



# BERMUDA MONETARY AUTHORITY

## INVESTMENT FUNDS ACT 2006

### INVESTMENT FUND GUIDELINES

UPDATED 2023

## Table of Contents

|   |           |
|---|-----------|
| <b>1. Application Process.....</b>  | <b>3</b>  |
| <b>2. Designated Overseas Funds.....</b>  | <b>4</b>  |
| <b>3. Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Compliance.....</b>                                | <b>4</b>  |
| <b>4. Fit and Proper Service Providers and Operators.....</b>   | <b>5</b>  |
| <b>5. Reporting Requirements .....</b>  | <b>5</b>  |
| <b>6. Filing Extension Requests.....</b>  | <b>8</b>  |
| <b>7. Late Fee Payable for Non-compliance with Reporting Requirements .....</b>                                   | <b>8</b>  |
| <b>8 Revocation of Authorisation/Cancellation of Registration/Cancellation of Overseas Fund Designation .....</b> | <b>9</b>  |
| <b>9. Material Change Notifications .....</b>   | <b>10</b> |
| <b>10. Late Notification of Changes.....</b>  | <b>10</b> |
| <b>11. Qualification Criteria for Modifications or Waiver of Rules.....</b>                                       | <b>10</b> |
| <b>12. Professional Closed Fund – Investor Warnings .....</b>   | <b>15</b> |
| <b>13. Close-ended Funds to Appoint a Designate Responsible for Safe-Keeping Assets.....</b>                      | <b>15</b> |
| <b>14. Auditor Communications with the Authority.....</b>   | <b>16</b> |
| <b>15. Matters to be Communicated to the Authority.....</b>   | <b>16</b> |
| <b>16. Segregated Account Companies (SAC).....</b>  | <b>17</b> |
| <b>17. Incorporated Segregated Accounts Company (ISAC)/Incorporated Segregated Account (ISA) .....</b>            | <b>17</b> |
| <b>18. Digital Assets .....</b>   | <b>18</b> |
| <b>19. Cannabis.....</b>  | <b>18</b> |
| <b>20. Investment Fund Billing Contact Details.....</b>   | <b>19</b> |
| <b>21. BMA Banking Details.....</b>   | <b>19</b> |
| <b>22. General Queries .....</b>  | <b>20</b> |

## 1. Application Process

The Bermuda Monetary Authority (Authority or BMA) must carefully vet applications for the incorporation of investment funds and the approval of investment activity to be carried out in, or from within, Bermuda. This approach ensures that promoters and service providers are suitable and schemes meet the high standards required in Bermuda.

The above-noted approach entails two separate vetting processes. The first vetting process relates to the incorporation, pursuant to the Companies Act 1981, of companies intending to carry out business as investment funds, including mutual fund companies (collectively defined within the Investment Funds Act 2006 (Act) as 'company funds'). Likewise, this first vetting process also relates to establishing a partnership, limited liability company or unit trust, as the case may be, pursuant to the relevant legislation. The Authority's vetting process regarding such applications parallels the approach taken by the BMA for all entity formation applications. The second and more intensive vetting process relates to the Authority's approval of the investment fund activity that the applicant proposes to carry out in, or from within, Bermuda. Specifically, granting such approval entails the Authority authorising or registering any entity that meets the definition of 'investment fund' within the Act that is not specified by the Investment Funds (Definition) Order 2019 (definition order) as an arrangement not falling within that definition. In the case of an overseas investment fund that is managed or promoted in the jurisdiction, it entails the Authority approving the fund as a Designated Overseas Fund pursuant to the Act.

The Authority recognises that applications for the establishment of funds are frequently time-critical and that there is potential for the necessary vetting process to delay the approval of an application. Accordingly, the Authority has implemented two different tracks for applicants to avoid unnecessary delays. Those submitting applications may, as they prefer:

- a) Seek to have the company incorporated/entity established in advance of submitting a related investment fund registration/authorisation application. In such cases, the Authority will immediately proceed to complete the standard due diligence process related to Exchange Control legislative requirements. This may include a review of the intended participating shareholders and an early decision on the incorporation/establishment of the entity without prejudice to its subsequent decision regarding the application for registration/authorisation of the fund. Where an application for incorporation/establishment of the entity is approved, the promoters will then be able to quickly prepare for the fund to begin operations by opening the necessary bank accounts and taking other steps following the establishment of the entity. In this case, the entity will not be permitted to conduct business as a fund until it is registered/authorised under the Act; or
- b) Ask for the incorporation/establishment and registration/authorisation applications to be processed simultaneously. In this case, the Authority will conduct, as expeditiously as possible, both the initial Exchange Control-related vetting and the full review of the offering document, promoters, key service providers and overall proposed arrangements. This will ensure the fund meets the legal requirements and adheres to the Authority's policy guidelines. The Authority will seek to complete both review processes as quickly as possible but will not approve the application for fund registration/authorisation until the entity is formally incorporated/established and the qualification requirements for the respective fund classification, as stated in the Act, have been met.

If the fund applies for a licence and intends to be registered pursuant to the Segregated Accounts Companies Act 2000 (SAC Act) or the Incorporated Segregated Accounts Companies Act 2019 (ISAC Act), the Registrar of Companies will seek confirmation from the Authority as to whether it objects to the application before registering an entity under the SAC Act or the ISAC Act. The Authority can only provide no objection for an application if the BMA has received a submission for registration/authorisation from the fund. Therefore, the fund must ensure the registration/authorisation application has been filed with the Authority as per the guidance discussed under item b) above.

