorporation
- Memorandum and Articles of Association

✓ Partnership

- Certificate of Limited Partnership
- Articles of Limited Partnership

✓ Unit trust

- Trust Deed



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• Documentation in Support of Mutual Fund Application

▪ Recognition of Private / Professional Funds

- ✓ Certified copies of constitutional documents
- ✓ Proof classification (usually incorporated in constitutional documents)
- ✓ Copy or extract of offering document confirming the minimum initial investment and subscription conditions
- ✓ Application fee (foreign funds carrying on business in BVI only)



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• Documentation in Support of Mutual Fund Application

▪ Recognition of Private / Professional Funds

✓ Directors must submit :

- A resume in the form of Appendix 3 of the fund application form
- 2 personal references (Persons integrally associated with the funds operations prohibited from providing reference)
- 1 bank reference
- 1 police clearance certificate (duly translated by a certified translator if not in English)



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• Documentation in Support of Mutual Fund Application

▪ Recognition of Public Funds

- ✓ Proof of classification
- ✓ Certified true copies of the constitutional documents
- ✓ Board resolution approving prospectus
- ✓ Prospectus
- ✓ Copies of all agreements with fund functionaries
- ✓ Copies of sub-delegation agreements (if any)



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• Documentation in Support of Mutual Fund Application

▪ Recognition of Public Funds

✓ Each director, general partner or trustee shall submit :

- A resume in the form of Appendix 2 of the application
- Police certificate
- Recent references addressed to Director of Investment Business, The Financial Services Commission



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• Tips to Remember when completing Mutual Funds Application Forms

- ✓ The name of the Fund must not be misleading or undesirable
- ✓ Directors resumes must be submitted in the relevant form of Appendix to the fund application form. Additional information may be provided on a separate sheet
- ✓ References must include 2 personal references (person integrally associated with the funds operations prohibited from providing reference) and 1 bank reference
- ✓ References must be recent and must be addressed to Director of Investment Business, The Financial Services Commission



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- Tips to Remember when completing Mutual Funds Application Forms

- ✓ Police clearance certificate must be duly translated by a certified translator if not in English
- ✓ A notarized affidavit confirming the absence of a criminal record may be submitted in lieu of a police clearance certificate if person not from a jurisdiction which issues such certificates



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- FSC Policy guidelines - Mutual Funds Generally

- ✓ Prospectus / Offering Memorandum to contain summary of investors rights and provide full and accurate disclosures for investors to make an informed decision
- ✓ Offering Memorandum to be approved by Directors
- ✓ Financial records to be kept and maintained at place of business in the BVI



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- FSC Policy guidelines - Functionaries

- ✓ Fund functionaries of Private / Professional / Public funds to include :

- Investment Manager
 - Administrator
 - Custodian
 - Investment Advisor (where applicable)
 - Auditor (where applicable)



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- FSC Policy guidelines - Functionaries

- ✓ Functionaries should preferably be in a **recognized jurisdiction** or jurisdiction with prudent regulatory system and applicant must :
 - Provide details of regulatory body to which the functionary reports
 - Provide details of activities/services the functionary is licensed to provide
 - Provide details on any limitations or restrictions to the terms of the functionary's license
- ✓ Functionaries must meet the « fit and proper » test



- FSC Policy guidelines - Functionaries

List of Recognized Jurisdictions

- Bermuda
- Belgium
- France
- Gibraltar
- Guernsey
- Hong Kong
- Ireland
- Isle of Man
- Australia
- Canada
- Italy
- Japan
- Sweden
- Germany
- Bahamas
- Cayman Islands
- Jersey
- Luxembourg
- Malta
- Netherlands
- Singapore
- Spain
- Switzerland
- United Kingdom
- United States



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- FSC Policy guidelines - Functionaries

- ✓ For functionaries in a **non recognized jurisdiction**, applicant must:

- Evidence showing the fund is regulated by an external regulatory body
 - Contact information for regulatory body
 - Corporate brochure as well as additional information on functionary (details of support staff, qualification of directors, etc.)
 - Provide details on any limitations or restrictions to the term of the functionary's license

- ✓ Functionaries must meet the « fit and proper » test



- FSC Policy guidelines - Functionaries

- ✓ Auditor of Public Funds :

