



BEESMONT
Law Limited

Guide to Bermuda Investment Funds

This Guide provides a brief overview and gives general information relating to the law and procedures for the establishment and operation of investment funds in Bermuda. It has been prepared to assist parties interested in establishing an investment fund in Bermuda and to give a summary of the law and procedures relating to the establishment, operation and ongoing requirements under Bermuda law. It is not intended to be comprehensive but to provide an outline of the laws and regulations which we hope will be of use to our clients while deciding the type of structure that is appropriate for their business objectives.

Prior to proceeding with the incorporation or establishment of an investment fund we advise our clients to seek legal advice and consult tax and other professional advisors in the relevant jurisdictions. If any questions arise in relation to the contents of this Guide, please address them to any member of the Corporate Department whose contact information is provided at the end of this Guide.

This Guide has been prepared in accordance with the law, policy and regulations of Bermuda as of the date referred to below.

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August 2019

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1. INTRODUCTION

Over the years Bermuda has developed a highly regarded reputation and position as a substantive international financial centre with a strong focus on financial stability coupled with effective and efficient supervision and regulation for both local and international business. Through the efforts of the Government and highly skilled professionals from the legal, accounting and financial services fields and the oversight of the Bermuda Monetary Authority (**BMA**), Bermuda is committed to providing open, transparent regulatory frameworks and requirements, which are consistent with international best practice.

Underpinning the supervisory work programme is the BMA's risk-based philosophy which ensures that standards are appropriately calibrated to Bermuda's wholesale and domestic financial markets and that supervisory resources are applied to those firms which pose the greatest risk. The BMA's sensible and effective regulation of the investment industry provides suitable transparency and disclosure conditions which make Bermuda a globally respected jurisdiction. Further Bermuda has since the 1940s had legal requirements under its Exchange Control legislation to provide information on beneficial ownership of companies registered in Bermuda.

Bermuda is a tried and tested jurisdiction with a Government based on the Westminster system, with English common law and recourse to the Privy Council. Bermuda also has a specialist commercial division of the Supreme Court of Bermuda which offers a more bespoke service to commercial users of the courts. Bermuda therefore has specialist court rooms and specialist commercial judges with experience of all kinds of commercial disputes but particularly fund and insurance cases. Bermuda has adopted the English concept of "overriding objective" for commercial parties which is designed to ensure expeditious and proportionate justice. The commercial court has considered a wide range of fund disputes and most cases have been satisfactorily resolved at first instance with very few appeals to the Court of Appeal of Bermuda (which sits 4 times per year) and no investment fund appeals to the Privy Council.

Bermuda has access to capital and talent. It is the World's largest captive insurance centre and the third largest reinsurance market (after the USA and the UK) and more recently Bermuda has become globally the leading market for insurance linked securities (**ILS**). Furthermore, Bermuda has decades of experience in the banking, trust and asset management industries. As a consequence, Bermuda offers a deep talent pool of experienced and internationally trained professional service providers, which include fund administrators, asset managers, wealth managers, telecommunications providers, accountants, bankers and independent directors. Bermuda is a full service "one stop shop" jurisdiction enabling the Bermuda domiciled fund to be managed, administered, audited, listed and regulated all on the island. Bermuda's modern infrastructure enables clients to structure their funds so as to have all key players in one place allowing for streamlined daily operations and oversight.

Bermuda is a major centre in the international offshore investment funds industry with over US\$165 billion of fund assets domiciled in Bermuda and a strong stable of fund structures listed on the Bermuda Stock Exchange (**BSX**) which was founded in 1971. The BSX is also the global leader in the listing of ILS offerings which have an aggregate market capitalisation of about US\$13.5 billion. Several larger Bermuda based funds are quoted on leading international stock exchanges such as the Hong Kong Stock Exchange, Australian Stock Exchange, Singapore Stock Exchange and London Stock Exchange. The BSX is a fully electronic trading, settlement and depositary exchange and the only offshore platform which is a full member of the World Federation of Exchanges and is recognised by the SEC of the USA, the Financial Conduct Authority and HMRC of the UK and the Canadian Ministry of Finance.

Other advantages to using Bermuda as a domicile for an investment fund and/or administration is that it has a convenient location and an advanced and robust infrastructure. Bermuda is one hour ahead of New York and 4 hours behind London and consequently ideally located for transatlantic business. It is less than a 2-hour flight to



New York (with US preclearance in Bermuda) and 7 hours to London (with daily flights in the summer). Bermuda demonstrated its infrastructure resilience in 2014 when after sustaining a direct Category 3 hurricane hit on a Saturday morning the central business district was fully operational at 8.30 a.m. on the Monday morning.