## **2. Designated Overseas Funds**

An ‘overseas investment fund’ means an investment fund incorporated or established in a jurisdiction outside Bermuda.

No overseas investment fund shall be managed or conduct promotion in, or from within, Bermuda unless it is designated as an Overseas Fund per the Act (section 5A(7)).

‘Promotion’ means the following activities initiated by, or on behalf of, an overseas investment fund:

- a) Advertising;
- b) Issuing an offering document, application form or proposal form and stating the method of issue; and
- c) Circulating or making available promotional material, including any description of the general nature of the material and the persons to whom and how it is to be circulated or made available.

An overseas investment fund can seek to obtain designation as an Overseas Fund by completing the overseas fund submission form and providing the supporting documentation via the Authority’s electronic filing platform (INTEGRA). The designation will be granted once the Authority is satisfied that an overseas investment fund has met the requirements set out under the Act’s section 5A(2) and the fund has provided evidence that the fee disclosed on the BMA fee schedule has been paid. Once the Authority has granted the designation, the name of the Overseas Fund will be published on the Authority’s website.

## **3. Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Compliance**

Authorised and registered funds meet the definition of AML/ATF Regulated Financial Institutions (RFI). As such, they fall within the scope of the requirements set out in the Proceeds of Crime Act 1997 (POCA).

Under POCA, RFIs must appoint a Money Laundering Reporting Officer (MLRO) and a Compliance Officer (CO) that satisfy fit and proper criteria. The operator of the fund is required to furnish the Authority with the contact information for the MLRO and CO and provide a copy of the board-approved AML/ATF policies and procedures at the time of registration/authorisation. This information can be filed as an attachment to the submission related to the fund’s registration/authorisation or by emailing the information to the BMA’s Funds mailbox (funds@bma.bm) referencing ‘AML/ATF Information’ in the subject line. If the fund’s appointed administrator has assumed responsibility for ensuring controls are in place for preventing and detecting money laundering and terrorist financing, and that fund administrator is licensed in Bermuda, the Authority may already have a copy of the board-approved AML/ATF policies and procedures on file. It is important to note that where a Bermuda fund has appointed an overseas fund administrator, the operator of the fund must ensure the controls that are in place for detecting and preventing money laundering/terrorist financing are of the same standard as those prescribed by POCA; otherwise, the fund will be deemed to have not met POCA requirements.

Where responsibility for ensuring the fund complies with AML/ATF requirements has been contracted to the appointed fund administrator and a new fund administrator is appointed to the fund, the operator of the fund shall furnish the Authority with a copy of the new AML/ATF policies and procedures along with the contact information for the new MLRO and CO (if applicable).

It should be noted that while the operator of a fund can outsource the compliance work to a fund administrator, it is the operator of the fund that remains legally responsible for complying with AML/ATF regulations.

#### 4. Fit and Proper Service Providers and Operators

Section 4A of the Act requires operators, officers and service providers to be fit and proper and to act in their respective capacities. The criteria applied with respect to the determination by the Authority as to whether the operator, officer or service provider is fit and proper to act on behalf of the investment fund is set out in the Schedule entitled 'Minimum Criteria for Licensing' contained within the Act.

The Authority will complete vetting procedures to assess fitness and propriety. The criteria largely focuses on ensuring the operator and service providers are fit and proper and that the business of the operator, officer or service providers is (or will be) conducted in a prudent manner. The Authority has published guidance on fit and proper persons on the BMA's website at:

<https://cdn.bma.bm/documents/2018-12-29-05-12-09-Information-Bulletin---Fit-and-Proper-Persons.pdf> .

The appointment of operators, officers or service providers must be accompanied by a completed personal declaration. The Authority will also vet the principals of the investment manager listed in the offering document. The personal declaration is on the BMA website at: <https://www.bma.bm/document-centre/reporting-forms-and-guidelines-investment-funds>.

Personal declarations must be provided for all newly appointed service providers and directors unless the has Authority vetted them within the last year (12 months).

#### 5. Reporting Requirements

Designated, registered and authorised funds are required to comply with the reporting requirements prescribed by the Act. The filing requirements that apply to designated, registered and authorised funds are summarised in the tables set out below. The filings are to be completed in the INTEGRA Portal, the Authority's electronic filing platform.

When completing the annual filing, details related to any changes to the primary contact and billing contact information should be included, if applicable, so that the Authority can update its records accordingly.

**Designated funds shall provide the following to the Authority in the prescribed format:**

| Type of fund  | Submission schedule  | Documents required  |
|---|--|---|
| Overseas Fund designated pursuant to section 5A(7) of the Act | <ul style="list-style-type: none"><li>- Annually – Pursuant to section 5B</li><li>- Due within six months of the fund's financial year-end</li></ul> | <ul style="list-style-type: none"><li>- A statement in such form as the Authority may direct confirming that the Overseas Fund's compliance territory in which it is incorporated or established **</li><li>- Annual declaration form, inclusive of:<ul style="list-style-type: none"><li>o Material changes to the Offering Document (OD)</li><li>o Confirmation of the fund's continued compliance with the Act</li></ul></li></ul> |

\*\*Certain overseas regulators will only share information regarding a fund's compliance status with another regulator. In these instances, the designated Overseas Fund shall provide the Authority with the overseas regulator's contact details and allow sufficient lead time for the Authority to file the request with the overseas regulator so that the response can be provided before the annual filing deadline stated in the Act.

