

## Alert

### Amendments to Investment Business Act 2003

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**Bermuda passed the Investment Business Amendment Act 2022 (the “Amendment Act”) amending our Investment Business Act 2003 (“IBA”). The amendments are expected to come into force on 1 July 2022 (the “Effective Date”), although there will be a 12-month transition period for existing entities conducting investment business.**

Historically, the IBA provided that a person could not carry out “investment business in or from Bermuda” unless they were licenced or qualified for an exemption from the requirement to be licensed under the IBA. “Investment business” was broadly defined to mean engaging in one or more “investment activities by way of business” with “investment activities” being those which were set out in a schedule to the IBA. However, the IBA also defined “in or from Bermuda” as meaning that the entity had premises in Bermuda that it occupied for the purpose of the investment business and at which it employed staff and paid salaries and other expenses in connection with the investment business. As a result, entities which carried on investment business outside of Bermuda with no such premises in Bermuda (“Non Resident Providers”) and entities qualifying for an exemption from the requirement to be licenced under the IBA were not regulated under the IBA.

For those entities which did have physical premises and staff in Bermuda at which they carried out investment business, they could elect to either be licensed under the IBA or to avail themselves of one of a number of exemptions from the requirement to be licensed (each an “Exemption”). Exemptions involved a one-time process of notifying the Bermuda Monetary Authority (the “BMA”) of the entitlement to be exempted from the provisions of the IBA.

After consultation, the BMA decided that the IBA needed to be amended to reflect the global trend towards increasingly decentralised and geographically mobile operating models. The BMA’s stated intent is that the changes will allow for more effective monitoring of the regulatory perimeter and allow the BMA to better meet international regulatory cooperation expectations. As such, “in or from Bermuda” will be defined as meaning the entity in question is incorporated or formed in Bermuda or is incorporated or formed outside Bermuda but carries on investment business in or from Bermuda. The removal of the reference to having physical premises in Bermuda means that all Bermuda incorporated entities carrying out an investment activity must now consider whether they are subject to the IBA or not.

It should be noted that the Amendment Act does provide that the Minister of Finance may pass an Order deeming certain persons to be non-registrable and therefore not required to be licenced or registered under the IBA. The current expectation is that the Order will cover those entities already registered and regulated in Bermuda under other pieces of legislation including:

- Investment funds authorised or registered under the Investment Funds Act 2006;
- Persons who are registered under the Insurance Act 1978 to carry on insurance business (as defined under that Act), where such persons provide investment services in connection with the insurance business for which those persons are registered under the Insurance Act 1978;
- Persons who are registered under the Insurance Act 1978 as insurance managers, brokers, agents, salespeople, or members of an association of underwriters recognised by the BMA, where such persons provide investment services in connection with the business for which those persons are registered under the Insurance Act 1978;
- Persons who are registered under the Insurance Act 1978 as insurance marketplace providers, where such persons arrange deals in investments in connection with the business for which those persons are registered under the Insurance Act 1978;
- Persons licensed under the Digital Asset Business Act 2018 to carry on digital asset business, where such persons provide investment services ancillary to the digital asset business for which those persons are licensed under the Digital Asset Business Act 2018.

Following the Effective Date, entities carrying out investment business which previously enjoyed an Exemption as well as Non Resident Providers will be required either to be licensed under the IBA or to be registered as either a (i) Class A Registered Person; or (ii) Class B Registered Person. The regime for obtaining a full licence under the IBA as amended is not expected to change materially following the Effective Date. Registration as a Class A Registered Person or Class B Registered Person will involve the making of an application to the BMA to be registered in the appropriate category and will involve compliance with the applicable regulatory requirements of the category and certain on-going reporting.

Based on current information, entities which already hold a licence under the IBA on the Effective Date shall be deemed by the BMA to hold a standard licence and will not need to take any further action.

Class A Registered Persons will consist of those entities which (i) do not maintain a place of business in Bermuda; and (ii) are already licensed, authorised or registered by a “recognised regulator” in another jurisdiction. A Class A Person will be required to appoint an individual in Bermuda approved by the BMA as its “Senior Representative” who will serve as the entity’s point of contact in Bermuda.

Entities who do not qualify for the Class A Registered Person category and who previously qualified for one of the prior Exemptions or which have historically been Non Resident Providers are expected to either apply to be registered as Class B Registered Persons or to be licensed under the IBA. The Class B Registered Person category will likely enjoy a “lighter touch” from a regulatory perspective than licenced persons. A Class B Registered Person will be required to maintain a “principal place of business” in Bermuda. A “principal place of business” means (i) in the case of an individual who is a sole trader, the premises occupied for the purpose of carrying out such investment business or (ii) in any other case, the premises from which the entity carries on investment business and which it occupies for that purpose and at which it employs staff and pays salaries and other expenses in connection with the investment business.

There will be a transition period of 12 months from the Effective Date during which Entities previously granted an Exemption as well as Non Resident Providers will be required to apply to be either licensed or registered as a Registered Person in the applicable Class, pursuant to the terms of the IBA. As such, relevant entities engaging in investment business should start planning to apply for licensing/registration under the IBA in the near future.

Entities incorporated after the Effective Date and which intend to carry on investment business will need to be licensed or registered under the Act prior to commencing such business. Equally, the 12-month transition period will not be available for existing entities that do not presently carry on investment business but intend to after the Effective Date. For such entities they will need to be licensed or registered under the Act prior to commencing such investment business after the Effective Date.

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