BeesMont Law has historically provided a strong investment funds practice and continues to be able to assist clients with specialised advice regarding investment vehicles and innovative structures. Our team has experience with a range of investment products including, but not limited to, the following;

- Establishing investment vehicles (including equity funds, bond funds, infrastructure funds, private funds, index funds, alternative investment funds and private equity funds)
- Segregated Accounts structures (including incubators/start-ups, umbrella funds, master-feeder funds, separate account management and ILS strategies)
- Mergers and acquisitions (including changes to fund domicile)
- Initial public offerings (debt or equity issues)
- Preparing and advising on disclosure and filing requirements of the BSX
- Listings of investment funds on any Appointed Stock Exchange
- Preparing and negotiating contractual documentation
- Schemes of arrangement
- Advising investment management companies/administrators on corporate governance/operational issues and drafting standard form agreements

2. BERMUDA MONETARY AUTHORITY

The BMA was established in 1969 under The Bermuda Monetary Authority Act 1969 and is managed by a Board of Directors, with a chairman and chief executive officer. The BMA is responsible for the supervision, regulation and inspection of financial institutions which includes banks, custodians, broker dealers, administrators and investment managers. The sophistication of the BMA as a regulator has been recognised as Bermuda has been selected in the first wave of non-EU countries to be assessed in respect to the EU's Solvency II Directive and Bermuda has achieved conditional status as a designated qualified jurisdiction by the National Association of Insurance Commissioners of the USA. The BMA is a full voting member of the International Organisation of Securities Commissions.

3. INVESTMENT FUNDS

The Investment Funds Act 2006, as amended (**IFA**) governs the authorisation or registration and regulation of investment funds.

The IFA broadly defines investment funds as:

“any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.”



Such an arrangement is essentially a pooled investment vehicle and the other features of an investment fund falling within the IFA are that the participants (i.e. investors):-

- (a) lack day to day control over the management of the fund's property (irrespective of whether there is a right to be consulted or give directions to management); and
- (b) are entitled to have their rights or interests (howsoever described) in the fund redeemed in accordance with the fund's constitution and offering document.

In other words, the IFA does not regulate funds which are closed-ended (i.e. investors are not provided with redemption or repurchase rights).

There are various ways to structure and organise investment funds in Bermuda. The most popular form of investment fund vehicle in Bermuda is an exempted limited liability company incorporated as a "*mutual fund company*" (discussed below) pursuant to the Companies Act 1981, as amended (**Companies Act**). A mutual fund company is by its Memorandum of Association constitutionally an open-ended investment fund though it could in its Bye-laws restrict the ability of investors to redeem without Board approval which in effect renders it close-ended but because this restriction could be lifted by the Board it falls within the ambit of regulation by the BMA as either an authorised or registered fund.

Other investment fund vehicles include:

- (i) Unit trust schemes (preferred by Japanese investors)
- (ii) Limited partnerships (useful for private equity funds)
- (iii) Closed-ended funds (currently fall outside the IFA).

It is also now possible to establish an investment fund as a LLC, which is a hybrid entity that includes features of both limited companies and partnerships. Similar to both companies and partnerships that so elect, LLCs have a legal existence separate and distinct from its owners, commonly referred to as members. As is the case with shareholders in a limited company, LLC members, are generally not personally liable for financial obligations of the LLC. Consistent with partnerships, LLCs are governed by contractual agreement amongst the members. However, any LLC member may participate in the day to day management and operations of the LLC without losing the liability protection offered by this structure. The LLC structure is well known investment vehicle and the Bermuda LLC legislation is modelled on the LLC legislation in Delaware, USA.

The IFA prohibits the operation of an '*open-ended*' investment fund in Bermuda unless it is:-

- authorised as an Institutional, Administered or Standard fund (**Authorised Funds**); or
- registered as either a Professional Class A fund or Professional Class B fund (**Professional Funds**); or
- registered as a Private fund (**Private Funds**).

Professional Funds and Private Funds are collectively referred to herein as **Registered Funds**.

Broadly, with an Authorised Fund regime, the IFA controls the regulatory disclosure, content of offering documents and responsibilities of service providers. Whereas with a Registered Fund the IFA imposes certain filings and service provider requirements.

For ease of reference a flow chart is provided in Schedule I.

TYPES OF OPEN-ENDED FUNDS

3.1 Mutual Fund Company (open ended)

The Companies Act 1981 defines a mutual fund company as a company “*incorporated for the purpose of investing the moneys of its members for their mutual benefit and having the power to redeem or purchase for cancellation its shares without reducing its authorised share capital and stating in its memorandum that it is a mutual fund*”. A fundamental characteristic of the mutual fund is that it can redeem its participating shares out of realised or unrealised profits by reference to the net asset value of such shares. Furthermore, the redeemed shares may be subsequently reissued in respect of new subscriptions and to new subscribers.

