



## Bermuda Exempted Funds Regime

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In 2013, Bermuda's investment funds regime was updated as a result of collaboration between the Bermuda Monetary Authority (BMA), Government and industry stakeholders to include the establishment of two new classes of 'light-touch' exempted (non-regulated) funds, namely:

- Class A exempt funds; and
- Class B exempt funds.

### Extension of Transition Period

Previously exempted funds under the old (pre-2013) regime were originally given a transition period of three years within which to convert to one of the two new classes. The initial transition deadline was 3 October, 2016. However, the deadline was recently extended by an additional year such that any relevant pre-existing or legacy exempted funds will now have until 3 October, 2017 to re-classify as either a Class A or Class B exempt fund.

### Class A Exempt Funds

In order to qualify as a Class A exempt fund, an investment fund must:

- Only be open to subscription by qualified participants (as defined below).
- Appoint an investment manager that either:
  - is licensed by the BMA under the Investment Business Act 2003, as amended;
  - is authorised or licensed by a foreign regulator who is recognised by the BMA (such as the US Securities and Exchange Commission or the UK Financial Conduct Authority); or
  - has gross assets under management of US\$100 million or more (either individually or as part of a group) and is carrying on business from Bermuda or a jurisdiction recognised by the BMA.
- Appoint an officer, trustee, or resident representative in Bermuda who has access to the books and records of the fund.
- Appoint service providers including a fund administrator, registrar, auditor, and a custodian or prime broker.
- Ensure that the financial statements of the fund are prepared in accordance with International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principles (GAAP) in Bermuda, Canada, the UK or US or such other GAAP considered appropriate by the BMA.

If the above requirements for a Class A exempt fund are not met a fund manager may consider a Class B exempt fund.

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## **Class B Exempt Funds**

In order to qualify as a Class B exempt fund, an investment fund must:

- Only be open to subscription by "qualified participants" (as defined below).
- Appoint an investment manager (although there is no requirement for the manager to be regulated as with a Class A exempt fund).
- Appoint an officer, trustee, or resident representative in Bermuda who has access to the books and records of the fund.
- Appoint service providers including an investment manager, fund administrator, registrar, auditor, and a custodian or prime broker who must be fit and proper, in the BMA's view, to perform the respective functions of their office.
- Ensure that the financial statements of the fund are prepared in accordance with International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principles (GAAP) in Bermuda, Canada, the UK or US or such other GAAP considered appropriate by the BMA.

## **Qualified Participants**

In respect of both Class A exempt funds and class B exempt funds, a "qualified participant" is a category of investor which is similar to accredited investors in the US or sophisticated investors in the UK. A qualified participant includes individuals who fall within any of the following categories:

- 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 (the year in which the investment is purchased) or joint income with his/her spouse in excess of US\$300,000 in each of those years and who has reasonable expectation of reaching the same income in the current year
- b. a high net worth private investor who has a net worth in excess of US\$1 million individually or jointly with his/her spouse
- c. a sophisticated private investor being an individual who has such knowledge of, and experience in, financial and business matters, that would enable him 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 US\$5million, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member
- e. unincorporated associations, partnerships or trusts, each of which has total assets of not less than US\$5 million, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member
- f. bodies corporate, all of whose shareholders fall within one or more of the categories set out in (a) to (h)
- g. partnerships all of whose members fall within one or more of the categories set out in (a) to (h)
- h. trusts all of whose beneficiaries fall within one or more categories set out in (a) to (h)

## **Applications for Class A and Class B Funds**

Applications for the establishment of both Class A and Class B funds are fairly simple and continuing obligations are not onerous.



The Class A fund can be launched by submitting a self-certification form to the BMA that the fund satisfies the requirements for exemption from authorisation, accompanied by the fund's offering memorandum. The exemption is automatically granted.

A Class B fund exemption (including the fund's offering document) must be submitted to the BMA. The BMA vets the fund's principals and service providers to ensure that they are fit and proper considering their respective functions. After filing has occurred, the BMA has ten days to revert with any issues, failing which the Class B exemption is automatically granted.

### **Re-classification as an Authorised Fund**

An exempted fund may be re-classified as an authorised fund (which is subject to BMA regulation) if appropriate. Authorised funds include institutional funds, administered funds, specified jurisdiction funds and standard funds.

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