



Council of the
European Union

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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– British Virgin Islands: final legislation and assessment under
criterion 2.2
= British Virgin Islands: final legislation on collective investment funds and
assessment under criterion 2.2

The ECOFIN Council acknowledged on 12 March 2019 that further work was needed to define acceptable economic substance requirements for collective investment funds (CIVs) under criterion 2.2 and invited the Code of Conduct Group to "*continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019*". In June 2019, the ECOFIN Council subsequently endorsed a technical guidance on substance requirements for CIVs that had been developed by the Group. The deadline of the end of 2019 was confirmed for the British Virgin Islands to address COCG's concerns relating to economic substance in the area of CIVs.

A/ FINAL LEGISLATION:

On 31 December 2019 the following acts entered into force:

(i) amendments to existing legislation

- Securities and Investment Business (Amendment) Act, 2019, (SIBA)^{1;2}
- Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019;³
- Mutual Funds (Amendment) Regulations, 2019, (MFR);⁴

(ii) new legislation:

- Private Investment Funds Regulations, 2019;⁵
- Mutual Funds (Foreign Funds) Regulations, 2019;⁶
- Fund Financials Guidelines;⁷
- Fund Safekeeping Arrangements Guidelines.⁸

B/ FINAL ASSESSMENT:

Background and Latest Developments

In September 2019, BVI's legislative framework on CIVs was found inadequate under all 4 pillars.

It comprised Securities and Investment Business Act (SIBA), Mutual Funds Regulations (MFR), Public Funds Code (PFC), Regulations and Guidelines for Incubator and Approved Funds and Guidelines for Applying for an Exemption to appoint a Custodian or Fund Manager. To address the deficiencies, BVI proposed (i) amendments to existing legislation (SIBA, MFR, PFC and Regulations for Incubator and Approved Funds) and (ii) new legislation (Regulations for Private

¹ <https://www.bvifsc.vg/library/legislation/securities-and-investment-business-amendment-act-2019>

² <https://www.bvifsc.vg/library/legislation/securities-and-investment-business-amendment-act-2019-notice>

³ <https://www.bvifsc.vg/library/legislation/securities-and-investment-business-incubator-and-approved-funds-amendment>

⁴ https://www.bvifsc.vg/sites/default/files/mutual_funds_amendment_regulations_2019.pdf

⁵ https://www.bvifsc.vg/sites/default/files/private_investment_funds_regulations_2019.pdf

⁶ https://www.bvifsc.vg/sites/default/files/mutual_funds_foreign_funds_regulations_2019_0.pdf

⁷ https://www.bvifsc.vg/sites/default/files/fund_financials_guidelines_2019.pdf

⁸ https://www.bvifsc.vg/sites/default/files/fund_safekeeping_arrangements_guidelines_2019.pdf

Investment Funds and Foreign Funds and Guidelines on Fund Financials and Fund Safekeeping Arrangements).

In November and December 2019 Member States discussed BVI's proposals, emphasising certain aspects that should be monitored. Based on Member States' feedback, BVI adopted revised versions of above proposed legislation. This took effect from 31 December 2019 with a 6-month transition period for some existing funds.

Under pillar 1, authorization/registration requirements extends to private funds, in addition to mutual funds, and fund managers have to notify the funds they manage. Under pillar 2, the Financial Services Commission (FSC) is an IOSCO member, with staff, resources and significant supervisory and enforcement powers. Under pillar 3, funds' valuation policies should adhere to specific principles, while accounting and audit should comply with IFRS, US, UK or Canada GAAP or other approved ad hoc, subject to specific conditions; exemptions under pillar 3 are also subject to specific conditions. Under pillar 4, mutual funds must appoint a custodian, while incubator and approved funds and private funds must designate appropriate service provider depending on their assets.

In December 2019, BVI confirmed the adoption of the above amendments to its CIVs framework, with effect from 31 December 2019 and shared the official versions of the relevant acts.

Conclusion

BVI's revised legislative framework for CIVs complies with the requirements of the 4 pillars.

Therefore, BVI has implemented its commitment to introduce economic substance in the area of collective investment funds under criterion 2.2 and was removed from Annex II at the ECOFIN meeting on 18 February 2020.