This is the most common form of investment fund and is incorporated by registration typically as an exempted mutual fund company under the Companies Act. The mutual fund company is the typical vehicle for a hedge fund. As noted above the bye-laws of a mutual fund company may restrict redemptions by shareholders but because this restriction this can be lifted by the Board the mutual fund company is subject to regulation under the IFA as either an Authorised Fund or a Registered Fund.

Any offer of shares to the public by a mutual fund company is subject to the Companies Act prospectus requirements as well as the content provisions of the IFA which require disclosure of certain matters relating to the mutual fund.

A mutual fund company can be approved by the BMA for incorporation within 24 to 48 hours once all necessary information is received. The application for approval by the BMA pursuant to the IFA as either an Authorised Fund or Registered Fund is potentially a more time consuming process.

A hedge fund will typically be incorporated as a mutual fund company.

3.2 Partnership Fund (open ended or close ended)

A partnership fund is typically an exempted limited partnership under which the property is held on behalf of participating partners of the partnership and governed by the partnership agreement and the Partnership Act 1902, as amended, the Limited Partnership Act 1883, as amended and Exempted Partnership Act 1992, as amended (collectively the **Partnership Legislation**). The partnership agreement is typically executed by the manager as general partner (who can be based overseas) and one or more limited partners. Partnerships may elect to assume separate legal personality and limited liability status is granted upon registration.

The limited partnership fund is typically used for private equity funds and is principally regulated by its partnership agreement as the Partnership Legislation imposes less regulation than applies to a corporate fund governed by the Companies Act.

3.3 Unit Trust Fund (open ended or close ended)

A Unit trust fund is defined in section 2 of the IFA as a fund under which the property is held on trust for the participants. A unit trust is established by a trust deed which is typically either executed by the trustee or made between the manager and the trustee. It has no separate legal personality.

A unit trust fund operates in accordance with the trust deed and investors contribute funds to the trustee to hold such funds in trust. The funds are managed by the manager for the investors’ benefit. Each investor is a beneficial owner of a percentage of the assets held by the trustee. Unit trust funds are preferred by Japanese investors.

Like partnerships, unit trust funds are fiscally transparent and are more flexible than both a corporate fund and a partnership as there is minimal legislation governing them.



3.4 LLCs (open-ended or closed-ended)

As noted above, the LLC in Bermuda is closely modelled on the Delaware LLC structure. It has the characteristics of a company and a partnership. Hence the Bermuda LLC it has its own separate legal personality like a mutual fund company but has a capital structure similar to a partnership with members contributing or agreeing to contribute rather than to subscribe for shares. It can be structured to allow for redemptions or restrict the same.

3.5 Closed Ended Investment Vehicles

As noted in Section 2 above, closed-ended investment funds do not fall within the statutory definition of an investment fund under the IFA and thus fall outside the regulation of the IFA (i.e. as either an Authorised or Registered Fund). Closed-ended funds are typically terminated at net asset value at the end of a pre-determined period. These investment funds may be an exempted limited liability (standard) company or LLC or unit trust or limited partnership with powers authorising the Board of Directors, Managing Member, Trustee or General Partner, as the case may be, to effect redemptions or repurchases of shares in certain circumstances. Such powers are used for the purposes of ensuring compliance with investors' qualification restrictions and for returning capital to investors at appropriate times. Since such closed-ended companies/LLCs, unit trusts and limited partnerships do not fall within the statutory concept of "investment fund" for the purposes of the IFA they are not subject to the provisions of the IFA.

An offer of shares to the public by a closed-ended investment company/LLC (as distinct from a unit trust or limited partnership) must comply with the prospectus provisions of the Companies Act/LLC Act and the offering document must be registered with the Registrar of Companies (RoC).

4. REGULATORY FRAMEWORK

The IFA provides the statutory basis for regulating funds in Bermuda. The IFA deals with the establishment, operation and regulation of investment funds and is intended to protect the interests of investors using a risk based supervisory approach. Regulation procedures differ based on the type of fund under consideration namely whether Private Fund, Professional Class A or B Fund, Authorised Institutional, Administered or Standard, each of which are considered below.

A Bermuda organised company, LLC, unit trust, or partnership that meets the definition of an investment fund under the IFA (i.e. essentially it is open-ended) must apply to the BMA for approval as an Authorised Fund or must be registered as either a Private Fund or a Professional Fund.

