



30 May 2019

NOTICE

Changes to Bermuda's Investment Funds Regime

In December 2018, the Bermuda Government passed the Economic Substance Act 2018 (**Substance Act**). The Substance Act amended the Investment Funds Act 2006 (the Funds Act as amended) in order to bring Bermuda's investment fund regulatory regime in line with international standards.

The changes to the Funds Act as amended are summarised below:

- Excluded Funds are now referred to as **Private Funds** (i.e. funds with less than 20 investors who do not promote themselves to the public)
- Class A Exempt Funds and Class B Exempt Funds are now referred to as **Professional Class A Funds** and **Professional Class B Funds**
- Professional Funds and Private Funds will collectively be known as **Registered Funds**
- Registered Funds will now need to apply to the Bermuda Monetary Authority (the Authority) for registration and approval before commencing trading
- Applications for Private Fund registrations must include information related to the fund, including a copy of the offering document and details about any service providers
- Private Funds will need to appoint a local service provider that is authorised and regulated by the Authority (the definition of "service provider" in the Funds Act as amended now includes corporate service providers)
- Private Funds are required to appoint a custodian to ensure safekeeping of the fund's assets; however, the Authority may waive the requirement to appoint a custodian if it meets certain requirements set by the Authority
- The operator of a Private Fund must annually certify that it satisfies the qualifying criteria and the requirements for registration and will continue to satisfy them on an ongoing basis
- In addition, the operator of a Private Fund must annually file information on the fund's net asset value and its underlying assets, provide a copy of the fund's management accounts or audited financial statements, as well as information on any material changes that took place during the course of the year
- Section 20 of the Substance Act prescribes that Excluded Funds, Class A Exempt Funds and Class B Exempt Funds (referred to as existing funds) have a transition period of six months to comply with any new requirements. Accordingly, the transition period expires on **1 July 2019**.
- The qualification criteria prescribed for the Class A Exempt Funds and Class B Exempt Funds are aligned with the qualification criteria prescribed for Professional Class A Funds and

Professional Class B Funds in the Funds Act as amended, hence the requirements in the Funds Act as amended are deemed to be met

- However, the operator of an existing fund that was previously Excluded must complete the new Private Fund submission form in the Authority's Electronic Regulatory Information Compliance Application (ERICA), and submit the form along with the related attachments so that the Authority can determine that all requirements prescribed by Section 6 of the Funds Act as amended have been met
- The Authority will not charge an application fee for the new Private Fund submission as these funds were already charged annual business fees for 2019
- Private and Professional funds fall in the scope of the Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Regulations
- As such, the Authority will continue to collect information about the Money Laundering Reporting Officer and the Compliance Officer, and will continue to require the fund to send in Board-approved AML/ATF Policies and Procedures
- If this information has not already been provided or if there have been any changes, please include it as part of the fund's registration application, or e-mail funds@bma.bm referencing 'AML/ATL Information' in the Subject
- The AML information form is accessible here: <https://www.bma.bm/document-centre/reporting-forms-and-guidelines-investment-funds>
- Please note that as a result of the new registration requirements related to Private and Professional Funds, these funds are no longer deemed to be Non-Licensed Persons under the Proceeds of Crime (Anti-Money Laundering/ Anti-Terrorist Financing Supervision and Enforcement) Act 2008
- Please direct any inquiries to funds@bma.bm