



BERMUDAMONETARY AUTHORITY
INVESTMENT FUND ACT 2006
INVESTMENT FUND GUIDELINES
UPDATED JANUARY 2019

1. Applications

Processing of Investment Fund Incorporation/ Approval of investment fund activity in Bermuda

The incorporation and approval of investment fund activity in or from within Bermuda involves careful vetting of applications by the Bermuda Monetary Authority (Authority). This ensures promoters and service providers are suitable, and schemes meet the high standards required in Bermuda.

Two separate vetting processes are required. The first involves the incorporation of mutual fund companies (or establishment of investment vehicles) pursuant to the Bermuda Companies Act 1981, paralleling the approach taken to all company incorporation applications. The second and more intensive process relates to approval of the investment activity in or from within Bermuda.

The Authority recognises applications for funds are frequently time-critical and the necessary vetting process could delay an application. 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 submitting a related investment fund registration/ authorisation application. In such cases, the Authority will proceed immediately 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 upon registration/ authorisation. 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 until it is registered/ authorised under the Investment Funds Act 2006 (the “Act”); or
- b) Ask for the incorporation/establishment and registration/ authorisation applications to be 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 overall proposed arrangements. This will ensure 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 fund registration/ authorisation until the qualification requirements stated in the Act have been met. Thereafter, the signed consent and registration/ authorisation approval letters will be issued simultaneously.

2. Anti-Money Laundering/ Anti-Terrorist Financing

Authorised, Private and 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 Anti-Money Laundering (AML)/Anti-Terrorist Financing (ATF) Policies and Procedures for its records. This information can be filed as an attachment to the submission related to the funds registration/ authorisation, or by emailing the information to the Funds mailbox (Funds@bma.bm) and reference AML/ATF Information in the subject. Often times the fund's administrator is delegated responsibility for AML/ATF. As such, the operator of the fund must provide the updated AML/ ATF information when there is a change in the fund administrator appointment.

3. Reporting Requirements

a) Routine Statistical Reporting

- a) 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 monthly on its operations to the Authority. This information is to be provided in the prescribed format and include a fund's price per share or unit, net asset value (NAV), and amounts subscribed and redeemed during the month. Reports should be submitted electronically to 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 at the end of each *calendar quarter*.
- b) Section 6B(2) and Section 8A(6) of the Act requires Professional Class A and Class B funds, respectively to report statistical information annually, on or before 30th June. This information is to be provided in the prescribed format and includes the fund's total NAV, NAV per share, and amounts subscribed and redeemed during the year.
- c) Section 6(3E)(a) of the Act requires Private funds to report statistical information annually, on or before 30th June. This information is to be provided in the prescribed format and includes the fund's total NAV, NAV per share, amounts subscribed and redeemed during the year, and the value of underlying assets.

b) Statement of Compliance/ Annual Certification Requirements

Section 26 of the Act requires the operator of an authorised fund to submit to the Authority a Statement of Compliance (SoC) in the prescribed format confirming the fund has at all times during the preceding year been in compliance with the provisions of the Act, fund rules and applicable prospectus rules. Where a breach has occurred, the particulars concerning the breach must be set out in the SoC, and once compliance with the Act has been restored the fund shall resubmit the SoC. The SoC is to be submitted within six months of a fund's financial year-end.

Section 6B(2) and 8A(6) of the Act requires the operator of a Professional Class A fund and the Professional Class B fund respectively to certify annually, on or before 30th June, that the fund satisfies the qualifying criteria and requirements for registration, and the fund will continue to satisfy them on an ongoing basis. In addition to the routine statistical information discussed above, the operator must also upload as an attachment, the annual audited financial statements prepared on a GAAP, IFRS, or other acceptable GAAP basis. The filings must also include a statement of any material changes to the fund's prospectus, and in relation to Professional Class B funds only, a schedule of any changes made to its directors and service providers.

