

REGULATORY UPDATE

July–September 2022



Preface

This Regulatory Update reports on activities at the Bermuda Monetary Authority (Authority or BMA) for the quarter ended 30 September 2022*.

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REGULATORY

Statement of Principles for the Investment Business Act 2003

On 1 July 2022, the Authority published its updated *Statement of Principles Investment Business Act 2003*.

Code of General Business Conduct and Practice for the Investment Business Act 2003

On 1 July 2022, the Authority published its updated *Investment Business Act 2003 Code of General Business Conduct and Practice*.

Enhancements to the Investment Business Regime

The Authority issued a response to stakeholder feedback on the following consultation papers on 22 July 2022, entitled:

1. *Proposed Enhancements to the Investment Business (Amendment) Bill and Investment Business (Registered and Non-Registrable) Persons Order;*
2. *Proposed Enhancements to the Investment Business Regime: Regulations and Rules;*
3. *Proposed Enhancements to the Investment Business Regime: Rules and Guidance on Net Asset and Liquidity Requirements, Statutory Return Rules and Statement of Principles;*
4. *Proposed Enhancements to the Investment Business Regime: General Business Conduct; and Practice: Code of Conduct and Advertising Code of Conduct.*

Code of Conduct for Banks and Deposit Companies

On 11 August 2022, following public consultation, the BMA finalised and published the new *Banks and Deposit Companies Act 1999 Code of Conduct*, to enhance protection for customers and encourage best practices within Bermuda's deposit-taking industry. Institutions licensed pursuant to the Banks and Deposit Companies

Act 1999 (BDCA) are afforded a six-month transition period from the document's publishing date to become compliant.

Consultation Paper on Amendments to Credit Risk Capital Charges for Banks

On 20 August 2022, the Authority published a consultation paper entitled: *Amendments to the Standardised Approach to Measuring Credit Risk Capital Charges for Banks*.

Revised Insurance Code of Conduct

The BMA published a revised version of the *Insurance Code of Conduct* on 31 August 2022, following public consultation. There is a six-month transition period for conduct-related additions and a 12-month transition period to comply with the new provisions/amendments of all other sections of the document.

Operational Cyber Risk Management Code of Conduct

The BMA published the revised *Operational Cyber Risk Management Code of Conduct: Corporate Service Providers, Trust Companies, Money Service Businesses, Investment Businesses and Fund Administration Providers, Banks and Deposit Companies* on 26 September 2022. The Code came into force on 15 March 2022 for all relevant licensed entities except banks and deposit companies. The Code came into force for banks and deposit companies on 26 September 2022. All relevant licensed entities are required to become compliant by 15 February 2023.

Updates to Reporting Forms and Guidelines

The Authority published the following reporting forms and guidelines in Q3-2022:

- *Guidance Notes on the Maintenance of Capital, Net Assets and Liquidity* for Investment Business (1 July)

- *Digital Asset Business and Investment Business: Guidance for Entities Seeking Exemption from Dual Licensing due to Ancillary Nature of Activities*
- *Investment Business: Guidance for Prospective Applications for Licensing and Registration* (1 July)
- *Banks and Deposit Companies Act 1999: Information for Prospective Applicants and Guidance Notes* (2 July)

Proposed Adoption of Final Basel III Reforms and Changes to Liquidity Coverage Ratio Outflow Treatments

On 17 August 2022, the Authority issued responses to the stakeholder feedback on the following consultation papers:

- *Amendments to the Standardised Approach to Measuring Operational Risk Capital Charges for Banks*
- *Proposed Adoption of the Revised Operational Risk Principles for Banks*
- *Amendments to the Large Exposure Framework for Banks*

Additionally, on the same date, the Authority issued responses to stakeholder feedback to the consultation paper entitled *Amendments to Liquidity Coverage Ratio Outflow Rates for Specific Financial Counterparties*.

LEGISLATIVE

Bermuda Monetary Authority Amendment Act 2022

This amendment to the Bermuda Monetary Authority Act 1969 (BMA Act) was passed in August 2022 to make provision for the Authority to expand its 'Principal Objects' under section 3, to include oversight of the conduct of financial institutions (i.e., by introducing the obligation of the Authority to promote and protect customers using products and services provided by Bermuda's financial institutions). The measures came into force in August 2022, and the Authority has commenced the rollout of the proposed conduct framework across all financial sectors through the issuance or revision of codes of conduct, beginning with the banking and insurance sectors.

Banks and Deposit Companies Act Amendment 2022

In connection with the proposed expansion to the Authority's supervisory mandate under the BMA Act, the BDCA was amended to provide power for the Authority to issue codes of conduct and for the Minister of Finance to act on the advice of the Authority to regulate the imposition of certain customer fees, penalties and charges by banks by way of regulations issued pursuant to new subsection 60(2)(ab). The amendment came into force in August 2022.

