

BERMUDA
BRITISH VIRGIN ISLANDS
CAYMAN ISLANDS
DUBAI
HONG KONG
LONDON
MAURITIUS
SINGAPORE
conyersdill.com



Conyers Dill & Pearman

Investment Funds in Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the establishment of a Bermuda entity to act as an investment (or “mutual”) fund. It deals in broad terms with the requirements of Bermuda law with respect to the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Further publications entitled “Bermuda Exempted Companies” and “Prospectuses and Public Offers” provide additional details of Bermuda law relating to Bermuda companies and their administration and are available on request.

Conyers Dill & Pearman

TABLE OF CONTENTS

1. INTRODUCTION

- 1.1 The Bermuda Monetary Authority
- 1.2 Types of Bermuda Investment Funds

2. BERMUDA INVESTMENT FUNDS

- 2.1 Permission for Incorporation
- 2.2 Investment Fund Provisions
- 2.3 Open-Ended
- 2.4 Investment Funds Outside of Regulation
- 2.5 Closed-Ended Investment Companies
- 2.6 Classification of an Investment Fund
- 2.7 Investment Funds Act Prospectus Requirements
- 2.8 Companies Act Prospectus Requirements
- 2.9 Bye-laws
- 2.10 Other Companies Act Obligations

3. UNIT TRUST SCHEMES

4. LIMITED PARTNERSHIPS

5. OVERSEAS FUNDS

6. CLASSIFICATION

- 6.1 Standard Funds
- 6.2 Institutional Funds
- 6.3 Administered Funds
- 6.4 Specified Jurisdiction Funds

7. CONTINUING OBLIGATIONS OF AN INVESTMENT FUND

- 7.1 Reports to Investors
- 7.2 Reports to the Administrator
- 7.3 Reports to the BMA
- 7.4 Approvals of the BMA
- 7.5 Notice to the BMA
- 7.6 Fund Officers to be "fit and proper"

8. TAXATION

9. STAMP DUTY

10. EXCHANGE CONTROL

11. GOVERNMENT FEES

12. RELATED BERMUDA LEGISLATION

- 12.1 The Segregated Accounts Companies Act 2000
- 12.2 The Investment Business Act 2003
- 12.3 Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

13. LISTING ON THE BERMUDA STOCK EXCHANGE (BSX)

- 13.1 Qualifications
- 13.2 Application
- 13.3 Timing
- 13.4 Prospectus
- 13.5 Continuing Obligations
- 13.6 Costs of Listing

14. CONCLUSION

1. INTRODUCTION

The sub-tropical islands of Bermuda are found at the mid-Atlantic crossroads between the Americas and Europe. The United States of America (the “US”) is the nearest Continental landfall, 800 miles due west of Bermuda. Despite its distant location (second most remote island in the world), small land size (area: 54 square kilometres) and low number of inhabitants (population: 65,000), Bermuda is a key player in the global financial world with an estimated trillion US dollars under management or in trust. English is the language spoken in Bermuda, hence the language used for business. Bermuda’s infrastructure is modern, well developed and technologically advanced.

Bermuda remains a British Overseas Territory, but is responsible for its own internal self-government and law courts. Bermuda has an independent legal and judicial system, with a right of final appeal to the Privy Council in London.

The laws of Bermuda are based substantially upon English common law. Bermuda’s legislation derives for the most part from a number of principal statutes from the United Kingdom (“UK”), but also includes original local statutes. Bermuda’s business laws and legal system have evolved in keeping with being a leading international offshore financial centre in the 21st century. Persons whose countries also derive their laws and legislation from the UK can expect to find many similarities with their own country.

Over the years, Bermuda has strived through legislation and codification of practices to meet the highest international standards in order to ensure that its name would be synonymous with ethics and quality. By being diligent in “knowing its customers”, it has often declined lucrative business when provenance was in doubt.

Bermuda is a major centre in the international offshore investment fund industry with over US\$50 billion in fund assets domiciled here. There are over 1,500 investment funds registered in and operating from Bermuda. A number of the larger investment funds are quoted on stock exchanges such as the London Stock Exchange and the Hong Kong Stock Exchange. There are also a significant number of unregulated

investment funds, being primarily closed-ended investment companies and limited partnerships, in Bermuda.

Whilst not being nor necessarily aiming to be the largest, nor the least expensive, domicile for funds, Bermuda remains committed to attracting quality funds by offering demonstrable political and demographic stability, excellent fund administration services, and welcome regulation of the investment industry to provide more transparency and disclosure.

1.1 The Bermuda Monetary Authority

The Bermuda Monetary Authority (the “BMA”) was established in 1969 under The Bermuda Monetary Authority Act 1969 (the “BMA Act”). The BMA is the competent authority responsible for supervising, regulating and inspecting financial institutions operating in or from Bermuda¹ and is responsible for exchange control. It also issues and redeems Bermuda’s currency notes and coins. The BMA is the principal body responsible for the regulation of investment funds, including those listed on the Bermuda Stock Exchange (the “BSX”). The BMA is a full voting member of the International Organisation of Securities Commissions (“IOSCO”).

The BMA insists that persons proposing to establish funds in Bermuda are persons of sound business integrity and good financial standing in addition to having high industry credentials. By maintaining such an approach, Bermuda has become the jurisdiction of choice for discerning fund managers.

1.2 Types of Bermuda Investment Funds

Bermuda investment funds (“funds”) may be structured and organised in several ways. A company registered under the Companies Act 1981, as amended (the “Companies Act”) as an exempted company and stated to be a ‘mutual fund’ for the purposes of the Companies Act is, with the exception of investors from Japan, by far the most popular form of investment vehicle used for an investment fund in Bermuda.

¹ BMA Act, Section 3(1)(b).

A Bermuda investment fund may also be structured and organised as:

- (i) a unit trust scheme (the preferred choice for investors from Japan);
- (ii) an investment company that is a closed-ended fund (that is, a company that is not a fund company); or
- (iii) a limited partnership.

In addition, in circumstances where special corporate objects or powers are required, a company may be incorporated by petition to the Bermuda legislature for a private act of Parliament (a “Private Act”). A Private Act is customised legislation which would provide for a specifically required corporate structure.

Bermuda investment funds are generally regulated under the Investment Funds Act 2006 (as amended) (the “IFA”). The IFA establishes and maintains standards and criteria applicable to the establishment and operation of investment funds in Bermuda which are open-ended with a view to protecting the interests of investors. An investment fund is open-ended if it permits its investors to redeem their shares of their own volition. Closed-ended funds (i.e. those that do not permit redemptions at the option of investors) are not subject to the IFA.

The IFA deals with regulatory disclosure, the content of offering documents and the responsibilities of various service providers to Bermuda investment funds. Bermuda investment funds (or, in the case of unit trust schemes, the trustee and the manager) must comply with the IFA unless specifically excluded from the scope of the IFA.

As indicated, closed-ended funds are not subject to the IFA and are not specifically regulated in Bermuda. Additionally, private funds are excluded from any provisions or requirements of the IFA². An investment fund is a private fund if the number of participants does not exceed 20 persons and the fund does not promote itself by communicating an invitation or inducement to the public generally. The operator of

² IFA, Section 6.

such an entity is required to notify the BMA that it qualifies for exclusion under the IFA as soon as possible after it is established.

2. BERMUDA INVESTMENT FUNDS

Under the IFA, an investment fund is defined as any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income. The arrangements must be such that the persons who are to participate do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions, and the participants are entitled to have their units redeemed in accordance with the investment fund's constitution and prospectus. To constitute an investment fund, the arrangements must also have one or both of the following characteristics:

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
- (b) the property is managed as a whole by or on behalf of the operator of the investment fund.

The vast majority of investment funds in Bermuda are companies. Such a company's memorandum of association would state that it is a mutual fund under the provisions of the Companies Act. An investment fund will be incorporated with the power to purchase for cancellation or redeem its shares without reducing its authorised share capital.

By way of background, Bermuda law distinguishes between those companies which are owned predominantly by Bermudians³ ("local companies") and those which are owned predominantly by non-Bermudians ("exempted companies"). Only local

³ Companies incorporated as "local" companies with power to carry on business in Bermuda must be owned at least sixty per cent by Bermudians.

companies are permitted to carry on and compete for business which is in Bermuda. Exempted companies must be resident in Bermuda and carry on business from Bermuda in connection with transactions and activities which are external to Bermuda. In this publication, references to “investment funds” or “funds” are to Bermuda incorporated exempted companies, unless otherwise noted.

There is no formal distinction under the Companies Act between the notion of a public company and a private company. Certain provisions of the Companies Act, however, are expressed to apply exclusively to companies the shares of which are listed on certain appointed stock exchanges⁴.

2.1 Permission for Incorporation

Generally speaking, shelf companies are not available in Bermuda. It is, therefore, necessary for prospective subscribers to incorporate a company for their specific purposes. Incorporation can generally be accomplished in approximately 24 hours.

The BMA must grant permission for the incorporation of all Bermuda companies and requires that each individual who will ultimately beneficially own, or be beneficially entitled to, on a look-through basis, ten per cent or more of the proposed company, or in the case of an investment fund, of the manager of the investment fund, make a personal declaration. By way of such personal declaration, each such ultimate beneficial owner of the proposed manager of the proposed investment fund attests to his or her good standing using a prescribed form. Such ultimate beneficial owners’ identities must in all instances be disclosed to the BMA without exception.

