

EXEMPT FUNDS

Following detailed consultations between the Bermuda Government, the Bermuda Monetary Authority (**BMA**) and the funds industry in Bermuda and overseas, the Investment Funds Amendment Act 2013 (**Amendment Act**), which amends the Investment Funds Act 2006 (**IFA**), was passed by the Bermuda Government on 3rd October 2013. The new measures introduced by the Amendment Act essentially enable funds which meet certain requirements to be exempt from the requirement of authorisation and supervision by the BMA under the IFA. The Amendment Act provisions are responsive to industry demands and will enhance the attraction of Bermuda as the domicile of choice for fund managers.

New Exempt Funds: Class A and Class B

The Amendment Act expands the options for investment managers who want to establish a fund in Bermuda. It introduces two new categories of funds which are exempt from the requirements for authorisation by the BMA (**Exempt Funds**) namely (1) Class A Exempt Funds and (2) Class B Exempt Funds.

Exempt Funds whether Both Class A Exempt Funds or Class B Exempt Funds must meet the following requirements:

- The fund must be only open to subscription by “qualified participants”. This is a category of investor which is similar to accredited investors in the US or sophisticated investors in the UK. A qualified participant includes an individual who is: (a) a high income private investor with personal income in excess of US\$200,000 in each of the two years preceding the current year or joint income with his/ her spouse of US\$300,000 in each of these years and who has reasonable expectation of reaching the same income in the current year; (b) a high net worth investor who has net worth in excess of US\$1,000,000 individually or jointly with his/her spouse; or (c) a sophisticated investor being an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.
- The fund must appoint various service providers including a fund administrator, an auditor and a custodian or prime broker.
- The fund must appoint a resident representative in Bermuda being an officer, trustee or resident representative who has access to the books and records of the fund (and this can be provided by the Bermuda based administrator).
- The fund must annually file a copy of its audited financial statements together with a certification stating that it continues to meet the qualification for its exemption and a statements of any material changes to the fund’s offering memorandum.

- Give notice to the BMA of a disqualifying event within 14 days of its occurrence.

The differences between qualifying as a Class A Exempt Fund or a Class B Exempt Fund are three-fold:

1. The application process though for each Class the process is expedited.
2. The investment manager specific requirements.
3. The change in service provider notification.

Looking at each Class of Exempt Fund in turn:

Class A Exempt Funds

To qualify as a Class A Exempt Fund, the fund must appoint an investment manager that is either: (a) licensed by the BMA under the Investment Business Act 2003; as amended or (b) regulated by a regulator recognised by the BMA, such as the US Securities and Exchange Commission or the UK Financial Conduct Authority; or (c) manages assets of US\$100 million or more and carrying business from a jurisdiction recognised by the BMA. Recognised jurisdictions include the US and the EU.

Class A Exempt Funds can be launched quickly by delivering to the BMA an exemption form confirming that the fund satisfies the requirements for exemption from authorisation, accompanied by the fund's offering memorandum on or before the date of commencement of the fund's offering. The BMA is no longer required to review and approve the offering memorandum. Further once notification is filed then this exemption is automatically granted and the fund can be launched following filing. Responsibility for ensuring compliance with the contents requirements of the IFA and the supporting rules is with the operator for the fund and its legal advisers. The fee to be paid at the time of registration and annually thereafter is US\$1,500.

The continuing obligation requirements for Class A Exempt Funds are not onerous. Furthermore the Class A Exempt Fund is not required to obtain the approval of the BMA for any change in its service providers. However the fund must deliver to the BMA annually on or before 30 June a prescribed form confirming that it continues to qualify as a Class A Exempt Fund and a copy of the fund's audited financial statements for the preceding year, together with details of any material changes made to the fund's offering memorandum.

Class B Exempt Funds

To qualify as a Class B Exempt Fund, the fund need only have appointed an investment manager as opposed to a manager who is regulated by a recognised regulator. A Class B Exempt Fund will be required to submit an application to the BMA, together with its offering memorandum. The BMA will review the fund's offering memorandum to check that it contains the prescribed contents requirements and that the services providers appointed by the fund are deemed to be fit and proper persons. The application is deemed to be approved if the BMA does not either reject it or respond to it within 10 days of the day it is submitted. The fee to be paid at the time of registration and annually thereafter is US\$1,000.

The continuing obligation requirements or Class B Exempt Funds are the same as for Class A Exempt Funds described above, save that a Class B Exempt Fund must also obtain prior approval from the BMA for any changes to its directors or service providers.

General

The BMA must be notified within 14 days if a Class A Exempt Fund or Class Exempt B Fund no longer satisfies the requirements set out in the Amendment Act.

Funds which are currently registered as “Exempted Funds” under the IFA will be “grandfathered” for 3 years after which they will have to be registered as either Class A Exempt Funds or Class B Exempt Funds.

The introduction of the new Exempt Funds in the Amendment Act will reduce the time to launch which is responsive to the fund industry demands. It is an initiative to be applauded and should encourage fund managers to consider Bermuda as the domicile for establishment of their new funds.

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ISIS Law Limited 5th Floor, Andrew’s Place, 51 Church Street, Hamilton, HM 12, Bermuda
T +1 441 400 4747 **F** +1 441 236 1999 **W** www.isislaw.bm