

LEGAL ALERT

Hedge Funds In The British Virgin Islands **New Requirement To Submit Annual Information –** **Deadline for filing is June 30, 2009**

The BVI Financial Services Commission (the “FSC”) announced the creation of a new Annual Return regime for BVI investment funds. All regulated BVI mutual funds must submit a return to the FSC no later than June 30, 2009.

On September 9 2008, the BVI FSC announced that BVI investment funds (*i.e., funds which are recognized or registered under the BVI Mutual Funds Act 1996*, including all regulated BVI private, professional and public funds) will need to submit a yearly Annual Return to the FSC. However, certain closed end funds may not need to submit the Annual Return. Prior to this Annual Return regime, the FSC had a voluntary mutual funds survey which requested information similar to the information requested in the new Annual Returns.

The FSC stated that the information gathered from Annual Returns would be used for statistical and compliance purposes only. The FSC further mentioned that the Annual Return policy is intended to allow the BVI to appropriately benchmark its funds industry, to conform to international reporting standards, and to enable the FSC to gather financial information which will assist with the strategic development of the BVI funds industry. However, the FSC has stated that no information will be shared outside the FSC, except on an aggregated basis or as required by law of BVI. Therefore, in accordance with stated FSC policy, completed Annual Returns will not be available to the public.

The reporting period for Annual Returns (the “Reporting Period”) will be the calendar year, regardless of the financial year under which the fund operates. Therefore, the Reporting Period in this year’s return must cover the calendar year ending 31 December 2008.

The information to be disclosed includes basic information related to the fund and its service providers, and financial information such as opening NAV, total subscriptions and total redemptions, net income or loss, dividends and distributions, summary expenses and closing NAV. Each Fund is also required to provide a general description of the fund’s asset allocation; however, individual positions are not required to be revealed. No information is required to be disclosed with respect to the identity of investors or of specific investments held by the fund. The Annual Return also includes a declaration that the information represents a true and fair view of the fund’s position as of the date the Annual Return is made. Such a declaration must be signed by a director, officer or other duly authorized person.

The Annual Return will need to be submitted to the FSC by June 30 of 2009. Subject to the enacting legislation coming into force, failure to complete the Annual Return for the 2008 Reporting Period may lead to enforcement action being taken by the FSC, including the application of administrative penalties.

The form of the Annual Return along with the regulator’s guidance notes is available at www.bvifsc.vg.

For further general information, or for referral to BVI qualified counsel, contact Paul I. Shin, Esq. at pshin@dlkny.com