



9th July 2013

NOTICE

Investment Funds Amendment Act 2013

The Bermuda Monetary Authority proposes to amend the Investment Funds 2006 (the “IFA”). The purpose of the amendment is to provide for the registration of an exemption of investment funds from authorisation, without the approval by the Authority, which is presently required.

Under this proposed regime, an operator may register a fund which will be exempted from the authorisation process set out under sections 11-14 of the IFA if the fund meets the following criteria:

- a. The fund-
 - i. is only open to qualified participants as defined under the IFA; or
 - ii. requires each participant to invest a minimum amount of \$100,000 in the fund; and
- b. The investment manager appointed by the fund is regulated by a competent authority of an equivalent jurisdiction; and
- c. The fund audits annually its financial statements by a recognised auditor.

Under this proposed regime a fund may file with the Authority a statutory declaration that it meets the minimum requirement and a registration in such form as directed by the Authority, and a copy of its offering memorandum. This form will include information on the various providers to be engaged by the fund. Upon the filing of the statutory declaration, the registration form and the offering memorandum, the fund is exempted from the authorisation requirements under the IFA. There will be a requirement for the fund to make an annual filing in such form as the Authority may direct. This filing will include the audited financial statements, a certification by the fund that it meets the statutory criteria and that the investment manager is in good standing as a regulated entity.

In addition the Investment Funds Act 2006 will be amended to vest in the Authority the power to issue a direction similar to the direction under section 30. These directions will enable the Authority to take action to ensure that the interests of investors are protected. In particular the Authority may issue a direction if the Authority is satisfied that the director, officer or service providers are no longer fit and proper. As well, the power vested in the Authority to petition to wind-up under section 36 will be expanded to enable the Authority to wind up a fund where the Authority determines it is in the public interest.

The fee to be paid at the time of registration and annually would be \$1,500.

A fund which is exempted from the authorisation provisions by this new registration process would be subject to the anti-money laundering and anti-terrorist financing legislation.

The Authority has carried out consultation with various industry groups and under these circumstances the period for inviting further comments has been reduced.

Comments on the proposal and the attached draft Bill are invited by **12th July 2013** and should be sent to policy@bma.bm.

A BILL

entitled

INVESTMENT FUNDS AMENDMENT ACT 2013

ARRANGEMENT OF SECTIONS

1	Short title and commencement	7	Subsection (2A) of Section 30 of principal Act added
2	Interpretation	8	Subsection 36 of principal Act amended
3	Definition	9	Consequential amendments
4	Section 7 amended		
5	Section 8A added		
6	Section 9(1C) of principal Act added		

WHEREAS it is expedient to amend the Investment Funds Act 2006 to provide for additional criteria for exempting funds from authorization.

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Investment Funds Amendment Act 2013.

Interpretation

2 In this Act, the "principal Act" means the Investment Funds Act 2006.

Definition

3 Section 2 of the principal Act is amended by adding the following definition in alphabetical order:-

“Section 8A Exempted Fund” means a fund which is exempted from authorization as it meets the requirements of section 8A;”.

Section 7 amended

4 Section 7 of the principal Act is amended by deleting the words “section 9” where they appear in subsection 7(1)(a) and insert the words “subsection 9(1)”.

Section 8A added

5 The principal Act is amended by inserting the following section after section 8 –

“Notification of exemption: Section 8A Exempted Fund

8A (1) A fund that meets the criteria for exemption set out in subsection 9(1C) is exempt from the requirement of authorisation under this Act.

(2) A fund that qualifies for exemption pursuant to the provisions of subsection 9(1C) of the Act shall provide the Authority with a declaration in such form as the Authority may require, declaring that it qualifies for exemption pursuant to the provisions of subsection 9(1C), and registration in such form as the Authority may direct, and a copy of the offering memorandum.

(3) The operator of the fund shall in each year on or before 31 March certify in writing to the Authority that the fund continues to qualify for exemption under this section, and submit an annual filing in such form as the Authority may direct, and audited financial statements.

(4) The operator of the fund shall pay to the Authority–

- a) on the filing of the declaration made in accordance with this section, and the registration form; and
- b) annually thereafter on or before 31 March,

such fees as may be prescribed under section 20B of the Fourth Schedule to the Bermuda Monetary Authority Act 1969; but no annual fee shall be payable in the calendar year in which a filing fee shall have been paid.”

