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# THE ASSET MANAGEMENT REVIEW

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FOURTH EDITION

EDITOR  
PAUL DICKSON

LAW BUSINESS RESEARCH

# THE ASSET MANAGEMENT REVIEW

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For further information please email  
[Nick.Barette@lbresearch.com](mailto:Nick.Barette@lbresearch.com)

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Editor  
PAUL DICKSON

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PUBLISHER  
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER  
Nick Barette

SENIOR ACCOUNT MANAGERS  
Katherine Jablonowska, Thomas Lee, Felicity Bown, Joel Woods

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# EDITOR'S PREFACE

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Following several challenging years in the wake of the global financial crisis of 2007–2008, recent years have seen a more sustained economic recovery take hold. However, despite significant improvements in the global economic landscape, 2014 was marked by significant geopolitical events, which have taken their toll on financial markets outside the US and Japan. In the UK, both the Scottish referendum and predictions of a close general election outcome in May 2015 created an uncertain political environment. At a European level, markets have been faced with continuing tensions in Eastern Europe, as well as the ongoing sovereign debt issues, with the Greek crisis featuring heavily in news headlines over the past 12 months. The collapse of oil prices, the spread of the Ebola virus in West Africa and the ongoing conflict in the Middle East have also had a significant impact on the global economy.

Nevertheless, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. By way of example in the UK, changes to the rules governing what retirees can do with their pension benefits look set to open up a new section of the market to discretionary managers and product providers.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. In Europe, major changes to the regulatory landscape were introduced by the Alternative Investment Fund Managers Directive, which has applied in full since July 2014, and this trend is set to continue in other areas of the asset management industry with the implementation of changes to the UCITS regime and the revised Markets in Financial Instruments package. In the UK, the Financial Conduct Authority has announced plans for a market study on the asset management industry and the charges it levies on investors.

It is not only regulators who continue to place additional demands on the financial services industry in the wake of the financial crisis; the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Investors and regulators' demands for greater clarity on fees and commissions charged by fund managers for services provided also remain a constant presence.

This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements and adapt to the changing geopolitical landscape. Despite the challenges outlined above, confidence has begun to return across a number of areas, buoyed by increasingly positive assessments of the global economic outlook, which raises the prospect of increased investment and returns. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself. The industry is not in the clear but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the fourth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank Gideon Robertson and his team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that the fourth edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

**Paul Dickson**  
Slaughter and May  
London  
September 2015

## Chapter 4

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# BERMUDA

*Sarah Demerling and Sally Penrose<sup>1</sup>*

### I OVERVIEW OF RECENT ACTIVITY

Over the past 12 months key stakeholders, including the government, the financial services regulator (the Bermuda Monetary Authority (BMA)) and investment industry professionals have collaborated to make legislative changes aimed at improving Bermuda's fund product that serve to further bolster its position as a premier offshore jurisdiction for investment funds.

Key among the recent legislative changes are the amendments to the existing Investment Business Act to develop Alternative Investment Fund Managers Directive (AIFMD)-focused legislation designed to create an opt-in AIFMD platform. The proposed amendments essentially provide the framework for a Bermuda manager to be licensed as an alternative investment fund manager (AIFM) by the BMA. The preparation is the next chapter in the evolving story of Bermuda's proactive response to industry needs, in this case as a result of the AIFMD, ensuring that the jurisdiction continues to stay relevant for European-facing business.

Bermuda has also implemented a series of innovative changes to the existing partnership legislation. One of the clearly defined government mandates is to attract and retain entities in Bermuda. A previous barrier to this was the inability to easily transfer non-corporates to Bermuda while retaining their existing corpus. The amended legislation (namely the Limited Partnership Amendment Act 2015, the Exempted Partnerships Amendment Act 2015, the Partnership Amendment Act 2015 and the Companies Amendments Act 2015) will permit a foreign partnership to re-domicile in Bermuda. Currently, the foreign jurisdiction must be an 'appointed jurisdiction', of which there are currently 29 jurisdictions, including all US states, the UK, France, Germany, Ireland, the Cayman Islands, Luxembourg, Switzerland, Isle of Man and

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<sup>1</sup> Sarah Demerling is a partner and Sally Penrose is a senior associate at Appleby.

