

**BERMUDA MONETARY AUTHORITY  
INVESTMENT FUND ACT 2006  
INVESTMENT FUND GUIDELINES  
FEBRUARY 2007**

## **1. Applications**

### Processing of Investment Fund Incorporation/Authorisation Applications

The incorporation and authorisation of investment funds involves careful vetting of applications by the Bermuda Monetary Authority (“the Authority”) to ensure that promoters and service providers are suitable, and that schemes meet the high standards required in Bermuda. It should be appreciated that two separate vetting processes are involved within the Authority – the first in relation to the incorporation of the mutual fund company (or establishment of the investment vehicle), paralleling the approach taken to all company incorporation applications, and the second and much more intensive process in relation to authorisation (or, when appropriate, exemption from authorisation).

The Authority recognizes that applications for funds are frequently time-critical and that there may be concerns that the necessary vetting process may delay an application. Accordingly, the Authority has implemented a number of arrangements with a view to avoiding unnecessary delays.

Those submitting applications may, as they prefer:

a) seek to have the company incorporated/vehicle established in advance of submission of the related authorisation application. In such cases, the Authority will proceed immediately to complete the standard incorporations-related due diligence process, including a review of the intended participating shareholders, and take an early decision on incorporation/establishment without prejudice to its eventual decision on authorisation or exemption. Where incorporation is approved, the promoters will then be in a position to prepare quickly for the fund to begin operations, by opening necessary bank accounts etc. and taking other steps that are normal following establishment. Clearly, however, the fund cannot operate as such until it gains either authorisation or exemption; or

b) ask to have the incorporation/establishment and authorisation applications processed simultaneously. In that event, the Authority will conduct, as expeditiously as possible, both the initial incorporations-related vetting and the fuller review of the prospectus, promoters, key service providers and of the overall arrangements that are proposed, in order to ensure that the fund meets the legal requirements and the Authority’s policy guidelines. The Authority seeks to complete both review processes as quickly as possible but will not approve the incorporation until the review in connection with the authorisation or exemption has been satisfactorily completed. Thereafter, the signed consent and authorisation letters will be issued simultaneously.

It should be noted that in order to help expedite applications – whether applicants intend to proceed under a) or b) above - the Authority has established a direct email contact address (**InvestmentsFunds@bma.bm**) that can be used for the submission of names of intended promoters and service providers. A copy of the pre-notification report form is attached to this Guidance note as Appendix I.

## 2. Reporting requirements

### a) Routine Statistical Reporting

Section 26 of the Act gives the Authority the power to require a fund operator to furnish it with such reports on the fund's activities as the Authority may reasonably require.

A Standard fund is required to report to the Authority on its operations on a monthly basis. This report should be provided in the format set out in Appendix II and includes information on a fund's price per share, or unit, net asset value and amounts subscribed and redeemed during the month. Reports should be submitted electronically to [navs@bma.bm](mailto:navs@bma.bm) within 20 business days after the month-end. For convenience, a fund's administrator normally handles reporting.

Institutional and Administered funds must report on the same basis as Standard funds, the only difference being the frequency of reporting, with such schemes required to report within 20 business days of the end of each *calendar quarter*.

### b) Statement of Compliance

Section 26 of the Act requires that the operator of an authorized fund shall submit to the Authority a statement confirming that the fund has at all times during the preceding year been in compliance with the provisions of the Act, fund rules and prospectus rules applicable to it. Where a breach has occurred, the particulars concerning the breach must be set out in the statement. The Statement of Compliance should take the form set out in Appendix III and must be submitted within six months of a fund's financial year-end.

### c) Alteration to Service Providers and Material Change Permissions

Section 25 of the Act requires the operator of an authorised investment fund to seek prior approval from the Authority for any changes to service providers (custodian, administrator, investment manager, registrar and auditor of a fund). In addition, any material change to a fund's prospectus must be submitted for prior approval by the Authority.

### d) Notice of Changes

Section 25 of the Act also sets out a number of additional matters of which the operator of a fund must give the Authority written notice.

### 3. Policy

#### a) Custodian Exemption

Under section 15 of the Act the Authority may grant exemption from the requirement for fund property to be entrusted to a custodian where it is satisfied that alternative arrangements are in place for safeguarding fund property. This exemption may be granted in the case of feeder funds and fund of funds where investment is solely in the related master fund which appoints a custodian or approved prime broker and for fund of funds on the condition that assets held consist predominantly of cash at a bank and registered shares in the underlying funds. Exemption may also be granted in the case of funds which invest principally in infrastructure type assets.

#### b) Waiver of Prospectus Requirement

The Authority is generally prepared to grant a waiver, under Section 40 of the Act, to master funds from the requirement of the Prospectus Rules to publish a prospectus provided that the only investors in the master funds are feeder funds of the same structure and that the respective feeder funds prepare and issue a prospectus.

#### c) Authorisation of Segregated Account Companies (“SACs”)

In reviewing applications for authorization or exemption by segregated account companies, the Authority has regard to a number of important considerations:

- i. SACs seeking classification or exemption should be established under the SAC Act; where this is not the case, they must satisfy the Authority that the provisions of their Private Act have substantially equivalent legal effect;
- ii. where SACs are to conduct investment fund business, no other business may be conducted, 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;
- iii. all accounts within the SAC must have the same auditor and must share the same accounting and financial year-end;
- iv. where an existing authorised or exempted mutual 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;
- v. While authorisation relates to the SAC as a whole, the operator may choose to offer units relating to separate segregated accounts by way of standalone prospectuses. The Authority views the preparation of such documentation upon the formation of additional segregated accounts as a material change to the prospectus of the authorised fund and the Authority’s approval must be sought in accordance with the provisions of the Act;

- vi. A SAC may appoint different service providers (with the exception of the auditor) to the authorized fund in respect of individual segregated accounts. The Authority's approval must be sought for such appointments in accordance with the provisions of the Act.

**APPENDIX I**  
**BERMUDA MONETARY AUTHORITY**  
**INVESTMENT GROUP – BANKING, TRUST & INVESTMENT DIVISION**

**Pre-Notification Report for Investment Fund Service Providers**

Name of Fund:

Classification:

Name of Submitting Firm:

Administrator:

Registrar & Transfer Agent:  
(If different from Administrator)

Corporate Secretary:

Investment Manager:

Custodian/Prime Broker:

Directors/Key Management:

Auditor:

Submitted by:

E-mail to [InvestmentsFunds@bma.bm](mailto:InvestmentsFunds@bma.bm)