Every Bermuda company requires the permission of the BMA for the issue⁵ or the transfer⁶ of shares. An investment fund will seek from the BMA blanket permission for the issue and transfer of its participating shares subject to, *inter alia*, receiving BMA approval for any material change(s) in the investment fund’s prospectus. Applications to the BMA for the incorporation of investment funds generally take ten

⁴ Companies Act, Section 2(9).

⁵ Exchange Control Regulations, Section 12(1).

⁶ Exchange Control Regulations, Section 13(1).

to twelve business days to be processed.

2.2 Investment Fund Provisions

The Companies Act includes provisions designed specifically to enable and to facilitate the use of investment funds⁷. Core to the concept of an investment fund is that it has the ability to redeem its participating shares out of realized or unrealized profits by reference to the net asset value of such shares. Shares redeemed by an investment fund may subsequently be re-issued to new subscribers or in respect of new subscriptions. An investment fund is specifically exempted⁸ from the provisions of the Companies Act which would otherwise require it to have a share premium account, or prevent it from freely redeeming or purchasing its shares or making payments of dividends or distributions. An investment fund also benefits from an exemption from the requirement of having a share register open to the public or other shareholders, thereby ensuring a higher degree of privacy for its investors⁹.

One or more classes or series of shares may be created and offered separately by an investment fund. Typically, an investment fund would be incorporated with two or more classes or series of shares that would include the manager's shares (usually without participation rights) comprising one class of shares that are issued to and held by the manager. The remaining shares would typically be participating shares issued to investors, who would be entitled to request the redemption thereof at the current net asset value. It is typical to incorporate with a share capital of one Bermudian dollar (BD\$1.00) or equivalent in a foreign currency¹⁰.

2.3 Open-Ended

An investment fund is 'open-ended' in that it may issue and redeem its participating shares on a continuous basis at their net asset value. An investor in an open-ended

⁷ Companies Act, Section 156C.

⁸ Companies Act, Section 156F.

⁹ Companies Act, Section 156F.

¹⁰ The Bermuda dollar has been pegged 1:1 to the US dollar since 22 May 1981 by the Bermudian Dollar Parity Order 1981(made under the BMA Act, Section 10(1)).

investment fund generally has the right to require such investment fund to redeem his or her investment at current net asset value on an ongoing basis.

2.4 Investment Funds Outside of Regulation

Certain investment funds are eligible to register for an exemption under the IFA. There are two categories of exempt funds: Class A Exempt Funds and Class B Exempt Funds. Once registered, such funds have minimal reporting obligations to the BMA.

A fund will qualify to be a Class A Exempt Fund if its investment manager meets certain qualification standards and if its securities are offered to “qualified purchasers” (as defined below). Eligible investment managers include: (i) those licensed under the Investment Business Act, (ii) those authorised or licensed by a foreign regulator recognised by the BMA; or (iii) those carrying on business in a BMA recognised jurisdiction and who have gross assets under management of not less than \$100 million (either individually or as part of a group).

In addition, a Class A Exempt Fund must have an officer, trustee or representative in Bermuda who has access to the books and records of the investment fund; the investment fund must appoint a fund administrator, a registrar, an auditor and a custodian or prime broker; and the financial statements of the fund must be prepared in accordance with International Financial Reporting Standards (“IFRS”) or Generally Accepted Accounting Principles (“GAAP”) or such other standards deemed appropriate by the BMA.

Registration as a Class A Exempt Fund is immediate upon filing electronically a self certification form attesting to the requirements noted above, together with a copy of the investment fund’s offering memorandum. No further regulatory approvals are required.

Funds which do not meet the investment manager qualifications for Class A Exempt Funds may elect to be designated as Class B Exempt Funds if they offer their securities to qualified purchasers. Class B Exempt Funds also require that the

investment fund has an officer, trustee or representative in Bermuda who has access to the books and records of the investment fund; the investment fund has appointed an investment manager, a fund administrator, a registrar, an auditor and a custodian or prime broker; and the financial statements of the fund are prepared in accordance with International Financial Reporting Standards (“IFRS”) or Generally Accepted Accounting Principles (“GAAP”) or such other standards deemed appropriate by the BMA.

Funds desiring to be registered as Class B Funds are required to apply to the BMA. The BMA then has a period of up to ten (10) calendar days following the date of submission of the application to either grant the Class B Fund exemption or to require additional information about the fund and/or its service providers.

Ongoing requirements are straightforward. After initial registration, on an annual basis, both Class A Exempt Funds and Class B Exempt Funds must certify that they continue to qualify for exemption and must provide a copy of their annual audited accounts. Class A Exempt Funds are also required annually to advise the BMA of any material changes to the terms of their offering document. Class B Exempt Funds must notify and seek the BMA’s prior approval to any change to the directors or service providers of the fund.

Both classes of exempt funds will be treated as ‘out of scope’ of the European Union Directive on Taxation of Savings Income (the “EU Savings Directive”) under Swiss home country rules. This means that exempt funds may conduct their business through Swiss paying agents without being subject to the disclosure or tax withholding requirements of the EU Savings Directive.

For the purposes of the above, a person is a ‘qualified participant’ if:

- (i) he/she is an individual who has such knowledge of, and experience in, financial and business matters as would enable him/her to properly evaluate the merits and risks of a prospective purchase of shares in the investment fund; or

- (ii) he/she is an individual whose net worth or joint net worth with his/her spouse in the year in which he/she purchases an investment exceeds \$1,000,000 (a 'high net worth investor'); or
- (iii) he/she is an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year or has a joint income with his/her spouse of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the year in which he/she purchases an investment; or
- (iv) it is an entity in which all individual members, partners or beneficiaries (as the case may be) fall into the classes set out in (i) to (iii) above; or
- (v) it is a body corporate that has total assets of not less than \$5,000,000, whether such assets are held solely by that body corporate or partly by any other body corporate of which it is a subsidiary or holding company; or
- (vi) it is an unincorporated association or trust that has total assets of not less than \$5,000,000.

It is important to note that where an investment fund qualifies for an exemption, it is generally exempted from the provisions of the IFA but must still meet the requirements of the Companies Act as the same pertain to all companies in Bermuda.

2.5. Closed-ended Investment Companies

Investors in closed-ended funds do not have the right to demand redemption of their units. Rather, investors' units are typically redeemed at net asset value at the end of a pre-determined investment period.

Closed-ended funds are companies incorporated by registration under the Companies Act as investment holding companies. Such companies are typically incorporated with powers authorizing the company itself (and not the shareholders) to effect

redemptions or purchases of shares in certain circumstances. Such powers are used for the purposes of ensuring compliance with investor qualification restrictions and for returning capital to investors at appropriate times. Since such companies, and indeed unit trusts and partnerships which are similarly structured, do not fall within the definition of “investment funds” as set out in the IFA, they are generally not subject to the provisions of the IFA.

An offer of shares to the public by a closed-ended investment company, like any exempted company proposing to make an offer of its shares to the public, is subject to the prospectus provisions of the Companies Act (see “Companies Act Prospectus Disclosure” above).

2.6 Classification of an Investment Fund

The IFA requires investment funds which do not qualify for exemption or exclusion from regulation to be classified as either:

- (i) Standard funds;
- (ii) Institutional funds;
- (iii) Administered funds; or
- (iv) Specified Jurisdiction funds¹¹.

An application for classification is made in the form of an Investment Funds Act Application and Certificate which is submitted to the BMA concurrently with a request for:

¹¹ Act, Section 11(1).

- (i) permission to incorporate the company;
- (ii) permission to issue shares to the manager; and
- (iii) blanket permission for the issue and transfer of the company's participating shares.

Such application for classification must also be accompanied by:

- (i) evidence of the manager's expertise and experience in the management of investments. Unless the administration is to be delegated to a recognised Bermuda service provider, the manager must produce evidence of its experience as an investment fund operator, especially as to its administrative abilities. The BMA must be satisfied as to the investment management experience and expertise of the manager¹²;
- (ii) evidence of the good standing of the ultimate beneficial owners of the manager. The BMA must be satisfied as to the good standing and business integrity of the principals of the manager; and
- (iii) a near final draft, complete with all pertinent details, of a prospectus (or offering memorandum). A fund is required by the IFA to publish a prospectus¹³.

2.7 Investment Funds Act Prospectus Requirements

The prospectus of an investment fund sets out such investment fund's investment objectives and limitations and also contains a summary of the players involved. The prospectus must contain provisions relating to the nature and frequency of financial reports to be distributed to investors¹⁴. Other matters which must be disclosed

¹² IFA, Section 14.

¹³ Fund Prospectus Rules, Rule 11.

¹⁴ Fund Prospectus Rules. Rule 5(r).

include¹⁵:

- (a) the name of the investment fund and the address of its registered or principal office in Bermuda;
- (b) a statement whether the investment fund is registered or licensed, as the case may be, (or intends to be registered or licensed) in any jurisdiction or with any supervisory or regulatory authority, outside Bermuda;
- (c) where applicable, an indication of stock exchanges or markets where the securities are, or are to be, listed or dealt in;
- (d) the names, addresses and other relevant particulars of directors, officers, resident representatives, auditors, fund administrators, custodians, registrars, promoters, legal advisers, investment managers, and other persons having significant involvement in the affairs of the investment fund;
- (e) a description of the investment fund's investment objectives, including its financial objectives, investment policy and any limitations on that investment policy and an indication of any techniques and instruments, and any borrowing powers;
- (f) a description of the investment fund's material risks;
- (g) details of the capital of the investment fund including, where applicable, any existing initial or founder capital;
- (h) details of the principal rights and restrictions attaching to the units, including with respect to currency, voting rights, circumstances of winding up or dissolution, certificates, entry in registers and other similar details;
- (i) the procedures and conditions for the redemption and sale of units and the

¹⁵ Fund Prospectus Rules, Rule 5.

circumstances in which such redemption may be suspended;

- (j) a description of the basis for the determination of the issue and redemption prices (including the frequency of dealings) and an indication of the places where information as to the prices may be obtained;
- (k) a description of the basis and frequency of valuation of the investment fund's assets; and
- (l) information on the nature and frequency of financial reports to be distributed to participants.

