



# BERMUDA MONETARY AUTHORITY

## GUIDANCE NOTES

### PROFESSIONAL CLASS A AND PROFESSIONAL CLASS B INVESTMENT FUNDS

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## **I. INTRODUCTION**

1. The passing of the Investment Funds Amendment Act 2013 (the “Amendment Act”) on 3<sup>rd</sup> October 2013 introduced new categories of investment funds - <sup>1</sup>Professional Class A Fund and Professional Class B Fund.
2. The purpose of the Amendment Act was to expand the options for investment funds seeking to establish in Bermuda by introducing two new categories of funds.
3. This Guidance Note comprises an overview of the qualification criteria, registration process, and the ongoing annual filing requirements in respect of the afore-mentioned new fund categories.
4. While the Bermuda Monetary Authority (the “Authority”) aims to provide clarity with respect to the process, this Guidance Note cannot be exhaustive. The Authority will do its best, through this, and other guidance, to set out information about the registration and reporting requirements for Professional funds. Ultimately it is the responsibility of the legal entity to ensure its compliance with the Amendment Act. All queries associated with this Guidance Note should be directed to the Authority via the following email address: [funds@bma.bm](mailto:funds@bma.bm).

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<sup>1</sup> Section 17 of the Economic Substance Act 2018 amends the Investment Funds Act 2006 such that all references made to “Class A Exempt Fund” have been repealed and replaced with “Professional Class A fund”, and all references made to “Class B Exempt Fund” have been repealed and replaced with “Professional Class B fund”.

## II. PROFESSIONAL PROFESSIONAL CLASS A FUND

### *Qualification Requirements*

5. The requirements for qualification as a Professional Class A Fund are set out in section 6A of the Act as amended.
6. The operator of a Professional Class A Fund must make a formal application to the Authority for Registration via ERICA (see Professional Class A Fund Registration Form) and the Authority must provide approval of the application prior to the commencement of business.
7. Professional Class A Funds are only open to *qualified participants*. For the purposes of the Amendment Act *qualified participants* has the following meaning as outlined in section 9(2) and 9(3) of the Investment Funds Act 2006. (“Accredited investors” as defined under Regulation D of The US Securities Act 1933 meets the definition of a qualified participant as defined under the Investment Funds Act 2006 (the “Act as amended”):
  - a. High income private investor - an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year, or has had a joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and “current year” means the year in which he/she purchases an investment;
  - b. High net worth private investor - an individual whose net worth or joint net worth with that person’s spouse in the year in which he/she purchases an investment exceeds \$1 million; and “net worth” means the excess of total assets at fair market value over total liabilities;
  - c. Sophisticated private investors - an individual who has such knowledge of, and experience in, financial and business matters as would enable him/her to properly evaluate the merits and risks of a prospective purchase of investments;
  - d. Bodies corporate, each of which has total assets of not less than \$5 million;
  - e. Unincorporated associations, partnerships or trusts, each of which has total assets of not less than \$5 million;
  - f. Bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this subsection;
  - g. Partnerships, all of whose members fall within one or more of the subparagraphs of this subsection; or
  - h. Trusts, all of whose beneficiaries fall within one or more of the subparagraphs of this subsection.

8. The operator of a Professional Class A Fund must appoint an investment manager who is either:-
- a. Licensed under the Investment Business Act 2003; or
  - b. Authorised or licensed by a federal regulator in the US or the European Union (EU); or
  - c. Carrying on business in or from Bermuda or in a jurisdiction recognised by the Authority, being a person who has gross assets under management of an amount that is not less than \$100 million or is a member of an investment management group that has consolidated gross assets under management of an amount not less than \$100 million. Recognised jurisdictions shall include the US and the EU; however the operator of the Professional Class A fund can contact the Authority at [funds@bma.bm](mailto:funds@bma.bm) in advance of registering to discuss the admissibility of any jurisdictions not listed.
9. The operator of a Professional Class A Fund must appoint an officer, trustee or representative resident in Bermuda who has access to the fund's books and records.
10. The operator of a Professional Class A Fund must appoint the following persons ("service providers") to provide services to the fund:
- a. A fund administrator;
  - b. A registrar;
  - c. An auditor; and
  - d. A custodian or prime broker.

***Professional Class A Fund - Annual Reporting Requirements***

11. On an annual basis, on or before 30<sup>th</sup> June, the operator of a Professional Class A Fund must certify via the prescribed form in ERICA that the fund meets the requirements specified in section 6A(2) of the Act as amended and will continue to satisfy them (see Professional Class A Fund Registration Form attached).
12. At the time of the annual certification, the operator of a Professional Class A Fund must also file a copy of the fund's audited financial statements for the preceding year and where applicable a marked prospectus highlighting all material changes to the document.
13. The financial statements of a Professional Class A Fund must be prepared annually in accordance with any one of the following standards:
- a. International Financial Reporting Standards (IFRS);
  - b. Generally Accepted Accounting Principles (GAAP) in Bermuda, Canada, the United Kingdom or the US; or
  - c. Any other such GAAP as the Authority may recognise.