Jersey. Under the new legislation, the re-domiciliation into Bermuda will not be deemed to create a new legal entity or affect the continuity of the partnership. The partnership will not need to transfer, assign or novate any of its assets or liabilities. In addition, an exempted, limited partnership that has elected to have separate legal personality will also be able to convert into an exempted company, further expanding the structuring opportunities available in Bermuda.

The amendments further extend the existing ‘safe harbour’ provisions and clarify what a limited partner may participate in for the partnership without compromising its status as a limited partner. In addition, the statute specifically provides that the general partner has to act in good faith and, subject to any express provisions in the partnership agreement, in the best interests of the partnership. This is one of the most interesting changes from a private equity perspective given the increased demand by investors for transparency and the global focus on management oversight.

We have also seen, over the past 12 months, that the Class A exempt fund (the new class of exempted fund that was launched in 2013 and that ensures speed to market as well as minimal regulatory requirements (see below for further details)) has continued to gain in popularity with managers of Bermuda funds.

## **II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK**

### **i Investment funds – overview**

The Investment Funds Act 2006, as amended (IFA) governs the exclusion, exemption and authorisation of investment funds and contains certain requirements for the formation of investment funds, their operation and the offering of shares, units or interests of investment funds. An ‘investment fund’ is broadly defined under the IFA and means 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 and income.

Investment funds are prohibited from being operated in or from Bermuda unless they are authorised or exempted under the IFA. The requirement to be authorised or exempted does not apply to investment funds that are deemed to be private (such as master funds). An investment fund is a private fund (or an excluded fund) if the number of participants is 20 or less, and if the promotion, communication and offer to participate in the investment fund are restricted and not made to the general public. An operator of an excluded fund is required to serve a notice on the BMA of the fact that the private fund qualifies for the exclusion as soon as practicable following the formation of the fund. An excluded fund (and an exempted fund) is required under the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 to register with the BMA as a non-licensed person.



**ii Unregulated funds**

For funds preferring to be exempt from regulation Bermuda offers a fast track process for Class A exempt funds that requires no approval from the BMA. To be eligible for a Class A exempt fund, a fund must:

- a* only be open to qualified participants (as defined below);
- b* have an investment manager who:
  - is licensed under the Investment Business Act 2003 (IBA);
  - is authorised or licensed by a foreign regulator recognised by the BMA (e.g., the SEC or FCA); or
  - is carrying on business in or from Bermuda or a jurisdiction recognised by the BMA and who has gross assets under management in excess of US\$100 million or is a member of an investment management group that has consolidated gross assets under management of not less than US\$100 million;
- c* appoint an officer, trustee, or representative that is resident in Bermuda and has access to the books and records of the fund;
- d* appoint an auditor, fund administrator, registrar and a custodian or prime broker; and
- e* prepare financial statements in accordance with IFRS or GAAP.

A 'qualified participant' is:

- a* an individual who has had a personal income in excess of US\$200,000 in each of the two years preceding the current year, or that has a joint income with his or her spouse in excess of US\$300,000 in each of those years, and has a reasonable expectation of reaching the same level of income in the current year (meaning the year in which he purchases an investment);
- b* an individual whose net worth or joint net worth with his or her spouse in the year in which he or she purchases an investment exceeds US\$1 million;
- c* an individual who has such knowledge of, and experience in, financial and business matters as would enable him or her to properly evaluate the merits and risks of a prospective purchase of investments;
- d* a body corporate that has total assets of not less than US\$5 million held either solely by the body corporate, or partly by the body corporate and partly by one or more members of the same group of which it is a member;
- e* an unincorporated association, partnership or trust, each of which has total assets of not less than US\$5 million held either solely by such association, partnership or trust, or partly by it and partly by one or more members of the same group of which it is a member;
- f* a body corporate whose shareholders fall within one or more of items (a) to (e);
- g* a partnership whose members fall within one or more of items (a) to (e); and
- h* a trust whose beneficiaries fall within one or more of items (a) to (e).

If a fund does not qualify for Class A exempt fund status it may make an application to be a Class B exempt fund. To qualify as a Class B exempt fund, a fund must:

- a* only be open to qualified participants;
- b* have an officer, trustee, or representative that is resident in Bermuda and has access to the books and records of the fund;

- c* appoint an auditor, investment manager, fund administrator, registrar and custodian or prime broker who are fit and proper to perform the respective functions of their office; and
- d* prepare financial statements in accordance with IFRS or GAAP.