- Auditor must be in a recognized jurisdiction
 - Auditor must be approved
 - Must disclose where auditing records are kept
 - Copies of auditing records must be kept in the BVI



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- FSC Policy guidelines - Functionaries

- ✓ Custodian :

- Should be functionally independent of the Investment manager/administrator
 - and Investment manager / administrator may be the same company but clear separation between the two respective operational functions must be established (e.g. different persons custodian and Investment manager / administrator duties AND separate management reporting lines)



- FSC Policy guidelines - Functionaries

- ✓ Fit and Proper Test :

- Functionary must possess :

- ✓ Adequate and appropriate knowledge
 - ✓ Adequate and appropriate expertise
 - ✓ A good track record :

- Reputation

- Character

- Financial soundness

- Regulatory action



• FSC Policy guidelines - Contents of Offering Memorandum

- Name and address of all functionaries
- Details of all charges
- Constitution details
- Investment specific details
- Valuation related details
- Accounting details
- Risk factors
- Summary of investors rights
- Subscription / Redemption procedures
- Winding up procedures
- Details of regulatory / non-regulatory status



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- Ongoing Supervision of Mutual Funds

- Inspection of audited annual accounts of public funds
- File annual certificate of compliance from home country regulator



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- Non-Resident Fund Investment Manager / Administrator
 - Approach to Licensing



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- Who should be Licensed Under the Mutual Funds Act

- Any person providing management and administrative services to a mutual fund in and from within the British Virgin Islands
- Exemption...



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- Who is A Fund Investment Manager ?

- A Fund Investment Manager is a person not being an officer or an employee of a person licensed under the Act or a mutual fund which has delegated management functions to a person licensed under the Act who (a) for valuable consideration, provides a mutual fund with management services alone or together with investment advice or administrative services, OR (b) is entitled to provide mutual funds (by whatever name called), such services or advices as provided here in before under the laws of a recognized country or jurisdiction.



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- Who is A Fund Administrator ?

- A fund Administrator is a person who for valuable consideration provides a mutual fund with administrative services alone or together with accounting services.



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- Who can be a Fund Investment Manager or Administrator ?

- Individual natural person
- Mutual Fund
- Company
- Partnership
- Unit Trust
- Trustees



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- Steps to Obtaining a License to Act as a Non-Resident Fund Investment Manager / Administrator

- Preparation and documentation to support license application
- Complete application form
- Submit to Fast for review and comments
- Submit to FSC for approval



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- Documentation in Support of License Application

- Copy of offering document
- Evidence of Applicant's regulatory status
- Full details on all shareholders
- Resume, police clearance and references for each director
- Application fee



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- Documentation in Support of License Application

- Details of persons performing daily duties and management functions
- Sub-delegation agreements (if applicable)
- Specific responsibilities of each director
- Explanation of how the director's educational background and experience relates to the business proposed



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- Tips to remember When Completing License Application Forms

- The licensing decision will be based on the following elements:
 - ✓ Fit and proper assessment
 - ✓ Adequate knowledge, expertise, resources and facilities available
 - ✓ Beneficial ownership
 - ✓ Bearer share and re-domiciliation
 - ✓ Who performs the management functions and daily activities
 - ✓ Sub delegation
 - ✓ Auditor



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- Tips to remember When Completing License Application Forms

- Fit and proper assessment :

- ✓ Applicable to individual and companies
 - ✓ Continuous and cumulative
 - ✓ Resumes, references, police clearance certificates, affidavits
 - ✓ Due diligence inquiries with outside regulators if necessary



- Tips to remember When Completing License Application Forms

- Fit and Proper Assessment / Key Elements

- ✓ Integrity
- ✓ Financial Stability
- ✓ Solvency and Financial Control Skills
- ✓ Competence
- ✓ Management Control
- ✓ Track record
- ✓ Viability



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- Tips to remember When Completing License Application Forms

- Adequate Knowledge, expertise, resources and facilities :
 - ✓ Directors experience
 - ✓ Support systems such as Fund administration Systems and Portfolio management



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- Tips to remember When Completing License Application Forms

- Beneficial Owner

- ✓ Where the applicant is owned by either a company, trust or other entity :

- Disclosure of the ultimate beneficial owner of the entity is required
 - There should be no connection to bearer shares within the proposed structure
 - In the case of a trust, details of the trust including the identity of the trustee, jurisdiction of the governing law of the trust, the beneficiaries of the trust and the settler of the trust will be required



- Tips to remember When Completing License Application Forms

- Beneficial Owner

- Complex structures of ownership should be clearly explained
Details and the rationale behind the structure should be disclosed
 - Shareholders of an applicant are also subject to fit and proper assessment by the FSC.

