



BERMUDA MONETARY AUTHORITY

INVESTMENT FUNDS ACT 2006

INVESTMENT FUND GUIDELINES

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Table of Contents

1. Application Process.....	3
2. Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Compliance.....	4
3. Fit and Proper Service Providers and Operator	4
4. Reporting Requirements	5
5. Revocation of Authorisation/Cancellation of Registration/Cancellation of Overseas Fund Designation	7
6. Alteration to Service Providers, Directors and Officers and Material Change Permissions	8
7. Segregated Account Companies (SAC).....	8
8. Incorporated Segregated Accounts Company (ISAC)/Incorporated Segregated Account (ISA)	9
9. Developments in the Investment Funds Sector	9
10. Qualification Criteria for Modifications or Waiver of Rules.....	10
11. Designated Overseas Funds	13
12. Professional Closed Fund – Investor Warnings to be Provided Prior to the Purchase of Units	14
13. Close-ended Funds to Appoint a Designate Responsible for Safe Keeping Assets.....	14
14. Investment Fund Billing Contact Details.....	15
15. BMA Banking Details	15
16. General Queries	16

1. Application Process

The Bermuda Monetary Authority (Authority or BMA) must carefully vet applications for the incorporation of investment funds, and the approval of investment activity to be carried out in or from within Bermuda. This approach ensures that promoters and service providers are suitable and that schemes meet the high standards required in Bermuda.

The above-noted approach entails two separate vetting processes. The first relates to the incorporation, pursuant to the Companies Act 1981, of companies intending to carry out business as investment funds, including mutual fund companies (collectively defined within the Investment Funds Act 2006 (Act) as “company funds”). The Authority’s process regarding such applications parallels the approach taken to all company incorporation applications. The second and more intensive process relates to the Authority’s approval of the investment fund activity the applicant proposes to carry out in or from within Bermuda. Specifically, the granting of such approval entails the Authority authorising or registering any vehicle that meets the definition of “investment fund” within the Act and which is not specified by the Investment Funds (Definition) Order 2019 (definition order) as an arrangement not falling within that definition; or designating any overseas investment fund that is promoting itself in the jurisdiction.

The Authority recognises that applications for the incorporation of funds are frequently time-critical and that there is potential for the necessary vetting process to delay the approval of an application. Accordingly, the Authority has implemented two different tracks to avoid unnecessary delays. Those submitting applications may, as they prefer:

- a) Seek to have the company incorporated/vehicle established in advance of submitting a related investment fund registration/authorisation application. In such cases, the Authority will immediately proceed to complete the standard incorporations-related due diligence process. This may include a review of the intended participating shareholders and an early decision on incorporation/establishment without prejudice to its eventual decision regarding the application for registration/authorisation of a fund. Where an application for incorporation is approved, the promoters will then be in a position to quickly prepare for the fund to begin operations by opening the necessary bank accounts and taking other steps following establishment. However, the fund cannot operate until it is registered/authorised under the Act; or
- b) Ask for the incorporation/establishment and registration/authorisation applications to be processed simultaneously, in which case the Authority will conduct, as expeditiously as possible, both the initial incorporations-related vetting and the full review of the offering document, promoters, key service providers and overall proposed arrangements. This will ensure the fund meets the legal requirements and adheres to the Authority’s policy guidelines. The Authority seeks to complete both review processes as quickly as possible but will not approve the application for fund registration/authorisation until the incorporation process is finalised and the qualification requirements stated in the Act have been met.

If the fund applies for a licence pursuant to the Segregated Accounts Companies Act 2000 (SAC Act) or the Incorporated Segregated Accounts Companies Act 2019 (ISAC Act), the Registrar of Companies will seek confirmation from the Authority as to whether it objects to the application before issuing a licence under the SAC Act or the ISAC Act. The Authority can only provide its no objection for an application if it has received a submission for registration/authorisation from the fund. Therefore, the fund must ensure the registration/authorisation application has been filed with the Authority as per the guidance discussed under item b) above.

2. Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Compliance

Authorised and registered funds meet the definition of AML/ATF Regulated Financial Institutions (RFI). As such, they fall within the scope of the requirements set out in the Proceeds of Crime Act 1997 (POCA).