The BMA is involved with both the processing of the investment fund establishment and approval of the investment fund activity as either an Authorised Fund or Registered Fund. These 2 vetting applications are separate but can be made contemporaneously or independently. Typically, the incorporation/establishment application is made first to enable the BMA to complete its due diligence process in respect of the initial shareholders and enables the promoters to open bank accounts for the fund in advance of resolving the fund structure and service providers. See Section 8 for more information on this vetting process.

REGISTERED FUNDS

4.1 Private Funds

A Private Fund is an open-ended investment fund which has or will have not more than twenty (20) participants, and does not promote itself by communicating an invitation or inducement to the public generally to subscribe for its securities.

The operator of a Private Fund (e.g. the board of directors in the case of a mutual fund company) must appoint the following service providers:-

- a local service provider who is separately authorised and regulated by the BMA (for example a licensed Bermuda administrator or corporate service provider); and
- (unless a waiver is granted) a custodian to safeguard the Private Fund's assets.

In the application for registration as a Private Fund the operator of a Private Fund must also provide the following to BMA:-

- (a) information relating to the fund;
- (b) copy of the offering document; and
- (c) details of the service providers.

If the BMA is satisfied that the applicable investment fund complies with the requirements of the IFA, it may grant the application to be registered as a Private Fund. As at the date of this Memorandum, the BMA fee for registration as a Private Fund is on application and annually \$1,250.

The annual compliance filing by a Private Fund, which must occur on or before 30 June, will certify continuing compliance with the Private Fund statutory criteria and includes the following statistical information:-

- (a) information on the net asset value of the fund (including amounts subscribed and redeemed during the year) and its underlying assets;
- (b) a copy of the fund's management or audited financial statements; and
- (c) Information on any material changes that occurred during the past year (reporting or accounting period).

A Private Fund may be *reclassified* as either an Authorised Fund or a Professional Fund, subject to compliance with their respective requirements.

4.2 Professional Funds

Open-ended investment fund structures which are not eligible to be registered as a Private Fund pursuant to the IFA, may apply to the BMA in order to be registered as a Professional Fund provided that certain criteria is satisfied. There are 2 types of Professional Funds:

- (I) Class A Funds; and
- (II) Class B Funds.

These are discussed in turn below.

4.2.1 Professional Class A Fund

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

- (a) be only open to subscription by "*qualified participants*" (as defined below);
- (b) appoint an investment manager who is either:
 - licensed by the BMA under the Investment Business Act 2003; as amended; or
 - authorised or licensed by a foreign regulator who is recognised by the BMA (such as federal regulator in the US or the European Commission or the UK Financial Conduct Authority); or

- carrying on business in or from Bermuda or a jurisdiction recognised by the BMA and manages gross assets of \$100 million or more (either individually or as part of an investment management group¹). Recognised jurisdictions include the US and the EU.²
- (c) the fund must appoint various service providers including a fund administrator, an auditor and (unless exempted) a custodian or prime broker;
- (d) the fund must appoint in Bermuda 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); and
- (e) the financial statements of the fund must be prepared in accordance with International Financial Reporting Standards (**IFRS**) or Generally Accepted Accounting Principles (**GAAP**)³ or such other standards as the BMA may recognise.

The operator of the proposed Professional Class A Fund must apply to the BMA for registration⁴ on or before the date of commencement of the fund's business. This is not a self-filing exercise as before but nor does it involve a review of the offering document as is the case with a Professional Class B Fund; it involves satisfying itself that the fund complies with the Class B qualification criteria.

No further regulatory approvals are required but if the Professional Class A Fund is making a public offering of its shares, other than on an Appointed Stock Exchange, it must file as soon as reasonably practicable the offering document with the RoC which complies with the Companies Act prospectus provisions.

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 operator of an open-ended investment fund is the Board of Directors (mutual fund company), Managing Member (LLC), Trustee (unit trust) or General Partner (limited partnership), as the case may be.

As at the date of this Memorandum, the BMA fee for registration as a Professional Class A Fund is on application and annually \$1,620.

The Professional Class A Fund is not required to obtain the approval of the BMA for any change in its service providers. However, the Professional Class A Fund must deliver to the BMA annually on or before 30 June a statement of compliance⁵ which certifies that the fund continues to satisfy the requirements for the Class registration and files the following:-

- a copy of the fund's prospectus;
- a copy of the audited financial statements for the preceding year; and

a statement of any material changes made to the fund's prospectus.⁶

A Professional Class A Fund may be reclassified as either an Authorised Fund or other Registered Fund, subject to compliance with their respective requirements.

¹ This has the meaning given to a group that carries on the business of managing investments within the meaning of paragraph 3 of Part 2 of the First Schedule to the Investment Business Act 2003, as amended.