**Registered funds shall provide the following to the Authority in the prescribed format:**

| <b>Type of fund</b>   | <b>Submission schedule</b>   | <b>Documents required</b>  |
|---|--|--|
| Professional Class A Fund registered pursuant to section 6B(1) of the Act | <ul style="list-style-type: none"> <li>- Annually – Pursuant to section 6B(2) and (3)</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>       | <ul style="list-style-type: none"> <li>- Audited financial statements</li> <li>- Offering document reflecting material changes to the fund</li> <li>- Annual certification form confirming registration requirements continue to be met and disclosing:               <ul style="list-style-type: none"> <li>o The Net Asset Value (NAV)</li> <li>o Amounts subscribed</li> <li>o Amounts redeemed</li> </ul> </li> </ul>  |
| Professional Class B Fund registered pursuant to section 8A(1) of the Act | <ul style="list-style-type: none"> <li>- Annually – Pursuant to section 8A(6) and 8A(7)</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>     | <ul style="list-style-type: none"> <li>- Audited financial statements</li> <li>- Offering document reflecting material changes to the fund</li> <li>- Statement reflecting material changes to the fund</li> <li>- Annual certification form confirming registration requirements continue to be met and disclosing:               <ul style="list-style-type: none"> <li>o NAV</li> <li>o Amounts subscribed</li> <li>o Amounts redeemed</li> </ul> </li> </ul>                               |
| Private Fund registered pursuant to section 6(3C) of the Act              | <ul style="list-style-type: none"> <li>- Annually – Pursuant to sections 6(3D) and 6(3E)</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>    | <ul style="list-style-type: none"> <li>- Audited financial statements or unaudited management accounts enclosing the balance sheet and income statement</li> <li>- Offering document reflecting material changes to the fund</li> <li>- Annual certification form confirming that the registration requirements continue to be met and disclosing:               <ul style="list-style-type: none"> <li>o NAV</li> <li>o Amounts subscribed</li> <li>o Amounts redeemed</li> </ul> </li> </ul> |
| Professional Closed Fund registered pursuant to section 8C(1) of the Act  | <ul style="list-style-type: none"> <li>- Annually – Pursuant to sections 8C(2) and 8C(3)(b)</li> <li>- Due within six months of the fund’s financial year-end</li> </ul> | <ul style="list-style-type: none"> <li>- Audited financial statements</li> <li>- Offering document reflecting material changes to the fund</li> <li>- Annual certification form signed by the fund operator, confirming that the registration requirements continue to be met and disclosing:               <ul style="list-style-type: none"> <li>o NAV</li> <li>o Amounts subscribed</li> <li>o Amounts redeemed</li> </ul> </li> </ul>  |

**Authorised funds shall provide the following to the Authority in the prescribed format:**

| Type of fund   | Submission schedule  | Documents required   |
|--|--|--|
| Standard Fund authorised pursuant to section 12 of the Act         | <ul style="list-style-type: none"> <li>- Monthly – Pursuant to section 7(2) of the Investment Fund Rules 2019 (Fund Rules)</li> <li>- Due within 20 business days after the month-end</li> <br/> <li>- Annually - Pursuant to section 26 of the Act</li> <li>- Due within six months of the fund’s financial year-end</li> </ul> | <ul style="list-style-type: none"> <li>- NAV</li> <li>- Amounts subscribed</li> <li>- Amounts redeemed</li> <br/> <li>- Statement of compliance signed by the fund operator</li> </ul> |
| Institutional Fund authorised pursuant to section 12 of the Act    | <ul style="list-style-type: none"> <li>- Quarterly – Pursuant to section 7(2) of the Fund Rules</li> <li>- Due within 20 business days after each calendar quarter</li> <br/> <li>- Annually - Pursuant to section 26 of the Act</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>                    | <ul style="list-style-type: none"> <li>- NAV</li> <li>- Amounts subscribed</li> <li>- Amounts redeemed</li> <br/> <li>- Statement of compliance signed by the fund operator</li> </ul> |
| Administered Fund authorised pursuant to section 12 of the Act     | <ul style="list-style-type: none"> <li>- Quarterly – Pursuant to section 7(2) of the Fund Rules</li> <li>- Due within 20 business days after each calendar quarter</li> <br/> <li>- Annually - Pursuant to section 26 of the Act</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>                    | <ul style="list-style-type: none"> <li>- NAV</li> <li>- Amounts subscribed</li> <li>- Amounts redeemed</li> <br/> <li>- Statement of compliance signed by the fund operator</li> </ul> |
| Specified Jurisdiction Fund authorised under section 12 of the Act | <ul style="list-style-type: none"> <li>- Quarterly – Pursuant to section 7(2) of the Fund Rules</li> <li>- Due within 20 business days after each calendar quarter</li> <br/> <li>- Annually - Pursuant to section 26 of the Act</li> <li>- Due within six months of the fund’s financial year-end</li> </ul>                    | <ul style="list-style-type: none"> <li>- NAV</li> <li>- Amounts subscribed</li> <li>- Amounts redeemed</li> <br/> <li>- Statement of compliance signed by the fund operator</li> </ul> |

## **6. Filing Extension Requests**

The Authority notes there may be instances when a fund, for reasons outside of the operators' control, is not able to adhere to the required filing deadline outlined in the Reporting Requirements above.