The prospectus must also contain a statement as follows:

“Authorisation by the Bermuda Monetary Authority does not constitute a guarantee by the Authority as to the performance of the fund or its creditworthiness. Furthermore, in authorizing such a fund, the Authority shall not be liable for the performance of the fund or the default of its operators or service providers, nor for the correctness of any opinions or statements expressed in the prospectus.”

In relation to an institutional or administered fund, the following statement must also be included:

“[Name of fund] has been classified as an Institutional/Administered Fund. As such, the fund may not be supervised to the same degree as other funds which are authorised and regulated by the Authority. Therefore, the fund should be viewed as an investment suitable only for participants who can fully evaluate and bear the risks involved.”

The BMA will normally grant an exemption to master funds from the requirement to issue a prospectus where the only investors in the master fund are feeder funds of the same structure and such feeder funds each prepare and issue a prospectus.

2.8 Companies Act Prospectus Requirements

An offer of shares to the public by an investment fund, like any exempted company proposing to make an offer of its shares to the public, is subject to the prospectus provisions¹⁶ of the Companies Act. Under the Companies Act, the “public” is broadly defined¹⁷. However, certain types of offer may be treated as not being made to the public¹⁸ (for example, an offer to existing holders of the same class of shares without any right of renunciation or an offer which is not calculated to result in the shares becoming available to more than thirty five persons, or an offer made pursuant to an employee share scheme). In addition, if the company’s shares are already listed on an appointed stock exchange or accepted by a competent regulatory authority, the company will not be required to submit a prospectus or explanatory memorandum.

Where the Companies Act does require an investment fund to publish a prospectus, such prospectus must contain, among other things, the following information¹⁹:

- (i) the names, descriptions and addresses of the manager and officers of the investment fund;
- (ii) the (proposed) business of the investment fund;
- (iii) the minimum subscription which, in the opinion of the directors, must be raised in order for the offer to become effective. If such minimum subscription is not raised within 120 days after the publication of the prospectus, no shares may be allotted²⁰ and the subscription moneys must be returned to the applicants²¹. Alternatively, the investment fund may be “funded” by an initial private placement of shares to an investor or group of investors;

¹⁶ Companies Act, Part III.

¹⁷ Companies Act, Section 25(2).

¹⁸ Companies Act, Section 25(4).

¹⁹ Companies Act, Section 27(1).

²⁰ Companies Act, Section 35(1).

²¹ Companies Act, Section 35(3).

- (iv) any rights or restrictions on the shares being offered;
- (v) all commissions payable on the sale of shares and the net amount receivable by the investment fund;
- (vi) any shareholding in the investment fund of any of its officers;
- (vii) financial statements²² of the investment fund prepared in such manner and containing such information and copies of such documents as may be required by rules²³ made under section 34 of the Companies Act (the “Auditor’s Report Rules”);
- (viii) a report or statement by the auditor of the investment fund prepared in such manner and containing such information as shall be required by the Auditor’s Report Rules. Where an investment fund is making an initial offer of shares and has not theretofore carried on business, the prospectus would include a statement that the auditor²⁴ has confirmed its acceptance of the appointment as auditor of the investment fund and has given and has not withdrawn its written consent to the inclusion of the references to it in the form and context in which it is included. The prospectus would also state that the investment fund has, among other things, not carried on business, and that there has been no significant change in the financial position of the investment fund since incorporation. Thereafter, it is appropriate to include with the prospectus a copy of the most recent audited financial statements. The auditor’s report and the financial statements should relate to a period not more than six months before the date of issue of the prospectus. If the report relates to a period more than six months before the date of such issue, unaudited financial statements to the end of the most recent fiscal quarter must also be included; and

²² Companies Act, Section 27(1)(h).

²³ The Companies (Financial Statements and Auditor’s Report) Rules 1995.

²⁴ Companies Act, Section 27(1)(i).

- (ix) the date and time of the opening and closing of subscription lists.

In addition, the prospectus must not contain an untrue statement or an omission that would make a statement in the prospectus untrue.

Save in the case of companies whose shares are listed on a recognised stock exchange, the prospectus of a Bermuda company must be filed, together with the prescribed filing fee, with the Bermuda Registrar of Companies (the “ROC”) before or as soon as is reasonably practicable after its publication²⁵. The ROC is a public depository of corporate information and does not review documents. Its functions merely extend to time and date stamping documents and filing them on the public record. There is no delay between filing with the ROC and the effectiveness of the filing. Filing is effected by simply delivering the prospectus, which must be signed by or on behalf of all the directors of the investment fund, together with the consent of its auditor and a certificate of compliance from an attorney²⁶, to the ROC.

Where an investment fund continuously offers shares to the public, if any particular statement in the prospectus issued by the investment fund ceases to be accurate in any material aspect, such investment fund must publish and file with the ROC, supplementary particulars disclosing the material change as soon as practicable after the investment fund becomes aware of such change²⁷.

Where the shares of a Bermuda company are listed on a recognised stock exchange, there is no requirement to file the prospectus with the Registrar of Companies in Bermuda.

2.9 Bye-laws

The bye-laws of an investment fund provide for the regulation and operation of its

²⁵ Companies Act, Section 26(1).

²⁶ Companies Act, Section 26(2).

²⁷ Companies Act, Section 29(1).

affairs. The IFA²⁸ requires that the bye-laws make provision for:

- (a) the rights and restrictions attaching to its shares;
- (b) the terms for valuation of its assets and liabilities;
- (c) the manner of calculation of the net asset value per share of its shares and the issue price and redemption price thereof;
- (d) the terms upon which its shares are issued;
- (e) the terms upon which its shares may be transferred or converted, if applicable;
- (f) the terms upon which its shares may be redeemed and the circumstances in which redemptions may be suspended; and
- (g) the investment restrictions or borrowing limitations, if any.

Accordingly, subscriptions and redemptions are effected upon the terms set out in the bye-laws of the investment fund. The subscription prices payable by a subscriber and the redemption prices payable to a shareholder are calculated by reference to net asset value calculations. Subscription and redemption prices must be available on request without charge from the registered or principal office of the investment fund in Bermuda or at the office in Bermuda of at least one of its service providers²⁹.

In general, the initial offer of shares of an investment fund is made at a fixed price and for such duration (up to a maximum of 120 days (see “Companies Act Prospectus Requirements” above)) as its directors determine. The bye-laws may provide for a commission or initial charge to be payable to the manager. An investment fund may issue fractional shares.

²⁸ IFA, section 14(3).

²⁹ IFA, Section 24.

Where an investment fund intends to invest in income producing assets, its bye-laws may provide that such income will be reinvested directly in the acquisition of further investments. However, the bye-laws may provide for the distribution of such income by way of dividend together with, if desired, the option for the reinvestment of any dividend on behalf of the shareholder in further shares of the investment fund.

2.10 Other Companies Act Obligations

An investment fund which is a company is subject to the Companies Act provisions applicable to all companies. Such provisions include, among other things, the requirement:

- (i) to maintain at its registered office in Bermuda, its register of members, its register of directors and officers (including the resident representative, if any) and signed minutes of meetings of all directors and shareholders;
- (ii) to hold an annual general meeting of its members in each calendar year, unless such requirement is waived by resolution of the members;
- (iii) to make financial statements available to the members;
- (iv) to pay the prescribed annual government fee by 31 January of each year (see "Government Fees" below).

The investment fund's administrator will normally have assumed responsibility for ensuring that such obligations are met, though the directors remain ultimately accountable.

3. UNIT TRUST SCHEMES

Section 1 of the Stamp Duties Act 1976 defines a "unit trust scheme" as meaning any arrangements made for the purpose, or having the effect of, providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding,

management or disposal of any property whatsoever.

A unit trust scheme (a “unit trust”) is similar to an open-ended investment fund, but it is not a company or a separate legal entity. A unit trust is a contractual agreement embodied in a trust deed or instrument. It is a declaration of trust that is either executed by the trustee only or entered into by the trustee and the manager. The concept of a unit trust is that investors contribute funds to the trustee to hold such funds in trust as trustee whilst such funds are managed by the manager for their benefit. Each investor is effectively a beneficial owner (and is possibly also a settlor) of a proportion of the assets held by the trustee.

Units of a unit trust are units of the trust arrangement constituted by the trust deed. Each unit (whether described as a unit, as a sub-unit, or otherwise) is a right or interest of a beneficiary³⁰ under the trust deed or instrument and is entitled to a pro-rata share of the trust’s assets. Each investor is issued with such number of units that represents the relevant proportion of assets belonging to such investor.