Under POCA, RFIs must appoint a Money Laundering Reporting Officer (MLRO) and a Compliance Officer (CO) that satisfy fit and proper criteria. The operator of the fund is required to furnish the Authority with the contact information for the MLRO and CO and provide a copy of the board-approved AML/ATF policies and procedures at the time of registration/authorisation. This information can be filed as an attachment to the submission related to the fund's registration/authorisation or by emailing the information to the BMA's Funds mailbox (Funds@bma.bm) referencing "AML/ATF Information" in the subject line. If the fund's appointed administrator has been contracted the responsibility for ensuring controls are in place for preventing and detecting money laundering and terrorist financing, and the fund administrator is licensed in Bermuda, the Authority may already have a copy of the board-approved AML/ATF policies and procedures on file. It is important to note that where a Bermuda fund has appointed an overseas fund administrator, the operator of the fund must ensure the controls that are in place for detecting and preventing money laundering/terrorist financing are of the same standard as those prescribed by POCA; otherwise, the fund will be deemed to have not met POCA requirements.

Where responsibility for ensuring the fund complies with AML/ATF requirements has been contracted to the appointed fund administrator and a new fund administrator is appointed to the fund, the operator of the fund shall furnish the Authority with a copy of the new AML/ATF policies and procedures along with the contact information for the new MLRO and CO (if applicable).

It should be noted that while the operator of a fund can outsource the compliance work to a fund administrator, it is the operator of the fund that remains legally responsible for complying with AML/ATF regulations.

3. Fit and Proper Service Providers and Operator

The Authority will complete vetting procedures to assess fitness and propriety. The framework largely focuses on ensuring the operator and service providers are fit and proper, and there is adequate transparency and disclosure enabling investors to make informed decisions concerning their investment in the fund. The Authority has published guidance on fit and proper persons here: <https://www.bma.bm/viewPDF/documents/2018-12-29-02-52-28-Information-Bulletin---Fit-and-Proper-Persons.pdf>.

The appointment of operators, officers or service providers must be accompanied by a completed personal declaration. The Authority will also vet the principals of the investment manager listed in the offering document. The personal declaration is on the BMA website using the following link: <https://www.bma.bm/viewPDF/documents/2018-12-31-07-25-51-Personal-Declaration-Form-For-Shareholders.pdf>.

Personal declarations must be provided for all newly appointed service providers and directors unless the Authority vetted them within the last year (12 months).

4. Reporting Requirements

Designated funds shall provide the following to the Authority in the prescribed format:

Type of fund	Submission schedule	Documents required
Overseas Fund designated pursuant to section 5A(7) of the Act	<ul style="list-style-type: none"> Annually – Pursuant to section 5B Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> Statement of compliance from the overseas regulatory Authority Annual declaration form, inclusive of: <ul style="list-style-type: none"> Material changes to the Offering Document (OD) Confirmation of the fund’s continued compliance with the Act

Registered funds shall provide the following to the Authority in the prescribed format:

Type of fund	Submission schedule	Documents required
Professional Class A Fund registered pursuant to section 6B(1) of the Act	<ul style="list-style-type: none"> Annually – Pursuant to section 6B(2) and (3) Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> Audited financial statements Annual certification form, confirming that the registration requirements continue to be met and disclosing: <ul style="list-style-type: none"> Material changes to the fund The Net Asset Value (NAV) Amounts subscribed Amounts redeemed
Professional Class B Fund registered pursuant to section 8A(1) of the Act	<ul style="list-style-type: none"> Annually – Pursuant to section 8A(6) and (7) Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> Audited financial statements Annual certification form, confirming that the registration requirements continue to be met and disclosing: <ul style="list-style-type: none"> Material changes to the fund Changes to the fund’s directors and service providers NAV Amounts subscribed Amounts redeemed
Private Fund registered pursuant to section 6(3C) of the Act	<ul style="list-style-type: none"> Annually – Pursuant to sections 6(3D) and (3E) Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> Audited/unaudited financial statements Annual certification form, confirming that the registration requirements continue to be met and disclosing: <ul style="list-style-type: none"> Material changes to the fund NAV Amounts subscribed Amounts redeemed