The operator of a fund can submit a request to the Authority to extend the deadline for its annual filing; up to three filing extensions can be requested by the fund in relation to its annual filing period. The fee per filing extension application is \$300 and the request can be made using the Filing Extension Submission in INTEGRA.

The filing extension request must include both the reason for the filing delay and the proposed timeline for the filing to be completed. If the filing is late and a filing extension is not requested, the operator of the fund will incur a late fee in accordance with the late filing fees set out in the Fourth Schedule of the Bermuda Monetary Authority Act 1969.

## **7. Late Fee Payable for Non-compliance with Reporting Requirements**

Section 17A of the Act applies to an operator of a fund who fails to comply with any requirement imposed on it under section 5B(1), 6(3D), 6(3E), 6B(2), 6B(3) (b), 8A(6), 8A(7), 8C(2), 8C(3)(b), 25(1) or 26(1)(b), as the case may be.

An operator of a fund to which this section applies shall, on failing to comply as provided in subsection (1), be liable to pay a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969. The fee related to late annual filings is \$1000 and the fee for late statistical filings is \$200.

A late fee levied pursuant to this Act and the rules made under sections 37 and 38 may be recovered by the Authority as a civil debt.



## 8. Revocation of Authorisation/Cancellation of Registration/Cancellation of Overseas Fund Designation

| Action  | Requirements and permissions provided for in the Act  |
|---|---|
| Winding up an authorised fund                                 | <p>Section 25(1)(g) of the Act requires the operator of an authorised Standard Fund to seek prior approval from the Authority to wind up its affairs.</p> <p>However, pursuant to section 25(4), the operator of an Institutional or Administered Fund is only required to provide the Authority written notice of their intentions to wind up the affairs of the respective funds.</p>   |
| Revocation of authorisation by the Authority                  | <p>Section 27 of the Act permits the Authority to invoke the procedure to revoke the authorisation of an authorised investment fund if:</p> <ul style="list-style-type: none"> <li>- Requirements for authorisation are no longer satisfied</li> <li>- The operator of the fund or the fund's service providers have or are likely to breach a requirement imposed on them by the Act</li> <li>- The operator has knowingly or recklessly provided false or misleading information</li> <li>- No investment activity has been carried out for the previous 12 months</li> </ul> |
| Revocation of authorisation by request                        | <p>Section 29 of the Act permits the operator of an authorised fund to file a request for the fund's authorisation to be revoked by the Authority. The Authority will consider whether:</p> <ul style="list-style-type: none"> <li>- 100% of interests are redeemed</li> <li>- All proceeds related to redemptions have been paid</li> <li>- Filings are up to date</li> <li>- The fund has duly paid all fees, penalties or other monies owing to the Authority pursuant to the Act and/or relevant regulations</li> </ul>   |
| Cancellation of registration by the Authority                 | <p>Section 10A of the Act permits the Authority to cancel the registration of a registered investment fund if:</p> <ul style="list-style-type: none"> <li>- Requirements are no longer satisfied</li> <li>- The operator of the fund or the fund's service providers have breached the Act</li> <li>- The operator has provided false or misleading information</li> <li>- No investment activity has been carried out</li> </ul>   |
| Cancellation of registration by request                       | <p>Section 10C of the Act permits the operator of a registered fund to file a request for the fund's registration to be cancelled by the Authority.</p> <p>The registration may be cancelled if:</p> <ul style="list-style-type: none"> <li>- 100% of subscriptions are redeemed</li> <li>- All investors are paid</li> <li>- Filings are up to date</li> <li>- The fund does not owe any money to the Authority</li> </ul>   |
| Cancellation of An Overseas Fund designation by the Authority | <p>Section 5C of the Act permits the Authority to cancel the designation of an overseas fund if:</p> <ul style="list-style-type: none"> <li>- The overseas fund is no longer managed from Bermuda; or the overseas fund is no longer carrying on promotion from Bermuda</li> <li>- The operator of the fund or the fund's service providers have breached the Act</li> <li>- The operator has provided false or misleading information</li> </ul>   |
| Cancellation of An Overseas Fund designation by request       | <p>Section 5E of the Act permits the operator of a designated overseas fund to file a request for the fund's designation to be cancelled by the Authority.</p> <p>The designation may be cancelled if the fund is no longer being managed or carrying on promotion in or from within Bermuda, and the Authority is satisfied that there are no matters to be investigated before the designation is cancelled.</p>  |

## 9. Material Change Notifications

A change is a material change if it would (if known) reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund and “materially” has a corresponding meaning. It encompasses changes to any of the relevant disclosures required pursuant to the Investment Fund Offering Document Rules 2019 (‘Offering Document Rules’).

Examples of material changes include alterations to service providers, directors and officers; changes to the investment strategy, fees, redemption and subscription terms, risk factors and conflicts and share classes; and a decision to wind up the fund, etc.

| Type of fund                                     | Requirements   |
|--|--|
| Authorised Funds                                 | <p>Section 25 of the Act requires the operator of an authorised fund to seek prior approval from the Authority for changes to service providers (custodian, administrator, investment manager, registrar and auditor of a fund) and material changes to the offering document.</p> <p>Section 25 (1)(d) of the Act requires the operator to provide written notice of changes to director appointments. Section 25 of the Act also sets out several additional matters of which the operator of an authorised fund must give the Authority written notice.</p> |
| Registered fund – Professional Class B Fund ONLY | <p>Section 8A(8) of the Act requires the operator of a Professional Class B Fund to seek the Authority’s prior approval concerning changes to directors or service providers (custodian, administrator, investment manager, registrar and auditor of a fund).</p>  |

## 10. Late Notification of Material Changes

Pursuant to section 25(8) of the Act, authorised funds that do not comply with the requirements stated under section 25 discussing Notification of Changes will be subject to a late notification fee of \$500 as stipulated in the Fourth Schedule contained within the BMA Act.