The trust laws of Bermuda essentially follow the trust laws of England. There is a substantial body of English case law on the subject. The trust deed, as well as containing provisions for the constitution of a trust, will be similar to the bye-laws of an investment fund, providing, among other things, for the regulation of the affairs of the unit trust in a manner similar to that of a company including meetings of unit holders, voting rights, appointment of an auditor and distribution of financial statements. It also provides for the calculation of net asset value per unit and sets out the terms for issue and redemption of units, for the unit holders’ rights, the manner in which the trust is to be administered, the duties of the trustee and the manager, the appointment and removal of the trustee and the manager, investment and borrowing powers and restrictions and the termination and winding-up of the affairs of the trust.

Unit trusts are expressly made subject to the IFA and are required to be classified by the BMA thereunder. In this publication all references to “unit trusts” are to Bermuda exempted unit trust schemes, which are unit trust schemes where the subject trust is

³⁰ Stamp Duties Act 1976, Section 1.

non-resident³¹. For most practical purposes a unit trust will operate and be regulated in the same manner as an investment fund.

The trustee or the manager is treated as making the offer of units to investors. An offer of securities (including unit trusts) to the public by a trustee or manager which is a Bermuda company or an overseas company subject to the provisions of the Companies Act is subject to the prospectus provisions of the Companies Act (see “Companies Act Prospectus” above). Accordingly, a prospectus prepared by the trustee or the manager forms part of the application to the BMA to establish the unit trust.

Unit trusts are the usual choice of managers marketing funds to investors in Japan, where participating in a unit trust is considered more acceptable or attractive than investing in shares in a company or acquiring interests in a limited partnership. Investing in units of a unit trust may result in more favourable tax treatment for the investor. In some other jurisdictions, unit trust schemes may offer regulatory advantages.

4. LIMITED PARTNERSHIPS

The partnership is a popular vehicle for international ventures primarily because it is often regarded as fiscally transparent and because it is subject to a lesser degree of regulation than a company.

The principal statutes governing the formation and operation of Bermuda partnerships are:

- The Partnership Act 1902, as amended (the “Partnership Act”);
- The Limited Partnership Act 1883, as amended (the “Limited Partnership Act”); and
- The Exempted Partnership Act 1992, as amended (the “Exempted Partnership

³¹ Exempted Undertakings Tax Protection Act 1966, Section 1.

Act”).

In Bermuda, a partnership may elect to have a separate legal personality. If such election is not made, the partnership is not a legal entity with any degree of legal personality, but merely a relationship between the partners.

Even if an election to assume a separate legal personality is not made, under Bermuda law a partnership may function for all practical purposes as an entity. The rules of court³² permit a partnership to sue and be sued in its partnership name³³. Sections 5 and 6 of the Partnership Act and the laws of agency empower a partnership to carry on business in its partnership name.

Bermuda partnership law tends to follow English principles. The Partnership Act substantially codified common law on partnerships, but provides that existing rules of equity and of common law continue in force except so far as they are inconsistent with the express provisions of the Partnership Act. The Partnership Act generally deals with the nature of partnerships, relations of partners to persons dealing with them and relations as between the partners themselves. The Partnership Act provides that “partnership is the relation which subsists between persons carrying on a business in common with a view to profit”.

A partnership must carry on a business and for this purpose investment holding is considered to constitute sufficient business activity. Further, the business must be carried on “with a view to profit”. It is immaterial whether or not the business realizes a profit, so long as the intention is to make a profit. The BMA must grant permission for the establishment of a Bermuda partnership.

There are two types of partnership under Bermuda law. The first (a general partnership) is where all the partners have unlimited liability for the debts and obligations of the partnership. The second (a limited partnership) is where one or

³² The Rules of the Supreme Court 1985, Order 81, Rule 1; Exempted Partnership Act, Section 23 for service on exempted partnerships; Limited Partnership Act, Section 6(5) for limited partnerships.

³³ Limited Partnership Act, Section 16.

more of the partners (general partners) have unlimited liability for the debts and obligations of the partnership and the liability of the other partner or partners (limited partners) is, subject to the satisfaction of certain requirements, limited to the amount of capital contributed or agreed to be contributed (respectively) by such limited partners.

An exempted partnership is defined in the Exempted Partnership Act as a partnership in respect of which a certificate of exempted partnership has been registered in accordance with the provisions of the Exempted Partnership Act and in which one or more of the partners does not possess Bermudian status³⁴.

Unlike Bermuda company law, the Partnership Act does not attempt to regulate the affairs of a partnership to any great extent. The operation of the partnership is left to agreement between the partners. It is only where the partnership agreement is silent that the Partnership Act³⁵ may apply. There are however, certain required provisions, namely that the governing law of an exempted partnership must be Bermuda law, the general nature of the partnership business must be stated in the partnership agreement³⁶, the exempted partnership's registered office must be in Bermuda³⁷ and the exempted partnership must appoint a resident representative in Bermuda³⁸.

The partnership agreement is private (except for information in the Certificates of Exempted and Limited Partnership).

Exempted partnerships may be resident in Bermuda and can only carry on business from Bermuda in connection with transactions and activities which are external to Bermuda. In practice, the activities carried out by international partnerships have no difficulty in meeting this requirement.

³⁴ Exempted Partnership Act, Section 2.

³⁵ Partnership Act, Section 24.

³⁶ Exempted Partnership Act, Section 6.

³⁷ Exempted Partnership Act, Section 10(10); Limited Partnership Act, Section 6(5) for limited partnerships.

³⁸ Exempted Partnership Act, Section 17(1)(a).

Limited partnerships, which are formed under the Limited Partnership Act, are commonly used for venture capital investments and closely held investments. The position of a limited partner in a limited partnership is analogous to that of a shareholder in a company. The IFA applies to open-ended investment funds structured as limited partnerships, and to any prospectus issued thereby. However, any prospectus issued by a limited partnership is not subject to the provisions of the Companies Act. However, common law principles relating to true, accurate and full disclosure made in any such prospectus will apply.

A limited partnership must have at least one general partner. In general, only the general partner or partners of a limited partnership may engage in the management or transact the business of the limited partnership. The general partner will usually be a special purpose vehicle which appoints an investment manager. All suits in respect of the business of a limited partnership can generally only be brought against the general partner(s). If a limited partner engages in the management of the partnership such limited partner will lose the benefit of limited liability although this is subject to certain exceptions; for example, limited partners may make decisions in respect of any investments made by the limited partnership without losing their limited liability.

Every limited partnership must keep at its office in Bermuda a register of limited partners. The register must contain the date each limited partner becomes or ceases to be a limited partner together with the capital contribution of each limited partner.

Partners' capital contributions may be made in cash or in the form of non-cash assets although contributions in the form of services are not permitted. Where non-cash assets are contributed, the Limited Partnership Act requires that this be highlighted in the register of limited partners by designating a "statutory value" to such non-cash assets.

Provision is made in the Limited Partnership Act for the trading on international stock exchanges of limited partnership interests by allowing branch registers of limited partners to be kept outside Bermuda.

There is no requirement for any consents or filings with public authorities in Bermuda on the transfer of limited partnership interests.

5. OVERSEAS FUNDS

An exempted company being an investment fund, a manager of a unit trust or a general partner of a limited partnership may market, respectively, its shares, the units of the unit trust of which it is manager or interests in the limited partnership of which it is general partner³⁹. It may also deal with the holders of such shares, units or partnership interests. The Companies Act, however, prohibits companies incorporated outside Bermuda from engaging in or carrying on any trade or business in Bermuda⁴⁰ without a permit⁴¹ to do so. Equivalent provisions apply to partnerships formed under a law other than the laws of Bermuda (“overseas partnerships”)⁴².

In general, in order to obtain such a permit, such a company must explain why it did not incorporate in Bermuda. For example such an explanation might be that if such company were incorporated in Bermuda, it would suffer from some disadvantage to which the foreign company is not subject. For overseas partnerships, the applicant must show good reason for wishing to conduct business in Bermuda through an overseas partnership rather than a Bermuda exempted partnership. For example, such good reason might be that there may be tax advantages available to the overseas partnership which would not be available to a Bermuda partnership.

A company incorporated outside Bermuda but having the characteristics of a mutual fund is exempted from the above prohibition if it engages a person in Bermuda to be its administrator or registrar to perform any or all of the following services or activities for it in Bermuda⁴³:

³⁹ Companies Act, Section 129(1)(e)(viii).

⁴⁰ Companies Act, Section 133.

⁴¹ Companies Act, Section 134.

⁴² Overseas Partnership Act 1995.

⁴³ Companies Act, Section 133A(2).

- (i) corporate secretarial;
- (ii) accounting;
- (iii) administrative;
- (iv) registrar and transfer agency; and
- (v) certain activities in relation to the marketing or dealing with the holders of its shares⁴⁴.

The notion of “carrying on business in Bermuda” generally manifests itself, in the context of an investment fund, as a restriction on the ability to market securities or deal with holders of securities in Bermuda.

A non-Bermudian incorporated fund company or manager of a unit trust (an “Overseas Entity”) would be regarded as an “overseas company” for the purposes of the Companies Act. An overseas company will be deemed to carry on business in Bermuda if it occupies premises in Bermuda. If it establishes a presence (branch office) or occupies premises in Bermuda and engages in the marketing and sale of its securities or units of a unit trust of which it is the manager (“Securities”), it will be deemed to be carrying on business in Bermuda.