#### *Authorised funds*

In addition to the unregulated funds, the IFA provides for four categories of authorised fund as follows:

- a* an institutional fund, which is only open to qualified participants or that requires each participant to invest a minimum of US\$100,000 in the investment fund, and which has an officer, trustee, or representative resident in Bermuda with access to its books and records;
- b* an administered fund, which must have an administrator that is licensed under the IFA, and which requires its participants to invest a minimum of US\$50,000 in the investment fund or to be listed on a stock exchange that is recognised by the BMA;
- c* specified jurisdiction funds, which are funds that incorporate the laws of a specified jurisdiction that is recognised by the Ministry of Business Development and Tourism; and
- d* standard funds, which are any investment funds that do not qualify to be classified under any of the foregoing categories.

#### **iii Regulatory approval**

The formation of companies and partnerships is subject to the approval of the Registrar of Companies (Registrar) and the BMA (the Registrar and BMA being the principal regulatory bodies), which have unlimited discretion to refuse to permit the incorporation of a mutual fund company or the formation of a partnership fund. The BMA is the principal body responsible for the regulation of investment funds, including those listed on the Bermuda Stock Exchange (BSX). The Registrar is responsible for the registration of companies and partnerships, and has powers pursuant to, *inter alia*, the Companies Act 1981 (Companies Act), the Partnership Act 1902, the Limited Partnership Act 1883, the Exempted Partnerships Act 1992 and the Segregated Accounts Companies Act 2000 (SAC Act). While the Registrar and the BMA do not regulate the formation of unit trust funds, a unit trust fund is required to apply to the BMA for authorisation or exemption under the IFA, and must also seek the permission of the BMA under the Exchange Regulations to issue units (as further defined and explained below).

On or before the date of commencement of business, the operator of a Class A exempt fund must certify to the BMA via its electronic filing system, ERICA, that it meets the requirements for Class A exemption. At the time of filing of the certificate, the operator must also file a copy of the fund's prospectus. Upon filing the exemption notification, the Class A exempt fund can immediately launch.

A fund that qualifies for Class B exemption must apply to the BMA via ERICA. The application is accompanied by the fund's prospectus. Once the application and prospectus have been submitted, the fund will be notified of the outcome of its application within 10 days of the application date.

To be authorised, an investment fund must prepare annual audited financial statements, have appointed, or on authorisation appoint, an investment manager, an auditor and an administrator, and ensure that the property of the investment fund is entrusted to a custodian that is licensed or regulated in accordance with the IFA and that is independent of the operator of the investment fund. The BMA will also consider whether the service providers and the operator of the investment fund are fit and proper persons, and in so considering will take into account their combined experience and expertise in relation to the investment fund. When seeking authorisation of an investment fund, a copy of the prospectus must be submitted to the BMA for review and approval.

If the application for authorisation or Class B exemption is approved, the investment fund may commence to carry on its business and operation.

The BMA's consent for the authorisation of an investment fund can be applied for concurrently with the application for permission to incorporate the mutual fund company or form the partnership fund. In the case of a unit trust fund, the application may be made once the deed of trust has been constituted or an application may be made in advance of the trust deed being executed. The BMA works closely with institutions and advisers in the private sector to provide as timely a response as possible to requests for consents. The process of incorporation of a mutual fund company or a partnership fund usually takes 24 to 48 hours.

It should be noted that closed ended funds (i.e., funds in which investors are not permitted to redeem shares or interests at their option prior to the winding-up of the fund) fall outside the scope of the IFA. Neither excluded funds nor closed-ended funds are:

- a* subject to any ongoing fees or reporting requirements that may be otherwise imposed by the IFA;
- b* required to appoint prescribed service providers;
- c* required to issue any offering document;
- d* required to file financial statements with the BMA; or
- e* required to prepare financial statements (provided such requirement is waived by the investors).

The Corporate Service Provider Business Act 2012 (CSP Act) regulates corporate service providers servicing clients who establish and maintain companies and partnerships in Bermuda. The CSP Act came into operation on 1 January 2013 and will be enforced from 1 July 2016. Corporate service providers are permitted to apply for a licence from November 2015. Once licensed, the corporate service providers, rather than the BMA, will be responsible for vetting and approving the issuance and transfer of securities in Bermuda entities that are subject to Bermuda's exchange control regulations.

