



Changes to the Investment Funds Act 2006

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The recent *Economic Substance Act, 2018* (“ESA”), passed in December 2018, included within it a series of amendments to the *Investment Funds Act, 2006* (the “IFA”). These amendments to the IFA are for the purpose of enhancing Bermuda’s regulatory framework with respect to certain categories of unregulated investment funds, namely, the private Excluded funds and the Class A and Class B Exempt funds.

This alert deals solely with the amendments to the IFA. For information on the broader implications of the ESA for Bermuda entities, please refer to the Conyers alerts on Economic Substance.

The original IFA framework

Qualifying investment funds previously had the option to register with the Bermuda Monetary Authority (the “BMA”) as authorised/regulated funds or in one of three non-regulated categories of funds: (i) the private Excluded fund; (ii) the Class A Exempt fund; and (iii) the Class B Exempt fund. This group of non-regulated funds was exempted from the requirement to be authorised under the IFA and the BMA’s focus was largely on self-certification by the fund operator. That has now changed to an application and registration process.

The amendments to the IFA

The various amendments to the IFA primarily relate to the replacement of the existing “Excluded”, “Class A Exempt” and “Class B Exempt” fund designations with “Private fund”, “Professional Class A funds” and “Professional Class B funds”, respectively. This group is now referred to collectively as “registered funds”.

The amendments generally seek to increase BMA oversight of these entities and bring them more in line with the BMA’s oversight of authorised and regulated funds. In summary, the amendments include (among other things) extending the BMA’s powers to make and modify/waive rules, require the production of information or documents and conduct investigations in relation to such funds. The amendments also expand the matters in respect of which the BMA may make rules to include obligations with respect to depositary functions and safekeeping obligations and additional requirements related to reports to the BMA, public disclosure and disclosure to investors.

New requirements and ongoing obligations

Going forward, all funds will need to apply to the BMA for recognition and registration as a Private Fund, Professional Class A fund or Professional Class B fund prior to launch. All existing affected funds will need to consider re-registering under the new regime within the six month transition period expiring at the end of June 2019.

In addition to the application and registration process, there are some extra requirements and obligations that are worth highlighting:

- Private funds will need to appoint a Bermuda-based service provider. While there is flexibility on the nature of this service provider (e.g., fund administrator, custodian), most funds will likely find it convenient to satisfy this new requirement through the appointment of a corporate service provider (providing registered office and director services) as most will have such an arrangement in place already.
- All registered funds (including Private funds) will need to appoint a custodian although the BMA may waive this requirement if it is satisfied that alternative arrangements have been made that would uphold safekeeping obligations.
- The application for registration will require submission of information relating to the fund, a copy of the offering document, details on the service providers and the applicable fee.
- Private funds will (much as currently exists for Class A and Class B Exempt funds) have a new obligation to file an annual certification to the BMA that the fund continues to satisfy the relevant qualifying criteria and requirements for registration which will include information on NAV and underlying assets, a copy of management accounts or audited financial statements, and information on material changes that may have taken place during the reporting period.
- The BMA may make fund rules as to (i) prudential requirements of the fund and obligations of the fund operator with respect to its service providers; (ii) obligations with respect to depositary functions and safekeeping obligations; (iii) additional requirements related to reports to the BMA, public disclosure and disclosure to investors.

Conyers will provide further details on the introduction of new or amended fund rules as they are drafted and published.

The changes overall are intended to enhance Bermuda's investment fund regulatory framework to better align with developing global standards. Many clients will find that they are well placed with their existing structures to comply easily with the new requirements. Existing fund clients are encouraged to discuss this development with their usual Conyers lawyer contact.

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