² Application can be made to the BMA in advance of registering to discuss the admissibility of any jurisdiction not listed by the BMA on funds@bma.bm

³ GAAP in Bermuda, Canada, UK or US is acceptable

⁴ via ERICA (see Professional Class A Fund Registration Form)

⁵ via ERICA

⁶ Typically by way of a marked offering document

4.2.2 Professional Class B Fund

The same Professional Class A Fund criteria applies to a Professional Class B Fund except that the investment manager is not required to manage gross assets of \$100 million or more rather the manager must be a fit and proper person for the applicable investment strategy.

A Professional Class B Fund must submit an application to the BMA⁷, together with its offering memorandum for review. 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 or respond within 10 days of the day it is submitted.

The operator of a Professional Class B Fund shall apply to the BMA for approval *prior* to appointing a person to act as director or service provider. Where the BMA deems a proposed director or service provider not to be a fit and proper person to perform the functions of his office, the BMA must within 14 days of receipt of the application for approval, inform the applicant in writing of its objection to the appointment. Where the BMA fails to give notice within the prescribed time, the BMA shall be considered to have no objection to the application for appointment of the director or service provider.

The operator of a Professional Class B Fund shall file a copy of the fund's audited financial statements for the preceding year, a marked prospectus highlighting all material changes to the document and a schedule communicating all changes to the directors and service providers.

As at the date of this Memorandum, the BMA fee for registration as a Class B Professional Fund is on application and annually \$1,080.

4.2.3 General Points on Professional Funds

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

The ongoing requirements for both Professional Class A and Class B Funds are to:-

- give notice to the BMA of a disqualifying event (i.e. one of the above criteria for the Class A or B registration no longer applies) within 14 days of its occurrence.
- annually (as note above) file a copy of its audited financial statements together with a certification stating that it continues to meet the qualification for its applicable registration and a statement of any material changes to the fund's offering memorandum.

In respect of both Professional Class A Funds and Class B 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 \$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 of \$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 investor who has net worth in excess of \$1,000,000 individually or jointly with his/her spouse;

⁷ Via ERICA (see Professional Class B Fund Registration Form)

- (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;
- (d) bodies corporate, each of which has total assets of not less than \$5,000,000, 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 five million dollars, 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 paragraphs (a) to (e);
- (g) partnerships all of whose members fall within one or more paragraphs (a) to (e); and
- (h) trusts all of whose beneficiaries fall within one or more paragraphs (a) to (e).

AUTHORISED FUNDS

The IFA requires all open-ended investment funds to which it applies (as discussed in Section 3 above) to be authorised if not otherwise a Private Fund or a Professional Fund (as discussed in Section 4.1 and 4.2 above). An Authorised Fund may be classified and regulated by the BMA as one of the following:

- Institutional Fund
- Administered Fund
- Standard Fund
- Specified Jurisdiction Fund

Details of each category are considered below.

4.3 Institutional Funds

Institutional Funds are targeted at institutional/sophisticated investors and are restricted to “*qualified participants*” or those investing at least \$100,000. They are required to have an officer, trustee, or resident representative in Bermuda, being a person who has access to the books and records of the fund.

Institutional funds are exempted from the requirement that the custodian must be a financial institution in Bermuda and they are able to apply for an exemption from the requirement to appoint a custodian if it meets certain criteria.

An Institutional fund prospectus must include the disclosure that the investment fund is less regulated than a Standard fund (discussed below).

4.4 Administered Funds

Investment funds qualify for classification as Administered funds if they have an administrator licensed under the IFA and also either:

- (i) require participants to invest a minimum amount of \$50,000; or
- (ii) are listed on a stock exchange recognised by the BMA (see Schedule II of this Guide).

This category enables retail type funds which are listed on an Approved Stock Exchange to be supervised by the BMA on a similar basis to Institutional funds as they have the benefit of the additional regulation and supervisory protections of the recognised stock exchange.



4.5 Standard Funds

An investment fund qualifies for classification as a Standard fund if it does not fit within any other class of fund. Such funds are not restricted to sophisticated investors and may include a more significant retail element among their investors. Consequently, they are subject to more comprehensive regulation and supervision by the BMA.

The IFA requires certain prospectus disclosure and financial reporting obligations. A Standard fund is required to appoint BMA-approved service providers including an investment adviser or manager, an administrator, a custodian, a registrar and an auditor.

4.6 Specified Jurisdiction Funds

The Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012 (**Japan Fund Order**), together with the Investment Funds (Specified Jurisdiction Fund) Japan Rules 2012, permit Bermuda domiciled funds established pursuant to the Order to be marketed to the Japanese public (**Japan Fund**). The Japan Fund Order has been specifically created to ensure that the rules applicable to Japan Funds domiciled in Bermuda will meet the requirements of the Japanese Securities Dealers Association Regulations which provide that Japanese investment dealers may only solicit customers to subscribe to securities of any foreign investment trust that is established in a jurisdiction, the laws and regulations and disclosure system of which are "*well-provided*". Japan Funds will be regulated by the BMA, which will require additional information, governance and disclosure with respect to a Japan Fund.