Additionally, fund operators who fail to publish the updated offering document inclusive of all material changes pursuant to Paragraph 5(1A) discussed in the Offering Document Rules will incur a late fee of \$200 as stipulated in the Fourth Schedule contained within the BMA Act, pursuant to section 38(9) of the Act read with Paragraph 5(1B) of the Offering Document Rules.

## 11. Qualification Criteria for Modifications or Waiver of Rules

We have described instances in the chart below when the BMA may consider a request for a waiver from, or modification to, the requirements set out in the Act, the Investment Fund Rules 2019 (Fund Rules) and the Offering Document Rules 2019. We are providing this chart to offer increased clarity and greater transparency regarding the exercise of the Authority’s power under sections 10(D), 14(4), 14(5), 15 and 40 of the Act to provide such waivers and modifications. That said, the examples given in the chart below are not exhaustive and should not be construed as the Authority automatically granting its approval in the specified circumstances. The Authority will consider each situation on a case-by-case basis and be guided accordingly.

**a) Custodian waiver**

Pursuant to section 15 in the case of an authorised fund, or section 10(D) in the case of a registered fund, the Authority may waive the requirement for fund property to be entrusted to a custodian where the BMA is satisfied that appropriate alternative arrangements are in place for safeguarding the investment fund property. This waiver may be granted to a registered or authorised fund as applicable.

| <b>The basis for a waiver</b> (the Authority reserves the right to consider each case based on its own merit)   | <b>BMA policy</b>   |
|---|---|
| A master-feeder structure or a fund of funds structure, where the investment is solely in the related master fund, which appoints a custodian or an approved prime broker | A custodian waiver may be granted to the feeder fund if the investments and the master fund have appointed a fit and proper custodian or prime broker for the safekeeping of the fund’s assets.   |
| A fund-of-funds structure where the assets held consist predominantly of cash at a bank and registered shares in the underlying funds                                     | A custodian waiver may be granted to the fund if the assets held consist predominantly of cash at a bank and the bank is responsible for the safekeeping of the applicable assets.  |
| Where the investment fund has an investment strategy tied to Insurance-Linked Securities (ILS)  | A custodian waiver may be granted where the proceeds from the issuance of shares are placed in a trust account that is maintained by a the trustee who manages the proceeds in the trust as per the terms and conditions of the agreements that govern the ILS transaction. This includes, but is not limited to, the offering documents, trust agreements, (re)insurance agreements and any investment guidelines. |
| Where the fund is investing principally in infrastructure-type assets or private equity investments   | A custodian waiver may be granted where the underlying investments tend not to be readily saleable if ownership can be verified and the fund has an appropriate alternative arrangements in place for safeguarding the investment fund property.  |

**b) Modification or Waiver of Investment Fund Offering Document Rules 2019**

Pursuant to section 40 of the Act upon application, the Authority may, subject to conditions, grant a waiver from or modification to any investment fund offering document rule, provided it is satisfied that—

- 1) Compliance with the rule or an unmodified rule would be unduly burdensome or would not achieve the purpose for which the rule was made
- 2) The waiver or modification would not result in undue risk to investors

| <b>Basis for waiver or modification</b> (the Authority will consider each case based on its own merit)   | <b>BMA policy</b>  |
|--|--|
| In the case of a master-feeder structure where the investment is solely in the related master fund   | An offering document waiver may be granted to either the master fund or the feeder fund (as applicable) as long as the feeder invests all its assets in the related master fund; there is an offering document published at either the master or feeder level and the particulars disclosed in the offering document apply to both the master and the feeder fund. |
| Where the investment fund is listed on a stock exchange, and the listing rules of the respective stock exchange govern the content and disclosure requirements of the offering document. | The Authority will consider these requests on a case-by-case basis to determine whether a waiver can be granted. At a minimum, the fund must demonstrate that there are alternative arrangements in place that ensure there is an adequate level of transparency and disclosure between the fund and its investors.  |

**c) Audit Waivers**

Sections 10D and 14(5) of the Act grants the Authority powers to waive the requirement for an authorised fund or a registered fund to have its year-end financial statements audited.

Only single-year approvals will be granted; thus, the fund must file a new application each year for the Authority’s consideration.

| <b>Basis for waiver or modification</b><br>(the Authority reserves the right to consider each case based on its own merit)   | <b>BMA policy</b>   |
|--|---|
| The units of all investors have been redeemed.   | The Authority may consider whether to grant a waiver where all the units of investors in a fund have been redeemed and the fund is preparing to wind down.  |
| The fund is closed-ended, and all investors have agreed in writing that no audit is required.  | An audit waiver may be granted if the fund has a suitable methodology to determine the value of the assets in the absence of an audit and all investors have agreed in writing to waive the audit requirement.  |
| The investment fund has recently been authorised or registered by the Authority and has not accepted any subscriptions since the application for authorisation or registration was approved. | The Authority may consider whether to grant a waiver on the basis that the fund, having been recently registered/authorised, has not accepted subscriptions since it was registered or authorised. If the waiver is approved, the first audit will cover the period since incorporation/establishment.                                    |
| The assets in the fund are not material, and the cost of the audit will erode all the assets.  | An audit waiver may be granted if the fund is winding down, the assets in the fund are not material and the cost of producing the audited financial statements will significantly erode proceeds that would otherwise be payable to investors.  |
| There is a unanimous written resolution of the fund’s board of directors agreeing to waive the audit requirement.  | A unanimous written resolution of the board alone does not qualify the fund for a waiver from the requirement to file audited financial statements with the Authority. However, if the fund has a small number of investors and they also agree to forego the audit to preserve the assets, the Authority may consider granting a waiver. |

