



20 January 2020

NOTICE

Bermuda Investment Funds Amendment Act 2019

The Bermuda Monetary Authority (Authority) published a Discussion Paper¹ 29 March 2018 announcing its intention to review frameworks related to fund administration, investment funds and investment business. The purpose of the review was intended to identify areas within the relevant pieces of legislation where changes needed to be made in order to align the respective frameworks with international standards of best practice and to ensure the respective frameworks continued to be fit for purpose.

In 2018, the review of the funds framework was accelerated in order to enable Bermuda to successfully address the expectations related to investment funds associated with the European Union's Economic Substance initiative. On 31 December 2018, The Economic Substance Act 2018 came into force, including a section discussing amendments to the Investment Funds Act 2006 (IFA). These 2018 amendments introduced a registration regime for funds previously excluded or exempted, and a renaming of such funds to Private and Professional funds respectively.

Following the passing of the Economic Substance Act 2018, further work was completed to enhance the IFA more broadly. This initiative culminated with the passing of the Investment Funds Amendment Act 2019, the Investment Funds Definition Order 2019, the Investment Fund Rules 2019 and the Investment Fund Offering Document Rules 2019.

The changes to the funds framework made via the above-mentioned instruments covered four key pillars –scope, supervision and enforcement, accounting and auditing, and custody. The most significant change involved the expansion of the definition of “investment fund” to include closed-ended funds as previously, only open-ended funds were caught by the funds legislation. With the expansion of the investment fund definition to include closed-ended funds, the Investment Funds Definition Order 2019 was created to provide clarity around the sorts of arrangements the investment fund definition was not intended to capture.

¹Discussion Paper entitled Proposed Enhancements To Investment Business, Investment Funds and Fund Administration Regimes: <https://www.bma.bm/viewPDF/documents/2018-12-29-04-07-08-DP-Proposed-Amendments-to-Investment-Business-Investment-Funds-and-Fund-Administration-Regimes.pdf>.

Including the revisions referenced above, the following list summarises some of the most notable changes to the IFA:

- Addition of a requirement for an overseas investment fund that is managed or carrying on promotion in or from within Bermuda to become designated as an Overseas Fund by the Authority
- Amendment to the investment fund definition to include closed-ended funds
- Passage of the Investment Funds Definition Order 2019
- Creation of a new class of Registered Funds (Professional Closed Funds) and a new category of fund (Designated Overseas Funds), under which the new “Overseas Fund” class was established
- Introduction of an express requirement for service providers, directors and officers to be fit & proper
- Repealing and replacing the Fund Rules 2007 and the Prospectus Rules 2017 with the Investment Fund Rules 2019 and the Investment Fund Offering Memorandum Rules 2019 (collectively referred to as the Rules)
- Expansion of the Rules

These enhancements to the Bermuda funds legislation have raised the standard of regulation and supervision of investment funds in Bermuda, and in many respects, the changes to the legislation have codified practice.

Existing closed-ended investment funds and overseas investment funds have a six-month transition period to 30 June 2020 to comply with the new legislative provisions. An operator of an existing fund is required to assess whether the changes to the funds framework are applicable to them and take the necessary steps to comply with the IFA as amended. Enforcement of the new requirements will commence on 30 June 2020 in conjunction with the Authority’s review of the annual certifications. During the transition period, the Authority will work with registrants to assist them in achieving compliance.

The Investment Funds Guidelines have been updated to reflect the changes to the legislative regime. The guidelines are accessible via the following link:

<https://www.bma.bm/viewPDF/documents/2020-01-17-09-14-43-Investment-Fund-Guidelines.pdf>

Questions regarding the changes to the investment funds regime can be directed to Funds@bma.bm.