#### **iv Segregated accounts**

The SAC Act establishes a registration regime whereby a mutual fund company may register as a segregated accounts company (SAC), thereby establishing, operating and maintaining a company with segregated accounts. A segregated account (in some jurisdictions described as a 'protected cell' or 'segregated portfolio') is an account containing assets and liabilities that are legally separated from the assets and liabilities of

the company's ordinary account, called its 'general account', and also separate from such company's other segregated accounts (if any).

The SAC Act affirms that a segregated account is not a legal person distinct from the SAC itself. The effect of this statutory division is to protect the assets of one account from the liabilities of other accounts. As a result, the accounts will be self-dependent, such that only the assets of a particular account may be applied to the liabilities of that account. The statutory divisions between accounts do not create separate bodies corporate, but rather achieve within a single company what could otherwise be achieved, for example, by incorporating subsidiaries or by using complex contractual and trust structures.

A number of specific provisions in the SAC Act facilitate the use of the legislation for mutual fund companies, in particular in relation to the repurchase or redemption of shares of a mutual fund company and the payment of dividends or other distributions. For example, an SAC that is a mutual fund may redeem or repurchase for cancellation shares using assets linked to the relevant segregated account provided that, on the date of redemption or repurchase, there are reasonable grounds for believing that the relevant segregated account is solvent. The SAC Act can be used by umbrella funds (funds offering several discrete investment portfolios, each with its own unique investment objective). It is quite common in these structures to also offer a diversified portfolio that will invest in all the other portfolios. Accordingly, one segregated account can be an account owner of another segregated account. The statutory segregation of accounts established by the SAC Act has been considered in a number of cases and upheld by the Bermuda court.

#### **v Prospectus requirements and Investment Business Act 2003 (IBA)**

If the offer of investor shares in a Bermuda company or units in a Bermuda-established trust is calculated to result in such shares or units being made available to in excess of 35 persons, any offering memorandum issued by the company or unit trust will need to be filed with the Registrar as a prospectus, unless an exemption is available. The prospectus will need to comply with the disclosure requirements set out in both the Companies Act and the IFA (where the fund is an authorised fund). Where an 'appointed stock exchange' (which includes the NYSE and the London Stock Exchange) or any competent regulatory authority (which includes the BMA) has approved the prospectus, the mutual fund company is exempted from complying with the prospectus rules set out in the Companies Act. There is no requirement to issue a prospectus in relation to the offer of partnership interests in a Bermuda partnership.

The restrictions in relation to the proposed offer of securities in Bermuda are predominately governed by the IBA. A person is deemed to be carrying on investment business 'in or from' Bermuda if such person is carrying on investment business from a place of business maintained by such person in Bermuda. Therefore, unless the offeror maintains an office in Bermuda or has an arrangement that the minister by order determines shall constitute the carrying on of business in Bermuda, the IBA will not apply to the offer of the shares or interests in an investment fund.

vi **Anti-money laundering (AML) and anti-terrorist financing (ATF)**

The Bermuda AML and ATF framework, set out in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing, Supervision and Enforcement) Act 2008, requires that AML and ATF regulated financial institutions as well as independent professionals establish policies and procedures to forestall and prevent money laundering and terrorist financing. Such policies and procedures must cover:

- a* customer due diligence measures and ongoing monitoring;
- b* reporting;
- c* record keeping;
- d* internal control;
- e* risk assessment and management; and
- f* the monitoring and management of compliance with and the internal communication of such policies and procedures in order to prevent activities related to money laundering and terrorist financing.

The policies and procedures should be developed using a risk-based approach. The nature and extent of such policies and procedures will depend on a variety of factors, including the nature, scale and complexity of the business; the diversity of its operations, including geographical diversity; and its customer, product and activity profile.

### **III COMMON ASSET MANAGEMENT STRUCTURES**

**i Private equity funds**

Closed-ended, private equity funds are typically formed as limited partnerships or companies incorporated with limited liability.

A Bermuda exempted company (e.g., companies exempted from the provisions of Bermuda law that stipulate that at least 60 per cent of the equity must be beneficially owned by Bermudians) incorporated with limited liability can be established with a single shareholder, any amount of authorised share capital, unrestricted objects, and the capacity and powers of a natural person.