| <b>Basis for waiver or modification</b><br>(the Authority reserves the right to consider each case based on its own merit)  | <b>BMA policy</b>   |
|---|---|
| <p>The fund would like to file a financial statements that are prepared according to standards or principles other than Bermuda, US, UK, Canadian GAAP or IFRS (referred to as ‘other GAAP’).</p> | <p>Pursuant to Investment Fund Rule 15(c), a fund is required to prepare financial statements according to Bermuda, US, UK, Canadian GAAP or IFRS (individually, a ‘permitted GAAP’) unless the Authority recognises the other GAAP.</p> <p>An application for a waiver may be considered where the fund’s operator has presented a gap analysis of the key differences between the other GAAP and a permitted GAAP (inclusive of the valuation principles and pricing policies) and the differences are found to be minimal.</p> <p>The other GAAP must be found to be comparable to the valuation principles and pricing policies applicable had the audit been conducted in accordance with a permitted GAAP, and the financial statements presented according to the other GAAP must not misrepresent the actual value of the fund, or disadvantage the investors in any way.</p> |

**d) Section 10D Waiver of Qualification Criteria Related to a Registered Fund**

**Classification**

On the application of the operator of a registered fund, the Authority may waive a requirement related to the qualification criteria for a particular fund classification if it is satisfied that appropriate arrangements are in place to safeguard the interests of investors in the fund. Although there are very few cases where a waiver of fund classification criteria would be granted, the Authority recognises that nuances could arise given the nature of the fund. The Authority will only consider granting a waiver related to fund classification criteria where the articulated classification criteria are not applicable given the nature of the underlying investment or fund structure and the waiver does not expose the investor or the jurisdiction to increased risk.

## 12. Professional Closed Fund – Investor Warnings

The Act's section 8B(c) requires all investors in a professional closed fund to be provided with an investment warning prior to the time of the purchase of units, which shall be in such form and contain such statements and information as the Authority deems appropriate.

An example of acceptable wording is provided below:

*“[This fund] has been established in Bermuda as a professional closed fund. It is suitable only for those who fall within the definition of “qualified participants” as discussed in section 9 of the Investment Funds Act 2006 (Act) as amended.*

*Requirements that may be deemed necessary to protect retail or unsophisticated investors do not apply to a professional closed fund. By acknowledging this statement, you are expressly agreeing that you fall within the definition of a ‘qualified participant’ and accept the reduced requirements accordingly (or in the case of existing investors ‘you are expressly confirming the fact that your investment in the fund pre-dated 31 December 2019, which was the date the Act was amended to bring such funds in scope”).*

*If you are an investment manager acquiring an interest in [this fund], directly or indirectly, for, or on behalf of, qualified participants, the Bermuda Monetary Authority expects you to be satisfied that the investment is suitable for the underlying investors and that the underlying investors are able to bear the economic consequences of an investment in the fund, including the possibility of the loss of the entire investment.*

*You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in a professional closed fund may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund], you should not invest in [this fund].”*

The investor or his duly authorised agent must acknowledge in writing that he/she has received and accepted this investment warning.

## 13. Close-ended Funds to Appoint a Designate Responsible for Safe Keeping Assets

As per the Fund Rules, a professional closed fund and a private (close-end) fund must designate responsibility for the segregation and safe-keeping of the investment fund property to a fit and proper person. The Fund Rules do not prescribe who the designate should be; however, the role must be fulfilled by someone fit and proper to act in such capacity, based on the nature of the fund property. Examples include:

- a) A fund that implements a fund-of-funds strategy where the entity holding the record of those shares is considered to be the designate;
- b) A fund that invests in real estate where the entity holding the deeds or land titles is considered to be the designate; and
- c) An ILS fund where the entity or person responsible for maintaining the record of the participating shares held on behalf of investors in the fund, or the person responsible for keeping a record of the notes issued to investors in the ILS fund, is considered to be the designate.

The name of the designate and the relevant details/provisions that set out the segregation and safe-keeping arrangements shall be disclosed to investors through the offering document.



#### **14. Auditor Communication with the Authority**

Section 63A of the Act outlines the Authority's expectations for auditors of Bermuda-regulated investment funds. During their review of financial reports, the auditor will usually become aware of issues facing a fund early on. The Authority expects the auditor to communicate matters if:

- The investment fund is insolvent, likely to become insolvent or likely to be unable to pay its debts as they fall due;
- There is evidence to suggest fraud, theft or misappropriation of assets;
- There are significant weaknesses in the governance framework that render the investment fund vulnerable to significant risks or exposures that have the potential to jeopardise the interests of the participants in the investment fund; and/or
- The auditor has made the decision to include a modification of his report on the fund's financial statements and, in particular, a qualification or denial of the audit opinion, or the statement of an adverse opinion.