The determination of what activities in the context of the marketing of Securities would require a permit will depend on the specific facts and circumstances. There are various ways that the marketing of Securities may be brought within the scope of what could be regarded as “permitted activities” (i.e. activities that would not by and of themselves amount to carrying on business in Bermuda). As a general rule, if the Overseas Entity does not establish a presence (branch office) or occupy premises in Bermuda the following activities should be permitted:

- (i) **Unsolicited Requests:** Investors should be able to contact the Overseas Entity, request copies of offering and sales materials and

⁴⁴ Companies Act, Section 136(4).

even request that a representative of the Overseas Entity visit them in Bermuda to discuss a (potential) investment in Securities. An investor may also visit the Overseas Entity's offices and facilities outside of Bermuda. There are no particular formalities as to how an investor should contact the Overseas Entity.

- (ii) **External marketing:** Nothing prevents the Overseas Entity from marketing to or soliciting potential investors at a time when the company representative of the investor is out of Bermuda. The fact that such person returns to Bermuda, makes an investment decision, and then enters into a transaction for the purchase of Securities while in Bermuda, would not alter such conclusion.
- (iii) **Local intermediaries:** The Overseas Entity could engage the services of a local intermediary to market Securities in Bermuda without restriction. Such an intermediary is in general required to be licensed under The Investment Business Act 2003 (see "The Investment Business Act 2003" below). Representatives of the Overseas Entity could be invited to attend and participate in presentations hosted by the local intermediary in Bermuda for the purposes of offering the Securities.
- (iv) **Communications from outside of Bermuda:** Representatives of the Overseas Entity should be able to communicate by telephone, fax or electronic mail from outside of Bermuda with (potential) investors in Bermuda, but only if the initial contact with the (potential) investor was made by the investor or through methods described in paragraphs (i), (ii) and (iii) above.

However, the following activities will require a permit:

- (i) **Direct marketing:** Prior to obtaining a permit, direct marketing activities conducted by the Overseas Entity in Bermuda will certainly fall foul of the "carrying on business in Bermuda" restriction in the

Companies Act. Direct marketing includes making known by way of advertisement, or by insertion in a directory or by means of letterhead that it may be contacted at a particular address in Bermuda or is otherwise seen to be carrying on any business in or from within Bermuda on a continuing basis.

- (ii) **Internet marketing:** The Electronic Transactions Act 1999 (the “ETA”) has had the effect of amending certain sections of the Companies Act in relation to internet/electronic transactions. As a result of the ETA, the Companies Act now provides that an overseas company shall be deemed to engage in or carry on any trade or business in Bermuda if it makes known by way of advertisement or by any statement on a web site or by an electronic record⁴⁵ that it may be contacted at a particular address in Bermuda or if it uses a Bermudian domain name.⁴⁶

If any activity results in the Overseas Entity being deemed to be carrying on business in Bermuda, it may also be deemed to be carrying on “investment business” in or from Bermuda and be subject to the provisions of The Investment Business Act 2003 (see “The Investment Business Act 2003” below).

The Companies Act envisages circumstances where the activities in Bermuda of a “travelling salesperson” representing an overseas company will not result in the overseas company being in breach of the prohibition on overseas companies carrying on business in Bermuda. In particular, the “travelling salesperson” must have been “permitted to land as such” and this would involve permission of the Bermuda Immigration Department. The current policy of the Bermuda Immigration Department is only to grant a travelling salesperson’s work permit where the individual is sponsored by a local business or the Bermuda Chamber of Commerce. Accordingly, it is unlikely that the employees or representatives of the Overseas

⁴⁵ An “electronic record” is defined in section 2 of the ETA as “a record created, stored, generated, received or communicated by electronic means”. Section 7(1) of the Interpretation Act 1978 now provides that a ‘record’ includes a record created, stored, generated, received or communicated by electronic, magnetic, optical or other similar means.

⁴⁶ Companies Act, Section 133(5).

Entity would be granted the permissions necessary to claim the “travelling salesperson” exemption.

An exception is where the securities of an overseas company⁴⁷ or of an overseas partnership⁴⁸ are listed on the BSX (see “Listing on the Bermuda Stock Exchange (BSX)” below). An overseas company or partnership may offer its securities for subscription in Bermuda where such securities are listed on the BSX. Further, an overseas company or partnership may offer the securities of any company or unit trust scheme of which it is the manager and of any limited partnership of which it is the general partner for subscription in Bermuda if such securities are listed on the BSX. When making any direct solicitation in Bermuda such an overseas company or partnership will need to comply with Bermuda immigration laws. Such immigration laws would not, however, prevent marketing to investors in Bermuda by way of mailing or calling by telephone from outside Bermuda.

6. CLASSIFICATION

As mentioned above, the IFA requires investment funds to be classified as Standard funds, Institutional funds, Administered funds or Specified Jurisdiction funds unless specifically excluded or exempted⁴⁹. A fee is payable to the BMA by the operator of an investment fund:

- (i) on the making of an application for authorisation;
- (ii) on the making of an application for a change of classification; and
- (iii) annually on or before 31 March.

6.1 Standard Funds

The IFA provides a supervisory and regulatory environment for Standard funds, and

⁴⁷ Bermuda Stock Exchange Company Act 1992, Section 16(1)(b).

⁴⁸ Bermuda Stock Exchange Company Act 1992, Section 16(2)(b).

⁴⁹ IFA, Section 11(1).

mandates certain prospectus disclosure and financial reporting requirements. The IFA requires a Standard fund to appoint an investment adviser or manager, an administrator, a custodian, a registrar and an auditor, all of whom must be approved by the BMA. Each of the investment adviser or manager, administrator and custodian may delegate their respective functions and duties but will remain responsible for the performance of any sub-investment adviser or sub-manager, sub-administrator, sub-custodian as the case may be.

The investment adviser or manager is the person appointed by or on behalf of the investment fund or the unit trust to render investment advice or investment management services or both to the investment fund or unit trust, in connection with its investment activities. The BMA will need to be satisfied as to the experience and expertise of the investment adviser or manager.

The administrator is responsible for the accounting and secretarial functions of the investment fund or the unit trust and has principal responsibility for compliance matters on a day-to-day basis.

The custodian is responsible for the safekeeping of the assets of the investment fund or unit trust. The custodian must normally be a financial institution in Bermuda or a subsidiary of such a financial institution. However, an exemption from such requirement is usually available if the proposed custodian is based in an acceptable jurisdiction and subject to regulation which, in the view of the BMA, is equivalent to that applying in Bermuda. In such a case, the investment fund's administrator should be a local, exempted or overseas (permit) company or partnership which satisfies the BMA as to its experience and expertise, and which has a physical presence in Bermuda at which the relevant records ("Relevant Records") of the investment fund can be made available to the BMA.

Relevant Records include the investment fund's prospectus, explanatory or offering memorandum and any other document or instrument issued by the investment fund for the purposes of offering securities and the investment fund's constitution, which shall include provisions for the following:

- (a) the rights and restrictions attaching to the units;
- (b) the terms for valuation of assets and liabilities;
- (c) the manner of calculation of the net asset value of each unit and the issue price and redemption price of units;
- (d) the terms upon which units are issued;
- (e) the terms upon which units may be transferred or converted, if applicable;
- (f) the terms upon which units may be redeemed and the circumstances in which redemptions may be suspended; and
- (g) the investment restrictions or borrowing limitations, if any.

An exemption from the requirement to appoint a custodian may be obtained where:

- (i) due to the nature of the assets to be held, the investment fund appoints as prime broker an institution which is based in an acceptable jurisdiction and is subject to regulation which, in the view of the BMA, is equivalent to that applying in Bermuda (an “approved prime broker”);
- (ii) the investment fund is a feeder fund into a related master fund which appoints a custodian or approved prime broker; or
- (iii) the investment fund is a fund of funds on the condition that assets held consist predominantly of cash at a bank and registered shares or units in the underlying funds.

The registrar is the person who issues, transfers, converts and redeems shares of the investment fund or units of the unit trust. The registrar must be resident in Bermuda with the power to carry on the business of a registrar. The registrar may delegate the maintenance of an investment fund’s register of members or unit holders to a person

outside of Bermuda but will remain responsible for the performance of the sub-registrar.

The auditor must be independent of the investment fund, the administrator, the investment adviser or manager, the registrar, and the custodian⁵⁰.

6.2 Institutional Funds

An investment fund may be classified as an Institutional fund⁵¹ if:

- (i) it is only open to qualified participants; or
- (ii) it requires each participant to invest a minimum amount of \$100,000 in the investment fund; and
- (iii) it has an officer, trustee or representative resident in Bermuda who has access to the books and records of the investment fund.

Generally, the regulations governing Standard funds apply equally to Institutional funds, except that an Institutional fund is automatically exempted from the requirement that the custodian must be a financial institution in Bermuda.

Similarly, an exemption from the Institutional fund's requirement to appoint a custodian may be obtained where:

- (i) due to the nature of the assets to be held, the investment fund appoints an approved prime broker;
- (ii) the investment fund is a feeder fund into a related master fund which appoints a custodian or approved prime broker; or
- (iii) the investment fund is a fund of funds on the condition that assets held consist predominantly of cash at a bank and registered shares or

⁵⁰ IFA, Section 14(2).

⁵¹ IFA, Section 11(2).

units in the underlying funds.

The prospectus of an Institutional fund must include specified disclosure indicating that the investment fund is less regulated than a Standard fund. Such disclosure must be in the prescribed form⁵² which highlights that the Institutional fund should be viewed as an investment suitable only for investors who can fully evaluate and bear the risks involved.