Professional Closed Fund registered pursuant to section 8C(1) of the Act	<ul style="list-style-type: none"> • Annually – Pursuant to section 8C(2) and (3)(b) • Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> • Audited financial statements • Annual certification form, confirming that the registration requirements continue to be met and disclosing: <ul style="list-style-type: none"> ○ Material changes ○ NAV ○ Amounts subscribed ○ Amounts redeemed
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Authorised funds shall provide the following to the Authority in the prescribed format:

Type of fund	Submission schedule	Documents required
Standard Fund authorised pursuant to section 12 of the Act	<ul style="list-style-type: none"> • Monthly – Pursuant to section 7(2) of the Investment Fund Rules 2019 (Fund Rules) • Due within 20 business days after the month-end • Annually - Pursuant to section 26 of the Act • Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> • NAV • Amounts subscribed • Amounts redeemed • Statement of compliance*
Institutional Fund authorised pursuant to section 12 of the Act	<ul style="list-style-type: none"> • Quarterly – Pursuant to section 7(2) of the Fund Rules • Due within 20 business days after each calendar quarter • Annually - Pursuant to section 26 of the Act • Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> • NAV • Amounts subscribed • Amounts redeemed • Statement of compliance*
Administered Fund authorised pursuant to section 12 of the Act	<ul style="list-style-type: none"> • Quarterly – Pursuant to section 7(2) of the Fund Rules • Due within 20 business days after each calendar quarter • Annually - Pursuant to section 26 of the Act • Due within six months of the fund’s financial year-end 	<ul style="list-style-type: none"> • NAV • Amounts subscribed • Amounts redeemed • Statement of compliance*
Specified Jurisdiction Fund authorised under section 12 of the Act	<ul style="list-style-type: none"> • Quarterly – Pursuant to section 7(2) of the Fund Rules • Due within 20 business days after each calendar quarter • Annually - Pursuant to section 26 of the Act 	<ul style="list-style-type: none"> • NAV • Amounts subscribed • Amounts redeemed • Statement of compliance*

	<ul style="list-style-type: none"> • Due within six months of the fund's financial year-end 	
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*Where a breach in compliance has occurred, the particulars concerning the breach must be disclosed. Once compliance with the Act has been restored, the fund shall resubmit the statement of compliance.

5. Revocation of Authorisation/Cancellation of Registration/Cancellation of Overseas Fund Designation

Action	Requirements and permissions provided for in the Act
Winding up an authorised fund	<p>Section 25(2) of the Act requires the operator of an authorised Standard Fund to seek prior approval from the Authority to wind up its affairs.</p> <p>However, pursuant to section 25(4), the operator of an Institutional or Administered Fund is only required to provide the Authority written notice of their intentions to wind up the affairs of the respective funds.</p>
Revocation of authorisation by the Authority	<p>Section 27 of the Act permits the Authority to revoke the authorisation of an authorised investment fund if:</p> <ul style="list-style-type: none"> • Requirements are no longer satisfied • The operator of the fund or the fund's service providers have breached the Act • The operator has provided false or misleading information • No investment activity has been carried out
Revocation of authorisation by request	<p>Section 29 of the Act permits the operator of an authorised fund to file a request for the fund's authorisation to be revoked by the Authority if:</p> <ul style="list-style-type: none"> • 100% of subscriptions are redeemed • All investors are paid • Filings are up to date • The fund does not owe any money to the Authority
Cancellation of registration by the Authority	<p>Section 10A of the Act permits the Authority to cancel the registration of an investment fund if:</p> <ul style="list-style-type: none"> • Requirements are no longer satisfied • The operator of the fund or the fund's service providers have breached the Act • The operator has provided false or misleading information • No investment activity has been carried out
Cancellation of registration by request	<p>Section 10C of the Act permits the operator of a registered fund to file a request for the fund's registration to be cancelled by the Authority.</p> <p>The registration may be cancelled if:</p> <ul style="list-style-type: none"> • 100% of subscriptions are redeemed • All investors are paid • Filings are up to date • The fund does not owe any money to the Authority
Cancellation of an Overseas Fund designation by the Authority	<p>Section 5C of the Act permits the Authority to cancel the designation of an overseas fund if:</p> <ul style="list-style-type: none"> • The overseas fund is no longer promoting its self in Bermuda • The operator of the fund or the fund's service providers have breached the Act • The operator has provided false or misleading information
Cancellation of an Overseas Fund's	<p>Section 5E of the Act permits the operator of a designated Overseas Fund to file a request for the fund's designation to be cancelled by the Authority.</p>