The auditor is expected to furnish the Authority with a report of its findings. Failure to comply with this requirement is an offence and the auditor is liable for a fine of \$25,000. The report may be filed via the following address: [funds@bma.bm](mailto:funds@bma.bm) with the subject 'Section 63 Auditor Reporting Notification'.

#### **15. Matters to be Communicated to the Authority**

Operators of Bermuda-regulated investment funds have a duty to protect the shareholders invested in their funds. Additionally, operators are duty-bound to keep the Authority abreast of developments as and when they occur.

The Authority must be notified immediately if any of the requirements for authorisation or registration are no longer being met. The notice of breaches must be sent to [noncompliantfunds@bma.bm](mailto:noncompliantfunds@bma.bm) with the following information included:-

- Comprehensive details on the matters arising that attributed to the fund falling out of compliance
- The actions that have been taken by the fund operator to contain the issues and remedy the IFA breach
- Details on the controls and safeguards that are in place to ensure the investor assets are protected while the fund is in breach
- Remediation plan/timeline for executing the plan so that the progression of the plan can be monitored

The Authority will consider all of the information provided, as well as the actions of the operator to remedy the breach when deciding the appropriate regulatory or enforcement actions to be taken. Additionally, there may be matters the fund is dealing with that, while a breach has not yet occurred, would still be of interest to the Authority. These include:-

- Filings that will be delayed
- Operator/ service provider appointments and resignations
- The fund is facing liquidity issues
- The fund's activity has been suspended
- The fund is no longer viable and therefore is winding down
- The basis upon which a modification/waiver was granted no longer applies
- The fund has encountered a situation that could put the interests of the investors at risk



In the first instance, an email should be sent to [funds@bma.bm](mailto:funds@bma.bm) outlining the matter with the relevant documentation attached. The Funds Supervision Team will advise how best to proceed once the matter has been reviewed internally.

## **16. Segregated Account Companies (SAC)**

The following policies must be observed by all funds that are also licensed as a SAC:

- SACs must be registered under the SAC Act; where this is not the case, the fund must demonstrate to the Authority that the provisions of the relevant private act have a substantially equivalent legal effect
- Where SACs are to conduct investment fund business, no other business may be conducted by the SACs, 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 with the overall structure of any SAC
- All segregated accounts within the SAC must have the same auditor and must share the same accounting and financial year-end
- Where the segregated accounts elect to have separate audits, each segregated account must be subject to an audit unless upon making the application the requirement of conducting an audit of the segregated account is formally waived by the Authority
- Where an existing fund seeks to register as a SAC, the Authority must be satisfied that adequate written notice has been given to investors to give them ample opportunity to sell or redeem their holdings in advance of such constitutional change occurring
- While the fund licence that is approved by the Authority applies to the entity as a whole, the operator may choose to offer units relating to its segregated accounts through standalone offering documents. The Authority views the preparation of such documentation upon the formation of additional segregated accounts as a material change to the fund's offering document. In the case of an authorised fund, the Authority's approval must be sought per the provisions of section 25 of the Act
- Segregated accounts must meet the service provider appointments under the Act at the segregated account level so the investors in the segregated account are afforded the same level of protection as a non-SAC structure. The segregated accounts may appoint different service providers; however, the auditor must be the same for all segregated accounts. When assessing whether the requirements under the Act have been met, the Authority will consider the entity (inclusive of all segregated accounts) as a whole

## **17. Incorporated Segregated Accounts Company (ISAC)/Incorporated Segregated Account (ISA)**

The ISAC Act affirms that each ISA is a legal person distinct from the ISAC itself. The effect of this statutory division creates separate corporate bodies (i.e., ISACs and ISAs are separate legal entities).

Each ISAC and its respective ISAs that conduct investment fund business are required to apply for registration or authorisation pursuant to the Act, unless the investment fund activity conducted by the ISAC or ISA is deemed to be out of scope based on the provisions discussed in the definition order.

A separate licence will be assigned to each ISAC or ISA that conducts investment fund business. The ISAC and the ISAs that conduct investment fund business will be regulated and supervised at the legal entity level based on the fund classification.

Where the ISAC is providing operational support to the funds on the platform, the operator of the respective funds must ensure conflicts of interest are not simply disclosed but are also effectively mitigated.

Each ISAC and ISA will complete the annual filing (per the requirements of the class of licence it

holds) for submission to the Authority. The Authority will defer to the applicable GAAP/ IFRS rules regarding consolidation, particularly as it relates to common ownership and control between the ISACs and its ISAs, as the determinant of the requirement for the ISAC to consolidate the results of its ISAs. That said, the Authority may request supplemental schedules setting out the financial position at the legal entity level so that there is visibility into the balances reported at the ISA-level.

Where the ISAC issues a 'Master Prospectus' containing disclosures that are common across all of the ISAs on the ISAC platform, the offering document issued by the ISA must make it clear that the investor is to *also* refer to the Master Prospectus for related disclosures. Additionally, the offering document issued by the ISA must disclose substantive details related to the ISAC platform structure, legal liability and the ISA's relationship with ISAC to ensure there is proper transparency and disclosure. When assessing compliance with the requirements stated in the Act and the Investment Fund Offering Document Rule 2019, the Authority will consider disclosures in both the Master Prospectus and the offering document issued by the ISA regardless even though the ISAC itself is not registered or authorised pursuant to the Act. Accordingly, in addition to notifying the Authority of material changes to the offering document issued by the ISA, the ISA must also notify the Authority (and participants in the fund) of all material changes to the Master Prospectus in accordance with the requirements related to the notification of changes as stated in the Act.