The administrator of an Institutional fund must (except with the prior approval of the BMA) be independent of the Institutional fund and any other service provider. The administrator also must normally be a local, exempted or overseas (permit) company or partnership which has a physical presence in Bermuda. An exemption from such requirement is usually available, however, if the BMA is satisfied that adequate nexus with Bermuda remains and, in particular, that satisfactory arrangements are in place to enable it to gain timely access in Bermuda to the Relevant Records of the Institutional fund (or copies thereof), in case the same may become necessary.

6.3 Administered Funds

An investment fund qualifies for classification as an Administered fund if it is an investment fund whose administrator is licensed under Bermuda law and (a) requires participants to invest a minimum of \$50,000 in the investment fund or (b) is listed on a stock exchange recognised by the BMA.

6.4 Specified Jurisdiction Funds

The Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012 (the “Order”), together with the Investment Funds (Specified Jurisdiction Fund) Japan Rules 2012, permit Bermuda domiciled funds established pursuant to the Order to be marketed to the Japanese public (“Japan Fund”). The Order has been specifically created to ensure that the rules applicable to Japan Funds domiciled in Bermuda will meet the requirements of the Japanese Securities Dealers Association Regulations which provide that Japanese investment dealers may only solicit customers to subscribe to

⁵² Funds Prospectus Rules, Rule 6.

securities of any foreign investment trust that is established in a jurisdiction, the laws and regulations and disclosure system of which are “well-provided”. Japan Funds will be regulated by the BMA, which will require additional information, governance and disclosure with respect to a Japan Fund.

7. CONTINUING OBLIGATIONS OF AN INVESTMENT FUND

The IFA subjects an investment fund to various ongoing requirements. Such requirements include, among others, the following.

7.1 Reports to Investors

An investment fund must make provision for the preparation and distribution of an annual report to investors including copies of its audited financial statements⁵³. Financial statements and other financial information distributed to investors and financial information used in the determination of net asset value must be prepared in accordance with generally accepted accounting principles (GAAP) which may be those of a jurisdiction other than Bermuda⁵⁴.

7.2 Reports to the Administrator

Service providers to an investment fund are required to report specific matters of concern to the BMA. Where a service provider to an investment fund becomes aware that the assets of such investment fund have not been invested in accordance with the constitution or that the general management of the investment fund is not materially in accordance with the provisions of its constitution, such service provider must⁵⁵:

- (i) immediately advise the BMA of the occurrence of any such event and the circumstances applicable thereto; and
- (ii) make a report in writing of such event to the investment fund’s administrator.

⁵³ IFA, Section 14(1)(a).

⁵⁴ Fund Rules 2007, Rule 7.

⁵⁵ IFA, Section 26.

Such report is required to be included in the investment fund's next annual report and, in addition, in its next periodic report if such next periodic report is to be distributed before the next annual report.

7.3 Reports to the BMA

An authorised investment fund is required to submit to the BMA⁵⁶:

- (i) within six months after its financial year end, a statement confirming that such investment fund has at all times during the preceding financial year been in compliance with the IFA and fund and prospectus rules applicable to it or, in circumstances where the investment fund has not been in compliance, the statement shall specify the particulars of such non-compliance; and
- (ii) when required, a report on such activities of such investment fund as the BMA may reasonably require.

The BMA will generally grant an exemption to file a statement of compliance for investment funds that have notified the BMA of their intention to liquidate at the earliest practical date.

7.4 Approvals of the BMA

The prior approval of the BMA is required for certain changes in relation to an investment fund including, for example:

- (i) any material change to the investment fund's prospectus or offering document⁵⁷;
- (ii) any change in the administrator, custodian, investment adviser or

⁵⁶ IFA, Section 26.

⁵⁷ IFA, Section 25(1)(a).

manager, registrar or auditor of the investment fund⁵⁸.

7.5 Notice to the BMA

Advance notice of certain matters in relation to an investment fund must be given to the BMA including, for example:

- (i) replacing a director of an investment fund (or trustee of a unit trust or general partner of a partnership)⁵⁹;
- (ii) amalgamating, reconstructing or winding up the affairs of an investment fund⁶⁰; or
- (iii) any change in control of the administrator of the investment fund⁶¹.

Where the notices above are given by a Standard fund, rather than an Institutional or Administered fund, prior consent of the BMA is also required before effecting such changes.

7.6 Fund Officers to be "fit and proper"

The IFA requires that any officers of a fund should be "fit and proper" to act as such in order to ensure that the business of the fund is being conducted in a prudent manner⁶².

8. TAXATION

There is currently no Bermuda income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by an investment fund, a closed-ended investment company, a unit trust or an exempted

⁵⁸ IFA, Section 25(1)(b).

⁵⁹ IFA, Section 25(1)(c) – (e).

⁶⁰ IFA, Section 25(1)(f) and (g).

⁶¹ IFA, Section 45A.

⁶² IFA, Section 14(1).

limited partnership, or their respective shareholders, unit holders or partners, other than shareholders, unit holders and partners ordinarily resident in Bermuda. Further, no such tax is imposed by way of withholding or otherwise on any payment to be made to or by such entities.

An exempted undertaking (which includes investment funds, closed-ended investment companies, exempted unit trust schemes and exempted limited partnerships) may apply for and is likely to receive from the Minister of Finance, pursuant to the Exempted Undertakings Tax Protection Act 1966, an assurance⁶³ that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not, until 31 March 2035, be applicable to such undertaking or to any of its operations or to the shares, units, partnership interests, debentures or other obligations of or in such undertaking except in so far as such tax applies to persons ordinarily resident in Bermuda and holding such shares, units, partnership interests (or being partners of the partnership) or debentures of or in the undertaking or being parties to other obligations of the undertaking, or to any land leased or let to the undertaking.

9. STAMP DUTY

No stamp duty or other similar duty is payable by an investment fund, a closed-ended investment company, a unit trust or an exempted limited partnership on capital or on the issue, redemption or transfer of shares, units or partnership interests⁶⁴.

10. EXCHANGE CONTROL

Bermuda is independent for the purposes of exchange control which is operated under the Exchange Control Act 1972 and related regulations. An exempted undertaking (which includes investment funds, closed-ended investment companies, unit trusts and exempted limited partnerships) will be classified as non-resident of

⁶³ Exempted Undertakings Tax Protection Act 1966, Section 2.

⁶⁴ The Stamp Duties (International Business Relief) Act 1990, Section 3.

Bermuda for exchange control purposes by the BMA. The BMA will also grant permission for the issue or transfer of the participating shares of a fund or a closed-ended investment company, the units of a unit trust or the limited partnership interests, to persons regarded as non-resident of Bermuda for exchange control purposes without specific consent under the Exchange Control Act 1972 and regulations made thereunder.

The non-resident designation allows such exempted undertaking to operate free of exchange control regulations and enables it to make payments of dividends and distributions, to distribute capital, to open and maintain bank accounts and to purchase, hold and sell any currency and foreign securities without restriction.

11. GOVERNMENT FEES

A Bermuda exempted company is liable to pay an annual registration fee⁶⁵ on a sliding scale based upon its assessable capital. In the case of an investment fund, assessable capital is its authorised share capital⁶⁶. In the case of a closed-ended investment company, assessable capital is the sum of its authorised share capital and share premium account⁶⁷.

An annual declaration⁶⁸ is submitted each year at the time of payment of the annual registration fee. Such declaration states the type of business carried on by, and the amount of the capital of, the investment fund or closed-ended investment company.

A unit trust itself is not liable to pay an annual registration fee. If its manager, however, is a company to which the Companies Act applies, it will be required to pay an annual fee in respect of each unit trust it manages.

⁶⁵ Companies Act, Section 121(1)(b).

⁶⁶ Companies Act, Section 131(1)(a)(ii)(aa)3.

⁶⁷ Companies Act, Section 131(1)(a)(ii)(aa)3.

⁶⁸ Companies Act, Section 121(1)(a).

12. RELATED BERMUDA LEGISLATION

12.1 The Segregated Accounts Companies Act 2000

The Segregated Accounts Companies Act 2000 as amended (“SACA”) came into force on 1 November 2000. SACA makes provision for companies to which the Companies Act applies to apply to the Minister of Finance for registration as a segregated accounts company (“SAC”) and sets out rules governing the operation of such companies and their segregated accounts.

The Minister of Finance accepts applications from companies registered under the Insurance Act 1978, investment funds regulated under the IFA, closed-ended investment companies and other companies structured to pool investors’ investments.

The registration procedure under SACA differs for the registration of existing companies and new companies. For a new company, such registration procedure is separate from the incorporation procedure under the Companies Act, but is designed so that the date of registration under SACA can be the same as the date of incorporation under the Companies Act. Registration under SACA does not affect the requirement of a SAC (to continue) to comply with the provisions of the Companies Act.

The concept of segregated accounts has been employed in Bermuda by Private Acts for some time. SACA establishes a system of registration so that SACs may be created speedily and with the flexibility necessary to respond to the needs of international business. However, a Bermuda company may continue to petition the Bermuda Legislature for Private Acts where the company is desirous of obtaining special provisions for the constitution and structure of the company not otherwise capable of being obtained under SACA. In most instances, SACA should provide an effective alternative to the lengthy and expensive Private Act procedure.