designation by request	The designation may be cancelled if the fund is no longer being managed or carrying on promotion in or from within Bermuda, and the Authority is satisfied that there are no matters to be investigated before the designation is cancelled.
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6. Alteration to Service Providers, Directors and Officers and Material Change Permissions

A change is a material change if it would if known, reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund and “materially” has a corresponding meaning. Pursuant to section 4A of the Act, all operators, officers and service providers to an investment fund must be fit and proper persons to act as such in relation to the respective fund.

Type of fund	Requirements
Authorised funds	<p>Section 25 of the Act requires the operator of an authorised fund to seek prior approval from the Authority for changes to service providers (custodian, administrator, investment manager, registrar and auditor of a fund) and material changes to the offering document. In the context of the Act, changes that are material include the matters outlined in the Investment Fund Offering Document Rules 2019 (Offering Document Rules 2019).</p> <p>Section 25 (1)(d) of the Act requires the operator to provide written notice of changes to director appointments. Section 25 of the Act also sets out several additional matters of which the operator of an authorised fund must give the Authority written notice.</p>
Registered fund – Professional Class B Fund ONLY	Section 8A(8) of the Act requires the operator of a Professional Class B Fund to seek the Authority’s prior approval concerning changes to directors or service providers (custodian, administrator, investment manager, registrar and auditor of a fund).

7. Segregated Account Companies (SAC)

The following policies must be observed by all funds that are also licensed as a SAC:

- a) SACs must be licensed under the SAC Act; where this is not the case, the fund must demonstrate to the Authority that the provisions of the relevant private act have a substantially equivalent legal effect
- b) Where SACs are to conduct investment fund business, no other business may be conducted by the SACs, and each account other than the general account must comprise an investment fund or be a part of such a fund. The Authority needs to be satisfied as to the overall structure of each SAC
- c) All segregated accounts within the SAC must have the same auditor and must share the same accounting and financial year-end
- d) Where the segregated accounts elect to have separate audits, each segregated account must be subject to an audit unless, on application, the requirement that an audit of the segregated account be conducted is formally waived by the Authority
- e) Where an existing fund seeks to register as a SAC, the Authority needs to be satisfied that adequate written notice has been given to investors, enabling them to have an opportunity to sell or redeem their holdings in advance of such constitutional change occurring
- f) While the licence applies to the SAC as a whole, the operator may choose to offer units relating to its segregated accounts through standalone offering documents. The Authority views the preparation of such documentation upon the formation of additional segregated

- accounts as a material change to the fund’s offering document. In the case of an authorised fund, the Authority’s approval must be sought per the provisions of section 25 of the Act
- g) Segregated accounts must meet the service provider appointments under the Act at the segregated account level so the investors in the segregated account are afforded the same level of protection as a non-SAC structure. The segregated accounts may appoint different service providers, however, the auditor must be the same for all segregated accounts. The Authority applies a “look-through” approach in assessing whether the requirements under the Act have been met

8. Incorporated Segregated Accounts Company (ISAC)/Incorporated Segregated Account (ISA)

The ISAC Act affirms that an ISA is legal persons distinct from the ISAC itself. The effect of this statutory division creates separate bodies corporate (i.e., ISACs and ISAs are separate legal entities).

Each ISAC and its respective ISAs conducting investment fund business will apply for registration or authorisation pursuant to the Act unless the investment fund activity conducted by the ISAC or ISA is deemed to be out of scope based on the provisions discussed in the definition order.

A separate licence will be assigned to each ISAC or ISA conducting investment fund business. The ISAC and the ISAs conducting investment fund business will be regulated and supervised at the legal entity level based on the fund classification.