CUSTODIAN WAIVER

Each of the following may apply to the BMA to waive or be exempt from the requirement for fund property to be entrusted to a custodian where it is satisfied alternative arrangements are in place for safeguarding fund property:-

- A Private Fund
- A Professional Fund (Class A or B)
- An Authorised Fund (Institutional, Administered or Standard)

This custodian waiver may be granted in the following cases:-

- (a) feeder funds and fund of funds, where 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
- (b) 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); or
- (c) funds which invest principally in infrastructure type assets or venture capital opportunities.

5. SEGREGATED ACCOUNTS COMPANIES

An investment fund which is a company may also seek designation under the Segregated Accounts Companies Act 2000, as amended (**SAC Act**) as a segregated accounts company (**SAC**). The SAC Act uses 3 conceptual definitions in order to provide a clear demarcation between different types of interest namely:

"account owner" is a person having an interest in the nature of an equity or residual interest in a segregated account – for example shareholders of a class;



"counterparty" is a person who transacts with the segregated account whether as a creditor or debtor; and
"creditor" is a person having an unsecured claim against the segregated account (which could include counterparty unless the counterparty is a debtor).

The most significant aspect of a SAC is that any asset which is linked to a particular segregated account shall be held as a separate fund which is not part of the general assets of the SAC and is held exclusively for the benefit of the account owner of that account and any counter-party to a transaction linked to that segregated account. Assets in such account shall only be available to meet liabilities to the creditors of that segregated account. The SAC Act provides that any asset which attaches to a particular account shall not be available or used to meet liabilities to and shall for all purposes be protected from the general shareholders of the SAC and from the creditors of the SAC who are not creditors in respect of the particular segregated account identified in the governing instrument. This principle has been upheld in the Bermuda Courts in recent years.

Thus in the context of an umbrella fund as a SAC, it may issue shares in classes and the proceeds of issue would be included in the assets of the account (i.e. the sub-fund linked to those shares). If shares are issued by a SAC but are not linked to a segregated account then such proceeds would comprise an asset of the SAC's general account.

The value of the SAC is that it enables entities registered under the SAC Act to achieve within a single company what could otherwise only be achieved by incorporating subsidiaries or by private act. This results from the provisions in the legislation which allows statutory division of accounts with the effect that the assets of one account are protected from the liabilities of the other accounts. Within the fund industry, this has proved particularly useful for clients wishing to establish master feeder fund structures, structures providing for multiple classes of shares or any structure where legal segregation of assets is desired.

The only additional costs associated with a company registered under the SAC Act is the annual fee of \$280 per segregated account subject to a maximum annual fee in the aggregate of \$1,120. Such fees are significantly less than standard incorporation fees or fees involved in the passing of a private Act.

6. TAX CONSIDERATIONS

Investment funds are not subject to tax, as there are no Bermuda corporation, profit, withholding, capital gains or income taxes applicable to an investment fund, closed-ended fund, unit trust, limited partnership or to its shareholders or unit holders or partners who are not ordinarily resident in Bermuda.

An exempted undertaking may apply for a Tax Assurance Certificate from the Minister of Finance. The certificate will confirm the exemption of the investment fund from such taxes, which is currently in effect until 31 March, 2035. This assurance is given as a matter of course to any investment fund with exempted status (i.e. not a local fund).

Investment funds fall within the definition of "*international businesses*" for purposes of the Stamp Duties (International Businesses Relief) Act 1990, which means that instruments executed by or in relation to an investment fund are exempt from stamp duty liabilities. Therefore, no stamp duty is payable upon, for example, share transfers or assignment of shares, units or interest in an investment fund.

7. CHANGE OF OWNERSHIP

Under the IFA an Authorised Fund must appoint a registrar and transfer agent and maintain in Bermuda a register of shareholders of participants in the Authorised Fund. Typically, this registrar service will be provided by the Bermuda based administrator. However, where there is an approved overseas administrator then there are a number of licensed service providers in Bermuda who provide registrar and transfer agent facilities which are able



to facilitate a variety of fund structures and widely-held interests. It is possible to appoint branch registrars or transfer agents in other jurisdictions.

Unless provided for in the bye-laws, trust deed or partnership agreement, there are no restrictions on ownership or transfer. This assumes that the necessary consents from the BMA under the Exchange Regulations have been obtained and due diligence requirements have been satisfied under Bermuda's anti-money laundering and anti-terrorism financing "*Know your Client*" policies.