## **18. Digital Assets**

The number of funds investing in digital assets is on the rise. The Act considers the fund class in determining the requirements that apply to the fund under the Act, rather than the investment strategy. However, in assessing whether service providers meet fit and proper criteria, the Authority considers the nature of the underlying investments in the fund and the complexity of the fund. Therefore, where the fund is investing in digital assets, the service providers and the operator must have the requisite skillsets and experience that would allow them to carry out their responsibilities effectively. Additionally, the Digital Asset Business Act 2018 (DABA) will apply to service providers appointed to an investment fund who are conducting activities that fall within the scope of DABA from or within Bermuda (refer to the following link for a list of activities that are in scope of DABA: <https://www.bma.bm/digital-assets-supervision-regulation>).

In addition to the disclosures prescribed by the Offering Document Rules 2019, the fund's offering document must also contain disclosures that would enable investors to make sound decisions concerning the fund. This includes, but is not limited to, the selection criteria and the due diligence process for selecting crypto exchanges, details on the fund's liquidity, clarification on whether or not the crypto exchanges are licensed, details on the custody arrangements (refer to the following link to access the Digital Asset Custody Code of Practice published on the Authority's website: <https://www.bma.bm/document-centre/policy-and-guidance-digital-asset-business>) and the risk factors, including details on risks that are specific to the crypto assets, such as cyber risk.

## **19. Cannabis**

The Authority will not object to regulated financial institutions conducting business with entities conducting business or participating in the cannabis sector, provided that the conduct of such business would not be contrary to any offences that may be provided for in the laws of relevant foreign jurisdictions, or that could amount to 'criminal conduct', as defined in POCA, section 3.

Where the conduct of such business may contravene POCA, there may be a statutory defence under section 45B of POCA, which provides, in part, that a person does not commit an offence under section 43 (concealing or transferring criminal property), section 44 (assisting another to

retain criminal property) or section 45 (acquisition, possession or use of criminal property) of the Act where there is knowledge, or a reasonable belief, that the relevant criminal conduct occurred outside Bermuda and was not unlawful under the criminal law applicable at the time in the foreign jurisdiction where it occurred. The onus will be on the RFIs to fully understand the applicable laws related to cannabis in the jurisdiction where the business activities are being conducted, including the jurisdiction of origin. Supervised entities are also expected to take the appropriate precautionary measures to detect and prevent money laundering. This includes a risk assessment of the underlying investments.

Additionally, supervised entities defined as RFIs under POCA section 42A must also apply customer due diligence or enhanced due diligence as required by POCA. This includes the need for the supervised entity to conduct source-of-funds enquiries to ensure that the funds' financial assets and the business' capital do not pre-date the date of legitimisation of the cannabis business in the relevant jurisdiction. RFIs also have the obligation to file suspicious activity reports with the Financial Intelligence Agency should an entity observe any behaviours that may indicate criminal activity.

## **20. Investment Fund Billing Contact Details**

Typically, the fund administrator is also the billing contact. To ensure the Authority has the fund's correct billing information on file, please promptly disclose the new billing contact details on the submission form when the billing information has changed.

## **21. BMA Banking Details**

Please note that cheques will no longer be accepted.

### **Domestic Payments**

Institutions can make payments directly to the BMA via the online banking systems at HSBC Bermuda and Butterfield Bank via the following 12 payment streams:

- Proceeds of Crime (AML)
- Bank and Deposit Company Act (BDCA)
- Corporate Registration Process (CRP)
- Corporate Service Providers (CSP)
- Currency Customers (CUR)
- Digital Asset Business Act (DABA) – HSBC only
- Investment Funds Act 2006 – Fund Administrators (FNDADM)
- Insurance Act 1978 and amendments (INS)
- Investment Business Act 2003 (IBA)
- Investment Funds Act 2006 (IFA)
- Trust Act 2001 (TBA)
- Miscellaneous Charges (MISC)

Each payment stream is easily identifiable within the 'Bill Payee' section of the various online banking systems via the prefixes 'Bermuda Monetary Authority' or 'BMA'.

Please ensure the entity name or registration number is included with all electronic remittances made through online banking portals or wire transactions.

### **International Payments**

*The following is information required to make international wire transfers to the BMA's two bank accounts:*

For payments to the Authority's Bank of NT. Butterfield & Son Limited account, please use the below routing information:

*The Bank of New York Mellon*  
*ABA 021000018*  
*SWIFT IRVTUS3NXXX Account number: 8900570903*  
*Credit to:*  
*Bank of NT. Butterfield and Son Limited*  
*SWIFT BNTBBMHM In favour of:*  
*Bermuda Monetary Authority*  
*Account No: 20 006 060 894331 100*

For payments to the Authority's HSBC account, please use the below routing information:

*HSBC Bank USA, NA.*  
*ABA 021001088*  
*SWIFT MRMDUS33*  
*Credit to:*  
*HSBC Bank Bermuda Limited*  
*SWIFT BBDABMHM In favour of:*  
*Bermuda Monetary Authority*  
*Account No: 010 308427 001*

If you have any queries regarding payments, please email [finance-receivables@bma.bm](mailto:finance-receivables@bma.bm).

## **22. General Queries**

Please send general fund-related queries to [funds@bma.bm](mailto:funds@bma.bm).