In general terms, the Companies Act restricts an exempted company from carrying on business in Bermuda except to the extent that it has been granted a licence by the Minister of Finance. There are certain activities that are expressly excluded from the requirements of a licence, including doing business with other exempted companies in furtherance of the business of the exempted company that is being conducted outside Bermuda, and dealing in securities of exempted companies or partnerships.

Approval is sought from the BMA for the intended beneficial ownership of those with voting rights in the company. Any information provided to the BMA is treated in the strictest of confidence (pursuant to Section 31 of the Bermuda Monetary Authority Act, 1969). Ordinarily, an incorporation can be accomplished within 24 to 48 hours. An exempted company can only commence business or issue shares after it has been organised and the requisite BMA consents have been obtained.

ii **Investment funds**

Investment funds are typically formed as mutual fund companies, limited partnerships or unit trusts, the optimal structure depending on a number of factors including where and to whom the investment opportunity is to be marketed, the nature of the investor base and the identified portfolio of investment assets.

*Mutual fund companies*

A mutual fund company is a company incorporated with limited liability, and that is 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 that states in its memorandum of association that it is a mutual fund. In the case of a mutual fund company the shares of which are to be sold in overseas markets, an exempted company is the appropriate vehicle. However, shares of a Bermuda mutual fund company, which is an exempted company, may also be offered inside Bermuda to local and international investors.

Typically, a mutual fund company is incorporated with two share classes – ordinary voting shares (non-participating) held by the investment manager; and non-voting, participating, redeemable shares held by the investors.

The timeline of the incorporation of a mutual fund company, after submission of the application to the BMA, is usually 24 to 48 hours. A mutual fund company may only commence business and issue shares after it has been organised and the consents under Bermuda's exchange control regulations (Exchange Regulations) and the IFA (if required) have been obtained.

A mutual fund company may also be registered as a SAC (for further detail on SACs, see Section II, *supra*).

*Limited partnerships*

Investment funds may also be formed as exempted limited partnerships. A limited partnership consists of one or more general partners (which may be bodies corporate, or general or limited partnerships, formed under the laws of Bermuda or another jurisdiction) and one or more limited partners (namely investors) whose relationship is governed by a partnership agreement. In Bermuda, partnerships (both general and limited partnerships) are not legal entities separate from their partners. Nevertheless, a partnership may function as an 'entity', and may sue and be sued and carry on business in its own name. It is possible for a partnership to irrevocably elect to have legal personality. If such an election is made, the partnership will continue regardless of whether all the partners die or are declared bankrupt or if there is a change in its constitution.

General partners are fully liable for partnership debts and obligations. In the case of limited partnerships, the general partners will have such general liability to third parties, while generally speaking, the liability of the limited partners is limited to the value of the money and the value of any property that they contribute (or agree to contribute) to the limited partnership. However, the limited partners may forfeit their limited liability status if they participate in the management of the partnership.

### *Unit trusts*

A unit trust is not a legal entity, but rather a relationship between a fiduciary officer, namely the trustee, and the beneficiary under the trust deed. The trust deed will provide for:

- a* the manner in which the unit trust fund is to be administered;
- b* unitholders' rights;
- c* the duties, and appointment and removal of the manager and the trustee;
- d* investment and borrowing powers and restrictions; and
- e* the termination and winding-up of the affairs of the unit trust fund.

Custody of the assets, accounting and calculation of net asset value are usually performed by the trustee (provided that, if providing the services in Bermuda, the trustee is also a licensed administrator). The management company is usually responsible for making investments on behalf of the unit trust fund. Beneficial interests in investment trusts are packaged as units. These units are then sold to investors and the proceeds form part of the collective fund. Unitholders in a trust have no liability for the actions of the trustee, and the trustee's liability is usually limited to the amount of the trust fund.

No governmental consent or approval is required to form a unit trust fund. All that is required is settlement of the terms of the unit trust fund deed, and execution of the deed by the trustee and the management company.

Once constituted, however, the unit trust fund may not issue units until relevant contracts and offering materials are approved and the consents required under the Exchange Regulations have been obtained. At the time of the application for such consents, information on the trustee and its investment expertise is usually submitted.