A SAC is permitted to create segregated accounts in order to segregate the assets and liabilities attributable to a particular class or series of shares of the SAC from the assets and liabilities attributable to each other class or series of shares of the SAC, and

from the SAC's general assets and liabilities. Any asset or liability linked to a particular segregated account of a SAC is deemed to be held as a separate fund which is not part of the other assets of the SAC and is held exclusively for the benefit or burden of the account owners of that account and any counterparty to a transaction linked to that segregated account⁶⁹. SACs can therefore contract with a creditor or shareholder so that the assets injected by that person are held by the SAC in a segregated account and insulated from any claims of the creditors of other segregated accounts and of the general creditors of the company.

Except where agreed otherwise⁷⁰, segregated account assets are only intended to be used to meet liabilities to creditors in respect of a particular segregated account and are not intended to be available to meet liabilities to creditors in respect of other segregated accounts or to general creditors of the SAC.

A segregated account is not a separate legal entity but a record or a collection of records detailing transactions relating or linked to each other. SACA therefore enables a statutory segregation of accounts within a single company that could otherwise only be achieved by incorporating subsidiaries or by Private Act. Within the funds industry, the ability to use a SAC is particularly useful for fund managers wishing to establish master-feeder fund structures, structures providing for multiple classes of shares or any structure where the statutory segregation of assets is desired.

A SAC is required to appoint a segregated account representative ("SAR")⁷¹ approved by the Minister of Finance. An appropriate person provided by the administrator or the manager would normally be acceptable. The purpose of the SAR is to act like an internal watchdog, with the statutory duty to make a written report to the ROC within thirty days after (a) the SAR reaching the view that there is a reasonable likelihood of a segregated account or the general account of the SAC becoming insolvent or (b) it coming to the SAR's knowledge or his or her having reason to believe that certain failures to comply with SACA have occurred or that the SAC has

⁶⁹ SACA, Section 17(2).

⁷⁰ SACA, Sections 12(1) and 17(5).

⁷¹ SACA, Section 10.

become involved in any criminal proceedings in Bermuda or elsewhere.

In order to be registered as a SAC, a company is required to file a statutory notice ("Form 1") with the ROC⁷². The Form 1 must describe the nature of the business as well as contain a statement that the company is able to comply with the accounting procedures set out in section 16 of SACA. When making such statement, it is usually sufficient for the company's directors or other applicants to confirm that the company's accountant or administrator has been directed to account for segregated accounts in the manner set out in SACA.

Where the company has conducted business prior to its application to register as a SAC, a copy of the Form 1 must be sent to all persons (currently doing business with the company) who will become account owners and to the company's known creditors at least contemporaneously with the filing of the Form 1 with the ROC. Further, the company must include with the Form 1 for filing with the ROC evidence that seventy five per cent, in number, of the account owners and the creditors have consented in writing to the registration of the company as a SAC⁷³ and a statutory declaration⁷⁴ (the "Statutory Declaration") setting out a true and accurate statement or description of the following:

- (i) the assets and liabilities of the company as at a date within three months before the date of the Form 1;
- (ii) any transaction or event which, as at the date of the Form 1, has occurred or is expected to occur between the date of making the statement of assets and liabilities and the date of registration of the company as a SAC which, if it occurred before the date of that statement, would have caused material changes to the assets and liabilities disclosed therein;

⁷² SACA, Section 5.

⁷³ SACA, Section 5(2)(b).

⁷⁴ SACA, Section 5(2)(a).

- (iii) the number of segregated accounts to be operated and the assets and liabilities proposed to be assigned to each of those segregated accounts; and
- (iv) a statement that:
 - on registration as a SAC, the company and each segregated account will be solvent and (aa) no known creditor of the company will be prejudiced, (bb) the known creditors of the company have consented in writing to the company's registration, or (cc) adequate notice has been given to all known creditors of the company and no creditor has objected to the registration (otherwise than on frivolous or vexatious grounds);
 - no creditor of the company will be prejudiced; or
 - the creditors of the company have consented in writing to the company proceeding to register as a SAC.

The process used by the company to determine that the known creditors will not be prejudiced, or to obtain their consent to registration, must be described and verified by its directors as part of the Statutory Declaration.

The company is also required to notify the ROC of any material changes to the information set out in the Statutory Declaration between the date of the notice filed and the date of registration.

It should be noted that the application and documents which are submitted to the ROC and the BMA do not form part of the public record on the company. The SAC will, however, be included in the Register of Segregated Accounts Companies which is maintained by the ROC and is available to public inspection.

Apart from the SAC application fee and the filing fee, the only additional annual

government fee is an annual fee in respect of the operation of segregated accounts⁷⁵. This represents a significant saving as compared to the costs of paying a separate fee in respect of a separate company for each segregated account.

The SACA has only recently been considered by the Bermuda courts and, to the best of our knowledge, there have been only five reported decisions on it at first instance. These decisions indicate that the courts will protect the segregated accounts upon insolvency and will ensure that the assets of an individual segregated account are only available for the creditors and account owners of that particular segregated account.

If any segregated account assets of a SAC are located in a jurisdiction other than Bermuda and proceedings are brought in respect of them in that jurisdiction, it is not known how the courts of that jurisdiction would deal with the structure contemplated by SACA, which may well be unfamiliar to such jurisdiction. More specifically, courts in jurisdictions other than Bermuda may not be prepared to accept that creditors in respect of a particular segregated account are prevented from gaining recourse to the assets of other segregated accounts, or that general creditors of the SAC as a whole do not have recourse to those assets specifically designated as segregated account assets. Similarly, if a liability (for example, a fine or tax) is imposed on a SAC by a Bermuda or other authority, it is unknown how the courts of Bermuda or other jurisdictions would impose or distribute that liability as among the general account of the SAC and the various segregated accounts.

That said, segregated cell structures such as those enabled by SACA are not unique to Bermuda. Variations of segregated cell legislation exist in an increasing number of jurisdictions, including in several US States. As the concept becomes commonplace, so too should investor comfort with the effectiveness of such structures.

12.2 The Investment Business Act 2003

The Investment Business Act 2003 (the “IBA”) came into force on 30 January 2004,

⁷⁵ SACA, Section 31.

repealing the Investment Business Act 1998. The IBA effects a new but similar financial services regime in Bermuda, which brings Bermuda's regime more in line with international standards. This new regime is operated and supervised by the BMA. Essentially, the IBA provides that no one may carry on an investment business in or from Bermuda unless they are licensed under the IBA or are exempt from being licensed⁷⁶.

The IBA contains a wide definition of "investment business"⁷⁷ which includes carrying on any of the following investment activities by way of business:

- (a) dealing in investments;
- (b) arranging deals in investments;
- (c) managing investments;
- (d) giving investment advice; and
- (e) safeguarding and administering investments.

Each of such activities is defined in the IBA and certain exceptions apply. The IBA also defines "investments"⁷⁸ in quite broad terms. In addition to such items as shares, bonds and warrants, the definition also includes options to acquire or dispose of any investment, rights under any contract the purpose of which is to secure a profit by reference to fluctuations in the value or price of property and rights under any contract constituting long-term insurance business.

If the activity falls within the definition of "investment business", a person carrying on such business will be subject to the licensing requirement of the IBA unless the activity is specifically excluded pursuant to section 3(2)(b) of the IBA or unless such person is eligible for exemption from such licensing requirement.

⁷⁶ IBA, Section 12(1).

⁷⁷ IBA, Section 3(1)(b).

⁷⁸ IBA, Part 1 of the First Schedule.

Excluded activities include certain activities carried on between members of the same group, firm or joint enterprise, certain activities carried on for the purposes of, or in connection with, the sale of goods or the supply of services, operating employee share or savings schemes, the sale of a body corporate, certain activities carried on by a trustee or personal representative, provided additional remuneration is not received for doing so and arrangements for and the giving of advice by barristers and attorneys and certain journalistic advice.

For the purposes of the IBA, a person carries on investment business 'in or from Bermuda' only if that person (a) carries on investment business from a place of business maintained by such person in Bermuda or (b) engages in an investment activity deemed to be carrying on investment business in or from Bermuda pursuant to an Order made by the Minister of Finance.

A person 'maintains a place of business' (a) in the case of a sole trader, if that individual carries on investment business from premises that he occupies for that purpose or (b) in any other case, if that person carries on investment business from premises it occupies for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

Persons carrying on investment activity may still be exempt from the licensing requirements of the IBA in certain circumstances. Broadly, there are four types of investment business which qualify for an exemption from the requirement to obtain a licence under the IBA:

- (i) **Investment business undertaken for specific clients:** the provision of investment services by a person, other than a market intermediary (i.e. a person who engages or holds himself out as engaging in the business of dealing in investments as principal or agent on an investment exchange), exclusively to sophisticated private investors, high net worth or high income private investors, certain entities with a specified level of assets, or investment funds approved by the BMA;
- (ii) **Investment business conducted on a limited scope:** the provision of

investment services to not more than twenty persons at any time, as long as such services are not provided to, and investment business is not solicited from, the public;

- (iii) **Insurers carrying on insurance business:** carrying on of investment activities by a person registered as an insurer under the Insurance Act 1978, provided such activities are in connection with the business permitted by such registration; and
- (iv) **Insurers carrying on insurance related business:** carrying on of investment activities by a person registered as a broker, agent, manager or salesman under the Insurance Act 1978, provided such activities are in connection with the business permitted by such registration.

Where a person seeks to rely on the first two exemptions described above, that person must submit a declaration to the BMA confirming the same.