Section 6(3D) of the Act requires the operator of a Private fund to certify annually, on or before 30 June, that the fund satisfies the qualifying criteria and requirements for registration, and the fund will continue to satisfy them on an ongoing basis. In addition to the routine statistical information discussed above, sub-section (3E) prescribes that the certification must be accompanied by a copy of the fund's management accounts or audited financial statements, and information on any material changes that took place during the course of the year.

c) Alteration to Service Providers, Directors & Officers, and Material Change Permissions

Section 8A(8) of the Act requires the operator of a Professional Class B fund to seek the Authority's prior approval in relation to director or service providers (custodian, administrator, investment manager, registrar and auditor of a fund).

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

d) Notice of Material 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.

4. Qualification Criteria for Waivers

a) Custodian Waiver

Under Section 6(2C), 6A(2A), 7(2A) and Section 15 of the Act, the Authority may waive the requirement for fund property to be entrusted to a custodian where it is satisfied alternative arrangements are in place for safeguarding fund property. This waiver may be granted to a Private, Professional, or Authorised fund in the case of feeder funds and fund of funds, where the investment is solely in the related master fund, which appoints a custodian or approved prime broker; fund of funds, on the condition assets held consist predominantly of cash at a bank and registered shares in the underlying funds; or funds with an investment strategy tied to Insurance Linked Securities (ILS) 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 in accordance with the terms and conditions of the agreements governing the ILS transaction (which includes but is not limited to the offering memorandum, trust agreement, (re)insurance agreements, and any investment guidelines). The waiver may also be granted in the case of funds which invest principally in infrastructure type assets or private equity investments.

b) Waiver of Prospectus Requirement

The Authority is generally prepared to grant a waiver under Section 40 of the Act removing the requirement discussed in the Prospectus Rules pertaining to the publication of a prospectus. The waiver will be considered if the waiver pertains to a master fund; and the only investors in the master fund is a feeder fund of the same structure, and the respective feeder fund prepares and issues a prospectus.

In the case of a Private Fund, the Authority will consider the requirement to have a prospectus/ offering document as having been met as long as there is a prospectus/ offering document published at either the master or feeder level, and the feeder invests all of its assets in the related master fund (assuming that the particulars in the prospectus apply to both the master and the feeder fund).

c) Waiver of requirements for qualification as a Professional Class B fund

On the application of the operator of a Professional Class B fund, the Authority may waive any requirement of Section 7(2) of the Act discussing qualification criteria if it is satisfied appropriate arrangements are in place to safeguard the interests of investors in the fund.

d) Waiver of Audit Requirement

Section 14(5) provides that the Authority may on the application of the operator of an authorised fund disapply the requirement that the financial statements of a fund shall be audited in any particular year, where the Authority considers it appropriate to do so. The waiver will be considered in the case of a fund where all investors have been redeemed and the fund is preparing to wind down. The Authority may also consider other extenuating circumstances on a case by case basis.

5. Segregated Account Companies (SACs)

In reviewing applications where the fund has a SAC structure, the Authority has regard to a number of important considerations:

- a) SACs must be licensed under the Segregated Accounts Act 2000 (SAC Act); where this is not the case, they must satisfy the Authority the provisions of their Private Act have substantially equivalent legal effect;
- b) 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;
- c) All accounts within the SAC must have the same auditor, and must share the same accounting and financial year-end;
- d) 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;
- e) 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. The Authority's approval must be sought in accordance with the provisions of the Act; and
- f) SACs may appoint different service providers (with the exception of the auditor) to the authorised 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. The Authority applies a “look through” approach in assessing whether the requirements under the Act have been met so that the investors in the SAC are afforded all of the same safeguards afforded to an investor that does not participate in a SAC structure.

6. Billing information

Typically the *registered office* is also the billing address. To ensure the Authority has the fund's correct billing information on file please disclose the new billing contact details on the submission form when the billing information has changed.