Each ISAC and ISA will complete the annual filing (per the requirements of the class of licence it holds) for submission to the Authority. The Authority will defer to the applicable Generally Accepted Accounting Principles (GAAP)/International Reporting Standards (IFRS) rules regarding consolidation; particularly, as it relates to common ownership and control between the ISACs and its ISAs, as the determinant of the requirement for the ISAC to consolidate the results of its ISAs. That said, the Authority may request supplemental schedules setting out the financial position at the legal entity level so that there is visibility into the balances reported at the ISA-level.

The respective ISAC or ISA operator is individually responsible for ensuring the respective fund complies with AML/ATF regulations.

9. Developments in the Investment Funds Sector

Digital Assets

There has been an increase in the number of funds investing in digital assets. The Act considers the fund class in determining the requirements that apply to the fund under the Act, rather than the investment strategy. However, in assessing whether service providers meet fit and proper criteria, the Authority considers the nature of the underlying investments in the fund and the complexity of the fund. Therefore, where the fund is investing in digital assets, the service providers and the operator must have the requisite skillsets and experience that would allow them to carry out their responsibilities effectively. Additionally, the Digital Asset Business Act 2018 (DABA) will apply to service providers appointed to an investment fund who are conducting activities that fall within the scope of DABA from in or within Bermuda [Refer to the following link for a list of activities that are in scope of DABA: <https://www.bma.bm/digital-assets-supervision-regulation>].

In addition to the disclosures prescribed by the Offering Document Rules 2019, the fund’s offering document must also contain disclosures that would enable investors to make sound decisions concerning the fund. This includes, but is not limited to, the selection criteria and the due diligence process for selecting crypto exchanges; details on the fund’s liquidity; clarification on whether the crypto exchanges are licensed or not; details on the custody arrangements [refer to the following link

to access the Digital Asset Custody Code of Practice published on the Authority’s website: <https://www.bma.bm/document-centre/policy-and-guidance-digital-asset-business>]; and the risk factors, including details on risks that are specific to the crypto assets, such as cyber risk.

Cannabis

The Authority will not object to RFIs conducting business with entities conducting business or participating in the cannabis sector, provided that the conduct of such business would not be contrary to any offences that may be provided for in the laws of a foreign jurisdiction or that could amount to “criminal conduct”, as defined in POCA, section 3.

Where the conduct of such business may contravene POCA, there may be a statutory defence under section 45B of POCA, which provides, in part, that a person does not commit an offence under section 43 (concealing or transferring criminal property), 44 (assisting another to retain criminal property) or 45 (acquisition, possession or use of criminal property) of the Act where there is knowledge or a reasonable belief that the relevant criminal conduct occurred outside Bermuda and was not unlawful under the criminal law applicable at the time in the foreign jurisdiction where it occurred. The onus will be on the RFIs to fully understand the applicable laws related to cannabis in the jurisdiction where the business activities are being conducted, including the jurisdiction of origin. There is also an expectation that supervised entities will take the appropriate precautionary measures to detect and prevent money laundering. This includes a risk assessment of the underlying investments.

Additionally, supervised entities defined as RFIs under POCA section 42A must also apply customer due diligence or enhanced due diligence as required by POCA. This includes the need for the supervised entity to conduct source-of-funds enquiries to ensure that the funds’ financial assets and the business’ capital do not pre-date the date of legitimisation of cannabis business in the relevant jurisdiction. RFIs also have the obligation of filing suspicious activity reports to the Financial Intelligence Agency should an entity observe behaviours that may indicate criminal activity.

10. Qualification Criteria for Modifications or Waiver of Rules

To provide clarity and greater transparency regarding the exercise of the Authority’s power under sections 10(D), 14(4), 14(5), 15 and 40 of the Act to grant waivers from and modifications to the requirements set out in the Act, the Investment Fund Rules 2019 (Fund Rules), and the Offering Document Rules 2019, we have described instances when the waiver or modification request will be considered (in the chart below). These examples should not be construed as exhaustive or indicate that the Authority will automatically grant its approval in the specified circumstances. The Authority will consider each situation on a case-by-case basis and be guided accordingly.

a) Custodian waiver

Pursuant to Section 15 (in the case of an authorised fund) or Section 10(D) (in the case of a registered fund), the Authority may waive the requirement for fund property to be entrusted to a custodian where it is satisfied that appropriate alternative arrangements are in place for safeguarding the investment fund property. This waiver may be granted to a registered or authorised fund as applicable.