Investment Business Amendment Act 2022

The Investment Business Act 2003 (IBA) was amended in April 2022 to make provisions for aligning the investment business regime with international standards and best practices. In this regard, measures were introduced to, among other things:

- Expand the scope of the regime by amending the definition of "carrying on investment business in or from Bermuda" such that it is no longer limited to persons who "maintain a place of business in Bermuda"
- Introduce new categories of registered persons and add the additional investment activity of 'promoting investments'
- Introduce a power for the Authority to make prudential standards or technical rules

The amendments became operable on 27 July 2022 through a Commencement Day Notice published by the Minister of Finance on 21 July 2022.

Investment Business (Exemptions) Order 2004 Revocation Notice (Notice)

The Minister of Finance, by this Notice, revoked the Investment Business (Exemptions) Order 2004 on 27 July 2022. In its place, the Minister of Finance issued the Investment Business (Non-Registrable Persons) (Designation) Order 2022.

Investment Business (Client Money) Amendment Regulations 2022 (Client Money Regulations)

The Client Money Regulations amended the Investment Business (Client Money) Regulations 2004 to, among other things, revise the definitions of 'high net worth private investor' and 'high income private investor' and introduce definitions of 'approved investor', 'investment fund' and 'investment provider'. In addition, an investment provider shall be required to implement controls based on the nature, scale and complexity of its business.

Investment Business Amendment Regulations 2022

The Investment Business Regulations 2004 were amended on 27 July 2022 to make provision to, inter alia:

- Revoke regulation 4, 'contents of register'
- Amend regulation 5 to ensure the provisions thereunder are aligned with the requirements of the minimum criteria for licensing
- Revise regulation 6 to align such provisions with requirements of the IBA
- Amend regulation 7 to require the portfolio statement to be made quarterly (unless advised by the client)
- Amend regulation 8 regarding the keeping of accounting records at the requisite offices of persons subject to the IBA

Investment Business (Prudential Standards) (Standard Licences, Test Licences and Class A Registered Persons) (Capital, Net Assets and Liquidity) Rules 2022 (Capital Rules)

The Capital Rules make provision for, inter alia, capital and liquidity requirements applicable to licensed and Class A Registered Persons and became operable on 27 July 2022.

Investment Business (Prudential Standards) (Statutory Return) Rules 2022 (Prudential Rules)

The Prudential Rules seek to embed various reporting requirements, which became applicable to all categories of investment providers when the revised regime became operable on 27 July 2022.

Investment Business (Class B Registered Persons) Order 2022 (Class B Order)

The Class B Order, which came into force on 27 July 2022, makes provision for persons to be defined as a 'Class B Registered Person' for the purposes of the IBA.

Investment Business (Non-Registrable Persons) (Designation) Order 2022 (Order)

The Minister of Finance, via this Order, has designated persons as 'non-registrable persons' for the purposes of the IBA. Persons under this Order include (but are not limited to) the Authority, the Government, public authorities and investment funds. The Order became operable on 27 July 2022.

Investment Business (Non-Registrable Persons) (Designation) Order 2022 (Order)

The Minister of Finance, via this Order, has designated persons as ‘non-registrable persons’ for the purposes of the IBA. Persons under this Order include (but are not limited to) the Authority, the Government, public authorities and investment funds. The Order became operable on 27 July 2022.

INTERNATIONAL AFFAIRS

International Association of Insurance Supervisors (IAIS)

The BMA is represented in nearly all IAIS committees and sub-committees and actively participated in the work conducted by these groups during the third quarter.

During this period, the IAIS Executive Committee (ExCo):

1. Discussed the progress made on the Targeted Jurisdictional Assessment
2. Discussed the 2022 Global Monitoring Exercise
3. Explored the prioritisation of new projects and activities for the 2023-2024 Roadmap
4. Discussed the following themes under the Strategic Retreat: diversity, equity and inclusion, financial technology and digital transformation and market conduct
5. Approved Cape Town, South Africa, as the selected venue for the 2024 annual general meeting, annual conference and committee meetings

The Policy Development Committee (PDC), Macprudential Committee (MPC) and Implementation and Assessment Committee provided input on the matters referenced above ahead of the ExCo meeting and received a myriad of updates on projects under their respective domains. The BMA continued actively participating in all four mentioned committees, namely as Co-Vice Chair of MPC and PDC. The BMA also continued its participation on a number of sub-committees, assuming several leadership roles, namely working on the Common Framework for Supervision of Internationally Active Insurance Groups, Holistic Framework, Insurance Core Principles and other supervisory material work.



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