



Grandfathered Exempted Funds need to reapply for Registration with the Bermuda Monetary Authority before 3 October 2016



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On 3 October 2013, the *Investment Funds Amendment Act, 2013* (the “Act”) was passed creating a new dual system of exemptions for qualifying investment funds. The Act, in addition to introducing the Class A Exempted Fund (the “Class A Fund”) and the Class B Exempted Fund (the “Class B Fund”) regimes, also repealed the prior exemption provisions. Investment Funds, which had previously obtained an exemption under the repealed provisions of the Investment Funds Act (each a “Grandfathered Fund”), were grandfathered for a period of three years from the implementation date of the Act.

This grandfathered period is now rapidly coming to an end. On or before October 2016, these Grandfathered Funds must have been registered as either a Class A Fund or a Class B Fund. Failure to reapply will result in a Grandfathered Fund losing its exempted status and falling out of compliance with the provisions of the *Investment Funds Act, 2006* as amended.

A Grandfathered Fund may register as a Class A Fund if the fund:

1. limits the offering of its securities to qualified participants (essentially equivalent to accredited investors in the US or sophisticated investors in the UK);
2. employs an investment manager that satisfies one of the following requirements: (i) is licensed under the *Investment Business Act, 2003*, as amended of Bermuda; (ii) is authorised or licensed by either the US Securities and Exchange Commission or the UK Financial Conduct Authority; or (iii) has either individually or as part of an investment management group gross assets under management of US\$100 million or more (or its currency equivalent);
3. appoints a fund administrator, a registrar, an auditor and a custodian or prime broker;
4. appoints a resident representative in Bermuda with access to the books and records of the fund; and
5. prepares and files with the BMA, on an annual basis, financial statements prepared in accordance with IFRS or GAAP as deemed acceptable by the Bermuda Monetary Authority (the “BMA”).

Registration of a Class A Fund with the BMA can be accomplished in a single business day by: (i) delivering to the BMA a certificate in the prescribed form confirming that the fund meets the requirements for exemption; and (ii) paying a registration fee of US\$1,545. Ongoing requirements for Class A Funds are minimal and include delivering, on an annual basis, a certificate that the fund continues to qualify as a Class A Fund together with a



copy of the fund's audited financial statements for the preceding year and a statement of any material changes to its offering memorandum.

Where a Grandfathered Fund meets all of the eligibility requirements of a Class A Fund except that its investment manager does not meet the more stringent qualifications, the Grandfathered Fund will have to apply to be registered as a Class B Fund. The application procedure is the same as that set out for a Class A Fund except the BMA has a period of up to ten 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. The registration fee for a Class B Fund is US\$1,030. The ongoing regulatory obligations for Class B Funds are identical to those applicable to Class A Funds, with the additional requirement that Class B Funds seek the approval of the BMA to any change to the fund's director or service providers.

Regardless of exemption category, a fund is required to advise the BMA if, at any time, it no longer qualifies for the exemption previously granted.

In addition, all exempted funds, be they grandfathered or registered as Class A Funds or Class B Funds, must register as Non-Licensed Persons pursuant to the *Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act, 2008*.

Please contact a member of our investment funds group should you wish to make the required registration or to discuss the implications of the upcoming deadline.

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