Basis for a waiver (the Authority reserves the right to consider each case based on its own merit)	BMA policy
A master-feeder structure or a fund of funds structure, where the investment is solely in	A custodian waiver may be granted to the feeder fund if the master fund holds the

the related master fund, which appoints a custodian or an approved prime broker	investments, and the master fund has appointed a fit and proper custodian or prime broker for the safekeeping of the fund's assets
A fund of funds structure where the assets held consist predominantly of cash at a bank and registered shares in the underlying funds	A custodian waiver may be granted to the fund if the assets held consist predominantly of cash at a bank and the bank is responsible for the safekeeping of the applicable assets.
Where the investment fund has an investment strategy tied to Insurance-Linked Securities (ILS)	A custodian waiver may be granted where the proceeds from the issuance of shares are placed in a trust account maintained by a trustee, who manages the proceeds in the trust per the terms and conditions of the agreements governing the ILS transaction (which includes but is not limited to the offering document, trust agreement, (re)insurance agreements and any investment guidelines).
Where the fund is investing principally in infrastructure type assets or private equity investments	A custodian waiver may be granted where the underlying investments tend not to be readily saleable if ownership can be verified and the fund has appropriate alternative arrangements in place for safeguarding the investment fund property.

b) Modification or Waiver of Investment Fund Offering Document Rules 2019

Pursuant to the Act (section 40) upon application, the Authority may, subject to conditions, grant a waiver from or modification to any investment fund offering document rule, provided it is satisfied that—

- 1) Compliance with the rule or an unmodified rule would be unduly burdensome or would not achieve the purpose for which the rule was made
- 2) The waiver or modification would not result in undue risk to investors

Basis for waiver or modification (the Authority reserves the right to consider each case based on its own merit)	BMA policy
In the case of a master-feeder structure where the investment is solely in the related master fund	An offering document waiver may be granted to either the master fund or the feeder fund (as applicable) as long as the feeder invests all of its assets in the related master fund; there is an offering document published at either the master or feeder level; and the particulars disclosed in the offering document apply to both the master and the feeder fund.
Where a fund is part of a master-feeder structure, and the operator wishes to waive the requirement to publish the offering document or otherwise make copies available to participants and potential participants	The Authority may consider waiving the requirement to publish the offering document for a master fund, which has a feeder fund of the same structure operating as the only investor of said master fund. The respective feeder fund

	must prepare and issue an offering document.
Where the investment fund is listed on a stock exchange, and the listing rules of the respective stock exchange govern the content and disclosure requirements of the offering document	The Authority will consider these requests on a case-by-case basis to determine whether a waiver can be granted. At a minimum, the fund must demonstrate that there are alternative arrangements in place that ensure there is an adequate level of transparency and disclosure between the fund and its investors.

c) Waiver of the Fund Rules – Audit Waivers

The Act (sections 10D and 14(5)) grants the Authority powers to waive the requirement that the financial statements be audited in any particular year. Approvals are granted annually; thus, the fund must file a new application each year to extend the approval.

