

Alert

Update – Effective Date for Amendments to Investment Business Act 2003

Author: Julie McLean, Director

We refer to the [Conyers June 2022 alert](#) in relation to upcoming amendments to the Investment Business Act 2003 (the “IBA”). As noted, the Investment Business (Amendment) Act 2022 was passed on 1 April, 2022 amending the IBA. However, the amendments did not take effect immediately. The Bermuda Monetary Authority has now confirmed the effective date for such amendments will be 27 July, 2022.

What does this mean practically?

Previously exempted entities

Existing Bermuda entities that have a physical office in Bermuda but had previously qualified for and filed an exemption notification will have 12 months to either be licensed under the IBA or be registered as a Class B Registered Person.

Existing entities carrying out investment business

Existing Bermuda incorporated entities that do not have a physical presence in Bermuda but do carry out “investment business” elsewhere will also have a 12 month transitional period to either be licensed under the IBA or be registered as either a (i) Class A Registered Person; or (ii) Class B Registered Person.

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. Class B Registered Persons will consist of those entities which qualify for what had previously been grounds for exemption. 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.

New and future entities

Clients who are considering forming a new Bermuda entity will need to determine if the entity will be carrying out “investment business” or not. Newly incorporated or formed entities that do carry out investment business will need to either be licensed or registered either as a (i) Class A Registered Person; or (ii) Class B Registered Person before they can carry out the investment business activities.

“Investment business” means engaging in one or more *investment activities* by way of business. In summary form, the following are defined as “investment activities” although it should be noted there are carve outs included in the legislation depending on the fact situation:

- (i) dealing in Investments
- (ii) arranging deals in Investments
- (iii) managing Investments

- (iv) investment advice
- (v) safeguarding and administering Investments
- (vi) promoting of Investments to the public

“Investments” are defined in the IBA and include shares, debentures, instruments giving entitlement to investments, investment funds, certificates representing investments, options, futures, interests in a partnership, contracts for differences, long term insurance business and rights and interests in investments.

Clients should liaise with their legal advisor before incorporating or forming a new Bermuda entity to ensure compliance with the amended IBA.

Non-Registrable Persons

Certain persons and public-bodies have been classified as “non-registrable persons” and will be deemed outside the scope of the IBA. These include:

- 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.

For more information, please contact the author or your usual Conyers contact.

Author:

Julie McLean
Director

julie.mclean@conyers.com
+ 1 441 299 4925

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For further information please contact: media@conyers.com