Notably, persons other than market intermediaries providing investment services to investment funds will be exempt from the requirement to obtain a licence under the IBA.

In addition to prohibiting the carrying on of investment business in or from Bermuda without being licensed (or exempted from the requirement to be licensed), the IBA also establishes an unsolicited calls regime, which will become effective once regulations have been made by the Minister of Finance. The IBA prohibits persons from entering into an investment agreement with an individual in the course of or in consequence of an unsolicited call made on that person. It is expected that licensed persons will be permitted to make unsolicited calls pursuant to the regulations.

Under the IBA, the BMA has several methods of regulating unlicensed persons, including powers of investigation and the ability to seek various types of court order.

12.3 Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

The Proceeds of Crime Act 1997 (“POCA”) contains provisions which deal with money laundering offences and other offences relating to the proceeds of criminal conduct. POCA is primarily aimed at preventing funds derived from the commission of offences relating to the proceeds of drug trafficking and/or serious crimes etc. from being laundered or legitimised. In addition to creating offences relating to money laundering (or the provision of assistance in such activities), POCA also confers expansive information gathering powers on the Bermuda Police Department relating to investigations into drug trafficking and whether a person has benefited from criminal conduct.

Pursuant to POCA, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the “POCA Regulations”) were enacted. The POCA Regulations apply only to ‘regulated institutions’ as defined therein.

Regulated institutions are required to comply with the POCA Regulations as interpreted by the Guidance Notes on the prevention of money laundering. Regulated institutions are required to ensure that their employees are periodically trained on the aforesaid anti-money laundering rules and procedures in order to ensure compliance with the duties imposed thereunder. Regulated institutions must also take steps to implement the required identification procedures, record keeping procedures, training procedures and procedures for the recognition and reporting of suspicious transactions. Further, regulated institutions are required to appoint a reporting officer to whom reports should be made and who shall have responsibility to make reports to the Financial Intelligence Agency when suspicious circumstances require.

A “person processing subscriptions or redemptions related to a collective investment scheme ...” or investment fund is a regulated institution. Such definition may also be applicable to Bermuda exempted companies which act as managers or administrators of investment funds which are in receipt of investors’ funds for the purposes of participating in investment funds. The POCA Regulations place the onus on the

administrator, registrar and transfer agent of an investment fund to obtain background information on its clients and the investors in the investment fund.

In effect, this anti-money laundering legislation does nothing more than put into legislative form what has been Bermuda's *de facto* practice. The Bermuda government has a long history of cooperation in appropriate circumstances with foreign regulatory bodies. The enactment of this legislation is in keeping with Bermuda's well-known and long established philosophy of 'knowing its customers'.

13. LISTING ON THE BERMUDA STOCK EXCHANGE (BSX)

Established in 1971, the BSX has grown to become the world's leading fully electronic offshore securities market. The BSX is a full member of the World Federation of Exchanges and an affiliate member of IOSCO recognised by the US Securities & Exchange Commission ("SEC") as a Designated Offshore Securities Market under Regulation S.

The listing regulations of the BSX⁷⁹ relating to investment funds are contained in Section IV of the BSX Regulations.

Offshore funds that want to provide their investors with an additional degree of comfort may list themselves on the BSX. Even if their securities may not in fact be traded on the BSX, which would provide investors with an easy exit from the fund, such offshore funds must allow exchange officials to vet their prospectus and marketing materials. A fund listed on the BSX must provide the BSX with periodic updates of net asset values and any changes in its structure, investment policy, management, administrator or auditor. Whilst such requirements do not provide investors with much protection if things go wrong, since the only recourse the BSX has to deal with funds that fail to make timely reports is to suspend or terminate their listings, the BSX does discourage fund managers with questionable business practices.

The BSX lists institutional funds under a relatively light but effective regulatory

⁷⁹ The BSX Regulations may be found on the BSX's website, www.bsx.com.

regime that meets international standards. The BSX does not impose minimum capital requirements or investment restrictions (with the exception of disallowing a fund to take control of its underlying investments) and allows flexibility for funds and the use of prime brokers.

13.1 Qualifications

To be acceptable for a primary listing, a fund must be duly incorporated or otherwise established, in conformity with applicable laws, in Bermuda or in one of a number of other specified jurisdictions⁸⁰ including, among others, Canada, France, Germany, Hong Kong, Japan, Switzerland, the UK and the US. In addition, the fund must have twenty five per cent of its securities held by the public or offer shares only to Qualified Investors.

A “Qualified Investor” is deemed to be an investor who has truthfully completed an investor suitability declaration in the form prescribed by the BSX from time to time or in such other form as the BSX may approve and either:

- (i) whose investment is not less than US\$100,000; or
- (ii) who otherwise meets one of the suitability tests set out in the declaration.

In order to qualify for a secondary listing on the BSX, the fund’s securities must be listed on a recognised stock exchange⁸¹, which must be designated as the fund’s Primary Regulatory Exchange, and be, in the opinion of the BSX, suitable for listing on the BSX. Stock exchanges recognised for such purpose include, among others, the Toronto Stock Exchange, all exchanges licensed in any EU Member State, Hong Kong Stock Exchanges and Clearing, the Tokyo Stock Exchange, the Swiss Stock Exchange and all exchanges approved as a National Market by the US SEC.

A fund must normally have a trustee, custodian or prime broker and investment

⁸⁰ BSX Regulations, Appendix 6 of Section IV.

⁸¹ BSX Regulations, Appendix 5 of Section IV.

adviser or investment manager acceptable to the BSX⁸², appoint an independent auditor and publish a prospectus.

13.2 Application

Offshore fund listing applications must be sponsored by either a BSX Trading Member or Listing Sponsor. A formal letter of application containing required information⁸³, a draft prospectus or offering memorandum⁸⁴ and other supporting documents⁸⁵, together with the appropriate fee⁸⁶, must be filed with the BSX.

Supporting documents⁸⁷ include:

- (i) certificate of incorporation or equivalent;
- (ii) certified copy of the fund's constitution;
- (iii) audited annual report and accounts (for last three years or since inception);
- (iv) certified copies of resolutions authorising issue of the securities;
- (v) the fund's undertaking and directors' declarations and undertakings in the prescribed form⁸⁸;
- (vi) copy of document of title to be used for the issue; and
- (vii) certified copies of material documents referred to in the prospectus.

⁸² BSX Regulations, Regulation 4.6.

⁸³ BSX Regulations, Appendix 3 of Section IV.

⁸⁴ BSX Regulations, Regulation 5.4(iii).

⁸⁵ BSX Regulations, Regulation 5.4(ii).

⁸⁶ BSX Regulations, Regulation 5.4(iv).

⁸⁷ BSX Regulations, Regulation 5.5.

⁸⁸ BSX Regulations, Regulation 5.8 and Appendix 2 of Section IV.

13.3 Timing

The process for obtaining approval for listing on the BSX is usually completed within three weeks. The BSX assures applicants of a response from its Listing Committee within seven business days after complete applications are submitted.

13.4 Prospectus

The relevant prospectus must describe the rights attaching to securities offered and contain information that enables an investor to make an informed assessment of the activities, assets and liabilities, financial position (including profits and losses), management and prospects of the fund. The BSX Regulations provide guidance on the following required items:

- (i) general information about the fund, its advisers and prospectus;
- (ii) information on the securities, including the terms of issue and distribution;
- (iii) share capital;
- (iv) investments;
- (v) investment advisers or investment managers;
- (vi) financial information and prospects;
- (vii) management;
- (viii) use of proceeds;
- (ix) material contracts; and
- (x) the provision of documents for inspection.

The prospectus must also contain the required BSX standard disclaimer as follows:

“The Bermuda Stock Exchange takes no responsibility for the contents of this document, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon any part of the contents of this document.”

13.5 Continuing Obligations

There are certain continuing obligations⁸⁹ applicable to a fund listed on the BSX including, among others:

- (i) promptly notifying the BSX and shareholders of material events to allow them to evaluate the financial position of the fund and to avoid the creation of a false market;
- (ii) notifying the BSX of net asset value calculations;
- (iii) filing audited annual report and accounts, as well as preliminary results;
- (iv) filing copies of shareholder notices or circulars.

13.6 Costs of listing

Initial listing fees are payable on the application for listing⁹⁰. Annual fees are charged at the same rates, with first year fees payable at the same time as the formal letter of application.⁹¹

14. CONCLUSION

Bermuda is well-established as the domicile of choice for quality investment funds. Investors are aware that the Bermuda domiciled investment funds in which they invest are subject to certain basic scrutiny standards. The established levels of

⁸⁹ BSX Regulations, Chapter 6.

⁹⁰ BSX Regulations, Regulation 5.4(iv).

⁹¹ A listing of the current fees is available upon request.

regulation offered in Bermuda provide Bermuda investment funds with a superior reputation as compared to rival jurisdictions. The benefits of doing business in a jurisdiction with a credible legal system and regulatory regime are obvious to our international fund clients. Regulators must strike a balance between providing investor protection and interfering with a manager's ability to pursue its investment strategy. The IFA demonstrates Bermuda's ability to continuously develop the effective yet flexible regulation of investment funds in this regard. Going forward, Bermuda remains committed to enhancing its regulatory regime in order to ensure it maintains its position internationally as a jurisdiction of choice for quality investment funds.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

© Conyers Dill & Pearman, January 2015

About Conyers Dill & Pearman

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

www.conyersdill.com