Basis for waiver or modification (the Authority reserves the right to consider each case based on its own merit)	BMA policy
The units of all investors have been redeemed and the operator of the fund wishes to obtain a waiver of the requirement that a fund's financial statements be subject to an audit.	The Authority may consider whether to grant a waiver where all the units of investors in a fund have been redeemed, and the fund is preparing to wind down.
The fund is closed-ended, and all investors have agreed in writing that no audit is required.	An audit waiver may be granted if the fund has a suitable methodology to determine the value of the assets in the absence of an audit and all investors have agreed in writing to waive the audit requirement.
The investment fund has recently been authorised or registered by the Authority and has not accepted any subscriptions since the application for authorisation/registration was approved.	The Authority may consider whether to grant a waiver on the basis that the fund, having been recently registered/authorised, has not accepted subscriptions since it was registered or authorised.
The assets in the fund are not material, and the cost of the audit will erode all the assets.	An audit waiver may be granted if the fund is winding down. The cost of producing the audited financial statements will negatively impact investor redemptions and the investors have agreed to such a waiver.
There is a unanimous written resolution of the fund's board of directors agreeing to waive the audit requirement.	A unanimous written resolution of the board alone does not qualify the fund for a waiver from the requirement to file audited financial statements with the Authority. However, if the fund has a small number of investors and they agree to forego the audit to preserve the assets, the Authority may consider granting a waiver.
The fund has an audit waiver and would also like to obtain a waiver	The requirement to appoint an auditor is not automatically waived where the Authority has granted a waiver of the audit requirement. This does,

from the requirement to appoint an auditor.	however, provide a basis on which the application to obtain a waiver of the requirement to appoint an auditor can be made.
The fund would like to file financial statements that are prepared according to standards or principles other than Bermuda, US, UK, Canadian GAAP or IFRS (referred to as “other GAAP”).	<p>Pursuant to Investment Fund Rule 15(c), a fund is required to prepare financial statements according to Bermuda, US, UK, Canadian GAAP or IFRS (individually, a “permitted GAAP”) unless the Authority recognises the other GAAP.</p> <p>An application for a waiver may be considered where the fund’s operator has presented a gap analysis of the key differences between the other GAAP and a permitted GAAP (inclusive of the valuation principles and pricing policies), and the differences are found to be minimal.</p> <p>The other GAAP must be found to be comparable to the valuation principles and pricing policies applicable had the audit been conducted in accordance with a permitted GAAP, and the financial statements presented according to the other GAAP must not misrepresent the actual value of the fund or disadvantage the investors in any way.</p>

d) Section 10D Waiver of Qualification Criteria Related to a Registered Fund Classification

On the application of the operator of a registered fund, the Authority may waive a requirement related to qualification criteria for a particular fund classification if it is satisfied appropriate arrangements are in place to safeguard the interests of investors in the fund.

There are very few cases where a waiver of fund classification criteria would be granted. However, the Authority recognises that nuances could arise given the nature of the fund. The Authority will only consider granting a waiver related to fund classification criteria where the articulated classification criteria are not applicable given the nature of the underlying investment or the fund structure, and the waiver does not jeopardise the jurisdiction’s credibility. The instances where a waiver may be granted have already been discussed in the sections above that cover the granting of waivers of the requirement to appoint a custodian and the requirements related to the appointment of an auditor or conducting an audit.

11. Designated Overseas Funds

An “overseas investment fund” means an investment fund incorporated or established in a jurisdiction outside Bermuda.

No overseas investment fund shall be managed or carry out promotion in or from within Bermuda unless it is designated as an Overseas Fund per the Act (section 5A(7)).

“Promotion” means the following activities initiated by or on behalf of an overseas investment fund:

- a) Advertising
- b) Issuing an offering document, application form or proposal form and stating the method of issue

- c) Circulating or making available promotional material, including describing the general nature of the material and the persons to whom and how it is to be circulated or made available

An overseas investment fund can seek to obtain designation as an Overseas Fund by completing the overseas fund submission form on the investment fund electronic filing platform (<https://erica.bma.bm/Unsecured/Signin.aspx>) or by emailing the notification and the supporting document to OverseasFundDesignation@bma.bm. The designation will be granted once the Authority is satisfied that an overseas investment fund has met the requirements set out under the Act's section 5A(2) and the fund has provided evidence that the fee disclosed on the BMA fee schedule has been paid. Once the Authority has granted the designation, the name of the Overseas Fund will be published on the Authority's website.

12. Professional Closed Fund – Investor Warnings to be Provided Prior to the Purchase of Units

The Act's section 8B(c) requires all investors in a professional closed fund to be provided with an investment warning prior to the time of the purchase of units, which shall be in such form and contain such statements and information as the Authority deems appropriate.