In some circumstances it may be necessary to submit resumes, references and police clearance certificates for shareholders



- Tips to remember When Completing License Application Forms

- Bearer shares

- Potential of disguising beneficial ownership
 - The issuance of bearer shares of the ability to issue bearer shares within the fund structure will not be viewed favorably by the FSC
 - Applicant nor their holding company's (if any) must have the ability to issue bearer shares

- Re-domiciliation



- Tips to remember When Completing License Application Forms

- Who performs the applicants management function and daily activities :
 - Offering memorandum should provide an overall picture of the business activities of the fund and the investment manager daily activities (e.g. Does the director of the investment manager act alone or under the instruction and control of the shareholders ? Are any of the directors duties sub delegated?)
- Non-BVI corporate directors may not be acceptable



- Tips to remember When Completing License Application Forms

- Sub-delegation :

- Applicants who sub-delegate their management function must do so to persons (company / individual) that are licensed or authorized in a recognized jurisdiction or in a jurisdiction with a prudent system of regulation for mutual funds
 - FSC will require evidence of the sub-delegates license or authority



- Tips to remember When Completing License Application Forms

- Auditor :

- All applicants for licensing who manages or administers more than one private or professional fund must appoint an auditor
 - It is important that an applicant's auditor is located in a recognized country / jurisdiction or a jurisdiction with a prudent system of regulation for mutual funds
 - In cases where an auditor is an individual or a company that is not known to the FSC, it must be evidenced that the auditor is entitled to practice in a recognized jurisdiction and is a member of a recognized auditing body



- Ongoing Regulation of Mutual Funds and License Holders

- The mutual fund business is a supervised activity
- The mutual fund Registry need regular and timely information in order to exercise on supervision



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- Ongoing Regulation of Mutual Funds and License Holders

- The FSC routinely carries out ongoing regulation of mutual funds and license holders. Such ongoing regulation is necessary to :
 - ✓ Ensure continued compliance with relevant regulation
 - ✓ Assess whether the functionaries of the funds and license holders are or remain fit and proper persons (annual submission of compliance certificates required for public funds)



BVI MUTUAL FUNDS

- Ongoing Regulation of Mutual Funds and License Holders

- The FSC routinely carries out ongoing regulation of mutual funds and license holders. Such ongoing regulation is necessary to :

- ✓ Ensure adequate knowledge, expertise, resources and facilities to conduct fund business

- ✓ Audits being conducted (where applicable) by fit and proper persons.

Public funds must have annual audited accounts available for inspect in the BV

Assess the effect of any material changes to the information supporting

the original license decision



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- Ongoing Regulation of Mutual Funds and License Holders

- All material changes proposed to the original recognition, registration and licensing decision will require prior approval of the FSC, such as :

- ✓ Change in Directorship or shareholding
- ✓ Amendments to the scope of the license
- ✓ Changes in the scope of the fund's business and investment parameters
- ✓ Changes in the prospectus of public fund
- ✓ Changes of functionaries of public funds



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• Ongoing Regulation of Mutual Funds and License Holders

- Changes which merely require notification to the FSC (together with supporting documentation and detailed explanation) :
 - ✓ Change of name of license holder or public fund
 - ✓ Change of Auditor of private/professional fund and manager
 - ✓ Changes in the functionaries of private/professional funds
 - ✓ Change of place of business inside and outside of the BVI and change of BVI resident representative within 21 days of change (Statutory General Notice)
 - ✓ Suspension of valuation of public funds
 - ✓ Inability to complete or perform audit of public fund



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• Ongoing Regulation of Mutual Funds and License Holders

- Changes which merely require notification to the FSC (together with supporting documentation and detailed explanation) :
 - ✓ Regulatory action against the license holders, all funds or any person related thereto
 - ✓ Resignation or change of Authorized Representative
 - ✓ Suspension of business/trading (license holder and all funds)
 - ✓ Amendments to prospectus
 - ✓ Inability to produce completed audited financial statements
 - ✓ Material changes to private/professional fund
 - ✓ Change of fund manager



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