8. VETTING PROCESSES

The incorporation and authorisation of investment funds involves careful vetting of applications by the BMA to ensure that promoters and service providers (including the investment manager) are suitable, and that investment funds meet the standards required in Bermuda. It should be appreciated that 2 separate vetting processes are involved within the BMA – the first in relation to the incorporation of the mutual fund company (or establishment of the investment vehicle), paralleling the approach taken to all company incorporation applications, and the second and much more intensive process in relation to authorisation (or, when appropriate, exclusion or exemption from authorisation).

The BMA recognises that applications for funds are frequently time-critical and that there may be concerns that the necessary vetting process may delay an application. Accordingly, the BMA 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 or vehicle established in advance of the submission of the related authorisation application. In such cases, the BMA will proceed immediately to complete the standard incorporations-related due diligence process, including a review of the intended participating shareholders, and take an early decision on incorporation/establishment without prejudice to its eventual decision on authorisation or exemption. 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 as such until it gains either authorisation or exclusion/exemption; or
- (b) ask to have the incorporation/establishment and authorisation applications processed simultaneously. In that event, the BMA will conduct, as expeditiously as possible, both the initial incorporations-related vetting and the fuller review of the prospectus, promoters, key service providers and of the overall arrangements that are proposed, in order to ensure that the fund meets the legal requirements and the BMA's policy guidelines. The BMA seeks to complete both review processes as quickly as possible but will not approve the incorporation until the review in connection with the authorisation or exemption has been satisfactorily completed. Thereafter, the signed consent and authorisation letters will be issued simultaneously.

The BMA will need to be satisfied that the operator of the fund and its proposed service providers are fit and proper persons to act as such and the combination of their experience and expertise must be appropriate for the purposes of the fund.

The IFA Fund Prospectus Rules apply to all Authorised Funds and require disclosure of certain matters in the offering document. Contact BeesMont for further details regarding the offering document disclosure requirements.

The BeesMont Law attorney involved with the authorisation process can assist with structuring the investment fund and also advise on what (if any) exemptions from certain provisions of the IFA Fund Rules can be obtained. For



example, given the nature of the fund, the BeesMont attorney can whether an exemption from the custodian requirement is available.

The BMA has the power to modify or waive the IFA Fund Rules and Fund Prospectus Rules in respect of a particular fund if it is satisfied that (a) compliance with the rules would be unduly burdensome or not achieve the purpose for which the rules were made; and (b) the modification or waiver would not result in undue risk to persons whose interests the rules are intended to protect.

An offer of shares by a mutual fund company (or a Bermuda manager of trustee of a unit trust) is subject to the prospectus provisions of the Companies Act (contact us for further information).

Section 26 of the IFA gives the BMA the power to require a fund operator to furnish it with such reports on the fund's activities as the BMA may reasonably require (contact us for further information).

This Guide is intended for informational purposes only and is not a substitute for legal advice. For more specific advice on investment funds in Bermuda, we invite you to contact the BeesMont Funds Team details set out below.

9. AML/ATF COMPLIANCE

All Authorised Funds and Registered Funds are required to satisfy Proceeds of Crime (Anti-Money-Laundering/Anti-Terrorist Financing) Regulations 2008. Accordingly, all IFA regulated funds are required to appoint a Compliance Officer and Money Laundering Reporting Officer and comply with Bermuda's AML/ATF Policies and Procedures.

10. AUDITOR

Although an auditor must be appointed for Professional Funds and Authorised Funds, there is no requirement that the auditor be based in Bermuda. The BMA is simply concerned that the proposed auditor is fit and proper.



