



2010 Amendments to the Bermuda Investment Funds Act 2006

Bermuda is continually seeking to ensure that its laws and regulations are in line with international best practice. The Investment Funds Amendment Act 2010 was brought into force on 22 December 2010. The resulting amendments and additions to the existing Investment Funds Act 2006 (the “**Act**”) are designed primarily to align the regulatory framework for funds and fund administrators in Bermuda more closely with the requirements that exist in other regulatory legislation in Bermuda whilst ensuring that the framework overall remains risk-based and recognises the unique nature of the funds industry locally.

In making these amendments, Bermuda has sought to preserve an appropriate balance between securing appropriate degrees of protection for investors, most of whom are institutional or may be presumed to have a high degree of financial sophistication, whilst not imposing an undue regulatory burden on the industry.

Key Changes

- **Definition of Service Provider** – this has been extended to include auditors appointed to a fund in order to draw auditors under sections 7 and 14 of the Act, being the ‘fit and proper persons’ tests.
- **Service Provider Disclosure for Exempted Funds** – section 9 of the Act sets out the criteria for the exemption of a fund under the Act and includes the requirement that the fund have a recognised fund administrator, an auditor and an officer, trustee or representative resident in Bermuda who shall have access to the books and records of the investment fund. There are now additional requirements for exempted funds to appoint an investment manager, a registrar and a custodian or prime broker in order to satisfy the criteria for exemption and to enable the Bermuda Monetary Authority (the “**Authority**”) to have the ability to waive the requirement (where satisfactory alternative arrangements for safeguarding fund property have been made) for a fund exempted under section 7 of the Act to appoint a custodian or prime broker. All such additional service providers will be included in the vetting process in the same way as for funds which are authorised under the Act.

- **Changes in control for Fund Administrators** – the following provisions have been added to the Act:
 - fund administrators must notify the Authority in advance when there is a prospective change in control of the fund administrator;
 - the Authority has the power to object to such change in control to prevent it happening and to object to existing controllers where the Authority concludes they are no longer fit and proper persons to be controllers of the fund administrator;
 - provisions for offences and penalties for the contravention of the new notification provisions; and
 - restrictions on the sale of shares of a fund administrator where a controller of any description is in breach of the above provisions.

The changes are designed to mirror the existing provisions for other Bermuda licensed entities to ensure appropriate oversight can be exercised over those corporate entities and individuals who exercise significant control over fund administration businesses.

- **Rights of Appeal** – section 55 of the Act has been amended to provide that, where the Authority has objected to a change of controller in accordance with the new notification provisions, the person who is the subject of such objection may appeal against the Authority’s decision to a tribunal duly constituted under section 56 of the Act. This ensures that proper judicial review of the Authority’s exercise of its powers is provided for.
- **The “Four Eyes” Criterion for Fund Administrators** – the concept that business should be directed by at least two individuals is a standard regulatory requirement based on sound corporate governance principles that aim to prevent one individual exercising excessive control over the affairs of a licensed entity. This principle has been extended to include fund administrators to assist the Authority in determining whether the fund administrator’s business is being conducted in a prudent manner. The Authority will expect all fund administrators to be able to explain how its particular arrangements satisfy this criterion.
- **Fund Officers to be ‘Fit and Proper Persons’** – section 14(1) of the Act has been amended to require that any officers of a fund (which includes directors) should be ‘fit and proper persons’ at the time of authorisation.

Comment

The amendments are designed to enhance the regulatory framework for the supervision of investment funds and fund administrators and to improve protection for investors in Bermuda funds going forward. They illustrate Bermuda’s commitment to providing a leading and responsible offering to the investment fund and fund administration industries. With European and other global fund-related legislation continuing in the pipeline, the monitoring and review of Bermuda’s laws and fund industry regulation in particular remains an ongoing process.

For more information, please contact:



Alex Erskine
Partner
Group Team Leader - Funds & Investment Services
Tel: +1 441 298 3545
Email: aerskine@applebyglobal.com



Sarah Demerling
Counsel
Corporate & Commercial
Tel: +1 441 298 3291
Email: sdemerling@applebyglobal.com

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