

HOW TO START AN OFFSHORE FUND



Starting an Offshore Fund has its complexities. If you have been a super trader with an impressive track record, it is likely that you are also seeking to enter the international investment fund arena for the first time, with 'seed capital' of between US\$500K to US\$1 million. This requires starting a private fund, preferably, offshore. To start an Offshore Fund, you need to know the types of specialist services available:

Initial Fund Start Up Services

- Incorporation of an Offshore Company
- Preparation of Private Offering Memorandum (Prospectus), Shareholders' Agreement and Share Subscription Agreement.
- Facilitation of Offshore Administration services and Private Offering Memorandum (Prospectus) and Subscription documentation.
- Preparation of investor documentation, letters.
- Vendor Due Diligence documentation

Fund Administration Services

- Providing the Offshore Fund its management office and non investment manager-trader operations personnel (if required)
- Due diligence checks on Investor under the Anti-Money Laundering (AML) regulations.
- Risk Management and Data Recovery services.

Investor Management Services

- Providing prospective investors with offering memorandum and shareholders' agreement and offering materials
- Managing subscription documents
- Processing and notifying investment manager and general partner of subscriptions, capital contributions and withdrawals
- Distributing financial reports, mailings and electronic communications
- Responding to investor inquiries.

Accounting Services

- Calculation of monthly capital account balances on an economic and tax basis.
- Calculation of management fees and performance allocation.
- Preparation of monthly financial statements.
- Calculation of fees due sales agent.
- Interaction with investment managers and traders, banks, counsel and auditors.
- Facilitate and manage the preparation of financial statements and year end audit.
- Facilitate and manage tax preparation, planning and consulting.

PROCEDURE FOR RECOGNITION OF A BVI INVESTMENT FUND

THE PROCESS, THE SERVICES & START UP COSTS

REGULATION UNDER THE BVI MUTUAL FUNDS ACT, 1996 (BVI MFA)

The BVI MFA defines a mutual fund as a company, partnership or unit trust which:

- a. collects and pools funds for the purpose of collective investment; and
- b. issues shares (or similar interests) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the company, partnership or unit trust.



The BVI MFA does not cover funds with only one investor (where that investor is a mutual fund that is regulated by the BVI MFA); or closed-ended funds (because the investors do not have the right to receive the NAV of their interest on demand).

The BVI MFA distinguishes between two types of non-public funds:

PRIVATE FUND - constitutional documents specify that either it will have no more than 50 investors or that an invitation to subscribe for interests is to be made "on a private basis".

PROFESSIONAL FUND - the initial investment in which, in respect of the majority of the investors, is not less than US\$100,000

THE PROCESS

1. Formation of a BVI Company with customized Memorandum and Articles of Association (M&AA).
2. Decide on the contents for the Offer Memorandum or Prospectus.
3. Decide on the Fund Manager and Company Administrator, Auditors (KPMG) and Bankers (Barclays Internationals)
4. Prepare the fund's constitutional documents to reflect the terms of the offering. In other words, the Offering Memorandum.
5. Prepare the service agreements
6. Prepare the form of subscription agreement, which must include appropriate representations as to the status of the fund, that is, whether it is a private fund or a professional fund.
7. Approve the fund documents.
8. Submit the following documents to the BVI FINANCIAL SERVICES COMMISSION(FSC):
 - i. a certified copy of the fund's Certificate of Incorporation;
 - ii. a certified copy of the fund's constitutional documents'
 - iii. a copy of the fund's subscription agreement;
 - iv. an application form for recognition;
 - v. a statutory notice detailing the address of the fund, its registered agent in the BVI and the fund's business address.

Where all the criteria are satisfied, the Certificate of Recognition as a private or professional fund will typically be issued with a week following submission of these documents to the BVI FSC.

The BVI MFA does not require a recognized fund to have an offer

STRUCTURING A BVI OFFSHORE FUND

It is worthwhile to consider the following structure:

1. An 'open-ended' investment fund, which enables the fund to receive subscriptions on a regular basis. Therefore you need to have month-end valuations, thus enabling the fund to receive subscriptions monthly;
2. An independent administrator carries out the valuations and a leading firm of accountants (such as KPMG) audits the fund.
3. BVI is a tax-free jurisdiction for 'non-resident' investment funds. Although the profits of the fund are not taxable in the BVI, individual investors may be taxable on their investment in the fund (if the profits are being credited to a bank account in their home country, not to their offshore bank account. Some countries tax on worldwide income and the investors are obligated to declare all of their income sources.
4. BVI adopts very strict confidentiality laws and therefore investor details are not open to public scrutiny.



ONGOING REQUIREMENTS OF A BVI RECOGNIZED FUND

An investment fund recognized as a private or professional fund must:

- Notify the BVI FSC within 21 days of any change to the details in the statutory notice detailing the address of the fund, its registered agent in the BVI and the fund's business address.
- Pay an annual fee of US\$350. For the year in which the fund is registered, the fee is USD\$350 if the fund is registered prior to June 30 and USD175 if the fund is registered after that date.



A private or professional fund is not required to file audited accounts. The BVI FSC is, however, empowered to require access to the information and records of the fund in order to ascertain compliance by the fund with the BVI MFA (Mutual Funds Act, 1996).