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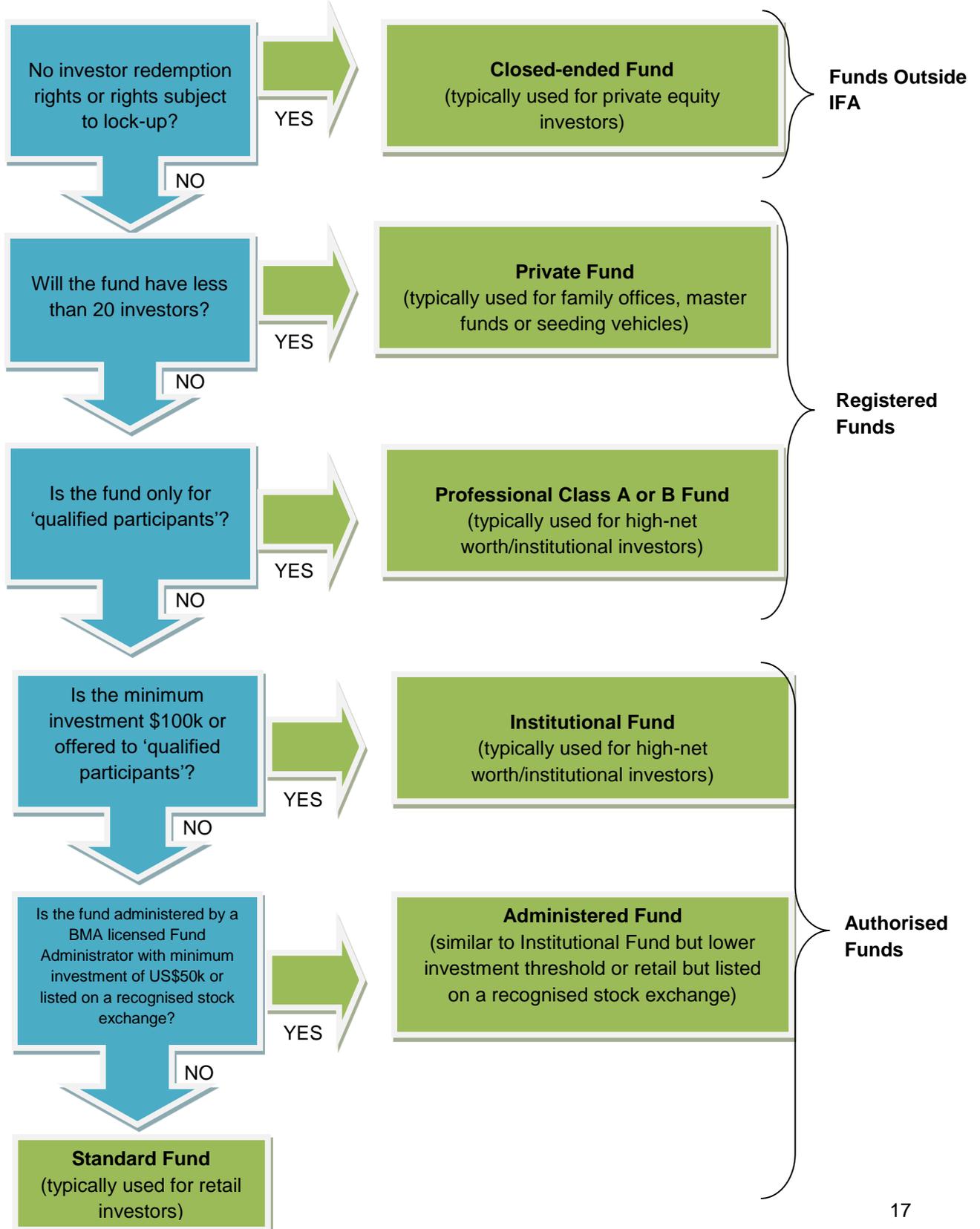


At BeesMont Law we strive to provide the highest standard of legal service for our clients through our responsive, thorough and innovative approach. We have a friendly and dynamic team who are approachable and sensitive to the commercial and practical needs of our clients, for whom we seek to provide tailored solutions.

BeesMont Law Limited

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SCHEDULE I - Regulatory Flowchart for Funds





SCHEDULE II - Appointed Stock Exchanges (Section 2(9))

ASX Limited (Australian Securities Exchange) [formerly The Australian Stock Exchange]
Bermuda Stock Exchange
Bolsa de Madrid
Bursa Malaysia Securities Berhad
Canadian Dealing Network
Euro MTF Market
Euronext Exchange
European Association of Security Dealers Automated Quotations
Frankfort Stock Exchange
Indonesia Stock Exchange
Irish Stock Exchange
JASDAQ MARKET
Johannesburg Stock Exchange
London Stock Exchange
London Stock Exchange – Alternative Investment Market (AIM)
Moscow Interbank Currency Exchange (A-1 Quotation List)
NASDAQ Dubai
Nasdaq Stock Market, Inc.
New York Stock Exchange, Inc
New Zealand Stock Exchanged
Nya Marknaden
NYSE Euronext
Oslo Børs
Oslo Axess
Paris Bourse
PLUS Markets
Qatar Exchange
Sao Paulo Stock Exchange
Securities and Exchange Commission of Brazil
Shanghai Stock Exchange
Singapore Exchange Securities Trading Limited
Société de la Bourse de Luxembourg S.A.
Specialist Fund Market
Stock Exchange of Hong Kong Ltd.
Stockholm Stock Exchange
Swiss Exchange
Taiwan Stock Exchange
Tel Aviv Stock Exchange
Tokyo Stock Exchange
The Toronto Stock Exchange
TSX Venture Exchange
Viennese Stock Exchange