Subsection (1C) of Section 9 of principal Act added

6 Section 9 of the principal Act is amended–

(a) by inserting the following subsection after subsection (1B) –

“(1C) The criteria for exemption referred to in section 8A(1) are as follows–

- (a) the fund–
 - (i) is only open to qualified participants; or
 - (ii) it requires each participant to invest a minimum amount of \$100,000 in the fund; and
- (b) appoints an investment manager who is regulated by a competent authority of an equivalent jurisdiction; and
- (c) audits annually its financial statements by a recognised auditor.”

(b) by inserting in subsection 3 the following definitions in alphabetical order–

““competent authority” means a regulatory authority that is empowered to supervise investment managers.”

“equivalent jurisdiction” means a jurisdiction that has supervisory standards that the Authority determines to be

equivalent to those established by or under the Investment Business Act 2003;

“recognised auditor” means either—

- (a) a person entitled to practise as a public accountant in Bermuda; or
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or
- (c) a person recognised by the Authority as an auditor;”.

Subsection (2A) of Section 30 of principal Act added

7 The principal Act is amended by inserting the following subsections after subsection (2) of section 30 –

“(2A) The Authority may also give a direction under this section in respect of a 8A Exempted Fund if it concludes that it is desirable to give directions in order to protect the interests of participants or potential participants in the fund.

(2B) The provisions of sections 30 to 36 applicable to authorised funds shall apply, *mutatis mutandi*, to a section 8A Exempted Fund.

(2C) Without limiting subsection (2A), the Authority may give directions if it is satisfied that –

- a) the direction and management of the fund has not been conducted in a fit and proper manner;
- b) a person holding a position as a director, manager or officer of a regulated mutual fund is not a fit and proper person to hold the respective position.”

Subsection 36 of principal Act amended

8 Section 36 of the principal Act is amended by inserting after paragraph (1)(b) the following-

“(c) where the Authority has determined that it is in the public interest.”.

Consequential Amendments

9 The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended under the heading “Investment Funds Act 2006” by deleting section 6 onwards and replacing with the following-

“(6) Application fee pursuant to s 7	- exempted funds	\$ 550
(7) Annual fee pursuant to s 7	- exempted funds	\$ 660

(7a) Registration fee pursuant to s8A - exempted funds	\$1,500
(7b) Annual fee pursuant to s8A - exempted funds	\$1,500
(8) Application fee - fund administrator's licence	\$8,270
(9) Annual fee - fund administrator	\$9,100
(10) Transaction fee: all section 25 changes and notifications and section 6 notifications -	\$250".

[Assent Date: [●] July 2013]

[Operative Date: [●] July 2013]

EXPLANATORY MEMORANDUM

Clause 1 – Title of the Bill.

Clause 2 – Interpretation. The term “principal Act” means the Investment Funds Act 2006.

Clause 3 – Definition. Introduces a new definition for the term section 8A Exempted Funds which are funds which are not required to be authorized where they meet the criteria set out in section 8A.

Clause 4 – Amends section 7 of the principal Act. This amendment clarifies the criteria to be met by a fund exempted under section 8 as those criteria specified in subsection 9(1).

Clause 5 - New section 8A added. There will be regime for an exemption from the requirement for authorization for an investment funds. The criteria for exemption is that the investors are restricted to qualified investors, the investment manager is regulated by a competent authority which has a regulatory regime similar to Bermuda for regulation of investment managers, and the accounts of the fund are audited by a recognised auditor. An investment fund which qualifies will file a registration form with the Authority to be registered as an exempted fund, and there is no additional vetting by the Authority.

Class 6 - New subsection 9(1C) added. The principal Act is amended by adding a new subsection 9(1C) which sets out the criteria for qualifying for this exemption from the authorization requirements under the principal Act. The terms ‘competent authority’ and ‘equivalent jurisdiction’ are defined.

Clause 7 - New subsection 30(2A) added. The principal Act is amended by adding a new subsection 30(2A) which enables the Authority to exercise its powers to issue a direction to a fund exempted in accordance with section 8A.

Clause 8 – Section 36 is amended to expand the power vested in the Authority to petition to wind-up to enable the Authority to wind up a fund until the Authority determines it is in the public interest.

Clause 9 - Consequential Amendments. The Bermuda Monetary Authority Act is amended to introduce the fee for filing of an exemption under section 8A, and annual fee.