An example of acceptable wording is provided below:

“[This fund] has been established in Bermuda as a professional closed fund. It is suitable only for those who fall within the

definition of “qualified participants” discussed in section 9 of the Investment Funds Act 2006 (the Act) as amended.

Requirements that may be deemed necessary to protect retail or unsophisticated investors do not apply to a professional closed fund. By acknowledging this statement, you are expressly agreeing that you fall within the definition of a “qualified participant” and accept the reduced requirements accordingly [or in the case of existing investors “you are expressly confirming the fact that your investment in the fund pre-dated 31 December 2019 being the date the Act was amended to bring such funds in scope”].

If you are an investment manager acquiring an interest in [this fund], directly or indirectly, for or on behalf of qualified participants, the Bermuda Monetary Authority expects you to be satisfied that the investment is suitable for the underlying investors and that the underlying investors are able to bear the economic consequences of an investment in the fund, including the possibility of the loss of the entire investment.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in a professional closed fund may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund], you should not invest in [this fund].”

The investor or his duly authorised agent must acknowledge in writing that he/she has received and accepted this investment warning.

13. Close-ended Funds to Appoint a Designate Responsible for Safe Keeping Assets

Per the Fund Rules, a professional closed fund and a private (close-end) fund must designate responsibility for segregation and safekeeping investment fund property to a fit and proper person. The Fund Rules do not prescribe who the designate should be; however, the role must be fulfilled by someone fit and proper to act in such capacity, based on the nature of the fund property. Examples include:

- a) A fund that implements a fund of funds strategy: the entity holding the record of those shares is considered to be the designate
- b) A fund that invests in real estate: the entity holding the deeds or land titles is considered to be the designate
- c) An ILS fund: the entity or person responsible for maintaining the record of the participating shares held on behalf of investors in the fund, or the person responsible for keeping a record of the notes issued to investors in the ILS fund is considered to be the designate

The name of the designate and the relevant details/provisions that set out the segregation and safekeeping arrangements shall be disclosed to investors through the offering document.

14. Investment Fund Billing Contact Details

Typically, the fund administrator is also the billing contact. To ensure the Authority has the fund's correct billing information on file, please promptly disclose the new billing contact details on the submission form when the billing information has changed.

15. BMA Banking Details

Please note that cheques will no longer be accepted.

Domestic Payments

Institutions can make payments directly to the BMA via the online banking systems at HSBC Bermuda and Butterfield Bank via the following 12 payment streams:

- Proceeds of Crime (AML)
- Bank and Deposit Company Act (BDCA)
- Corporate Registration Process (CRP)
- Corporate Service Providers (CSP)
- Currency Customers (CUR)
- Digital Asset Business Act (DABA) – HSBC only
- Investment Funds Act 2006 – Fund Administrators (FNDADM)
- Insurance Act 1978 and amendments (INS)
- Investment Business Act 2003 (IBA)
- Investment Funds Act 2006 (IFA)
- Trust Act 2001 (TBA)
- Miscellaneous Charges (MISC)

Each payment stream is easily identifiable within the “Bill Payee” section of each online banking system via the prefixes “Bermuda Monetary Authority” or “BMA”.

Please ensure the entity name or registration number is included with all electronic remittances made through online banking portals or wire transactions.

International Payments

The following is information for international wire transfers to the BMA's two bank accounts:

For payments to the Authority's Bank of N.T. Butterfield & Son Limited account, please use the following:

The Bank of New York Mellon

ABA 021000018

SWIFT IRVTUS3NXXX Account number: 8900570903

Credit to:

Bank of N.T. Butterfield and Son Limited

SWIFT BNTBBMHM In favour of:

*Bermuda Monetary Authority
Account No: 20 006 060 894331 100*

For payments to the Authority's HSBC account, please use the following:

HSBC Bank USA, N.A.

ABA 021001088

SWIFT MRMDUS33

Credit to:

HSBC Bank Bermuda Limited

SWIFT BBDABMHM In favour of:

Bermuda Monetary Authority

Account No: 010 308427 001

If you have any queries regarding payments, please email finance-receivables@bma.bm.

16. General Queries

Please send general fund-related queries to Funds@bma.bm.