### **III. PROFESSIONAL CLASS B FUNDS**

#### ***Qualification Requirements***

14. The requirements for qualification as a Professional Class B Fund are set out in section 7 of the Act as amended.
15. Professional Class B Funds are only open to qualified participants as defined under Professional Class A Fund Qualification Requirements discussed above.
16. The operator of a Professional Class B Fund must appoint the following persons (“service providers”) to provide services to the fund:
  - a. An investment manager;
  - a. A fund administrator;
  - b. A registrar;
  - c. An auditor; and
  - d. A custodian or prime broker.
17. The operator of a Professional Class B Fund must appoint an officer, trustee or representative resident in Bermuda, who has access to the books and records of the fund.
18. The operator of a Professional Class B Fund must make a formal application to the Authority for Registration via ERICA (see Professional Class B Fund Registration Form attached) and the Authority must provide approval of the application prior to the commencement of business. The Authority shall notify the applicant within 10 calendar days of receipt of the completed application. Failure by the Authority to notify the applicant of its decision within 10 calendar days shall be considered as approval of the application by the Authority.
19. Where the Authority has requested additional information or documentation in connection with an application to be registered as a Professional Class B Fund, the time between the giving of the notice and the receipt of the additional information or documentation shall be added to the 10 day period mentioned above.
20. The operator of a Professional Class B Fund shall apply to the Authority for approval prior to appointing a person to act as director or service provider. Where the Authority deems a proposed director or service provider not to be a fit and proper person to perform the functions of his office, the Authority must within 14 calendar days of receipt of the application for approval, inform the applicant in writing of its objection to the appointment. Where the Authority fails to give notice within the prescribed time, the Authority shall be considered to have no objection to the application for appointment of the director or service provider.

### ***Professional Class B Fund - Annual Reporting Requirements***

21. The operator of a Professional Class B Fund must certify to the Authority annually via ERICA on or before 30<sup>th</sup> June in the prescribed form that the fund satisfies the requirements for Registration specified in section 7(2) of the Act as amended and will continue to satisfy them.
22. The operator of a Professional Class B Fund shall file a copy of the fund's audited financial statements for the preceding year, a marked prospectus highlighting all material changes to the document and a schedule communicating all changes to the directors and service providers.
23. The financial statements of a Professional Class B Fund shall be prepared annually in accordance with any one of the following standards:
  - a. International Financial Reporting Standards (IFRS);
  - b. Generally Accepted Accounting Principles (GAAP) in Bermuda, Canada, the United Kingdom or the US; or
  - c. Any other such GAAP as the Authority may recognise.

### **IV. DISQUALIFICATION EVENTS**

24. A Professional Class A or Professional Class B Fund ceases to qualify as such if any of the requirements for Registration are not met ("a disqualification event"). The operator of the fund is required to inform the Authority of a disqualification event within 14 calendar days of its occurrence. Failure to do so attracts a civil penalty. The operator is also required to serve notice on the Authority within 45 calendar days of the disqualification event, setting out its proposals as to the manner and time within which it proposes to address the default.
25. The Authority may give directions to the operator of the fund as it considers appropriate to safeguard the interest of investors in the fund, and may direct that the fund ceases to qualify as a Professional fund.

## **V. ANTI-MONEY LAUNDERING/ ANTI-TERRORIST FINANCING**

26. Professional funds meet the definition of AML/ATF regulated financial institutions (AFIs), as such they fall in scope of the requirements discussed in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (POCA).

Under POCA, AFIs must appoint a Money Laundering Reporting Officer (MLRO) and the Compliance Officer (CO) satisfying fit and proper criteria. The operator of the fund is required to furnish the Authority with the contact information for the MLRO and the CO, and provide a copy of the Board approved AML/ATF Policies and Procedures for its records. This information can be filed as an attachment to the submission related to the fund's registration, or by emailing the information to the Funds mailbox (Funds@bma.bm) and reference AML/ATL Information in the subject.

## **VI. TRANSITION PERIOD**

27. Effective as of the commencement date of the Amendment Act, funds will no longer register in the Exempt fund category; they will apply to be registered as either Professional Class A or Professional Class B. Funds already registered as Exempt had a transition period until October 2017 to re-register as either a Professional Class A Fund or a Professional Class B Fund.

**Access the Investment Fund Guidelines via the following link for additional information concerning Professional Class A and Professional Class B funds: <http://www.bma.bm/document-centre/reporting-forms-and-guidelines/SitePages/InvestmentFunds.aspx>**



## APPENDICES

**PROFESSIONAL CLASS A FUND REGISTRATION FORM**

**PROFESSIONAL CLASS B FUND REGISTRATION FORM**