### **iii Principal documents**

In relation to an investment fund, the principal documents usually required for its establishment and the offering of its shares will be a prospectus or offering document, the by-laws, trust deed or partnership agreement, as applicable, and the material contracts. The latter will include an administration agreement, a custodian agreement and any sub-custodian or co-custodian agreement, a management agreement, where necessary, an investment advisory agreement, and a registrar and transfer agent agreement. A copy of the prospectus of an authorised investment fund must be submitted to the BMA and published or made available to the public on request (unless an exemption from the prospectus requirements is available as further detailed above). The prospectus may not be used in the offer of shares or units to participants until it has been approved by the BMA.

## **IV MAIN SOURCES OF INVESTMENT**

Bermuda is a major centre in the international offshore investment fund industry with over US\$166 billion of fund assets domiciled there. The majority of investors tend to be sophisticated, institutional investors. In addition to over 600 investment funds registered in and operating from Bermuda, there are also a significant number of unregulated investment funds, being primarily closed-ended investment companies and limited

partnerships that fall outside of the IFA. As the closed-ended funds are not required to be registered with the BMA, it is not possible to estimate with accuracy the number of such funds domiciled in Bermuda. A number of the larger funds are quoted on stock exchanges such as the London Stock Exchange and the Hong Kong Stock Exchange. In addition, many funds, particularly those seeking European investors, are listed on the BSX, Irish Stock Exchange or the Luxembourg Stock Exchange. The Bermuda fund industry sees investment predominantly from North America and Europe, although given its reputation Bermuda has a global client base. Investment funds formed as unit trusts are a popular vehicle for Japanese investors where they are able to benefit from certain tax benefits available to units that are unavailable for shares or limited partnership interests.

## **V KEY TRENDS**

The European Securities Market Authority recently included Bermuda among a list of countries that should be assessed for compliance with key principles of the AIFMD rules. As a premier jurisdiction with a highly respected reputation, Bermuda expects to be favourably considered for passport rights in a subsequent stage of the assessment process.

Over the past 12 months, insurance-linked securities (ILS) have continued to be attractive as an asset class. ILS products (often seen in the form of catastrophe bonds, industry loss warranties and sidecars) cover natural catastrophes such as hurricanes and earthquakes, life insurance (including mortality and longevity) and man-made events such as fire and terrorism. ILS fund structures are proving to be particularly attractive to pension funds because they offer the ability to improve a portfolio's investment performance through uncorrelated investments. As pension funds and other new institutional investors become more familiar with the ILS market and associated risks, they have been increasingly allocating a larger percentage of their investment mandates into this area. In addition to diversification in a fund's investment strategy, other benefits include comparatively short investment periods (e.g., cat bonds are typically 12 months to five years); favourable risk-reward ratios (given the potential returns for investors through investment income on the investment in the ILS structure, against low probability trigger events); and (usually) low credit risk of the insurer or reinsurer counterparty. The total global ILS sector is worth approximately US\$25 billion and, as at the end of June 2015, Bermuda represented over two-thirds of the global market.

We are seeing an increase in the number of tailored investment structures and single-investor vehicles being utilised. These 'fund of one' structures are especially popular with funds of funds (FoF), in which the investor, in this case the FoF, is the sole investor in a specific vehicle or fund. These structures allow the FoF to create bespoke investment rather than investing in a target fund as an ordinary limited partner.

We will continue to see a 'collaborative effort' by regulators, government and industry professionals to ensure Bermuda continues to provide innovative fund products and maintains its position as a leader in the offshore funds world.



## **VI SECTORAL REGULATION**

### **i Insurance**

There is no specific regulation that applies to insurance asset management, although Bermuda insurance companies are regulated by the BMA and subject to the Insurance Act 1978 and associated regulations, and may have to adhere to any restrictions regarding the class of assets in which they may invest imposed on them.

The BSX is the world's largest offshore fully electronic securities market, offering a diverse range of listing and trading opportunities for both international and domestic issuers of equity, debt, depository receipts, insurance securitisation and derivative warrants. The BSX is the main listing destination for, in particular, ILS. At the end of Q1 2015 the market capitalisation of ILS on the BSX stood at US\$14.7 billion. The momentum is driven largely by the designation for 'special-purpose insurers' (SPI) within the BMA's supervisory structure for insurance companies. SPIs can be set up quickly in Bermuda to issue ILS, and the BSX continues to be successful in offering issuers the option of listing ILS on the exchange.

### **ii Pensions**

There is no specific regulation that applies to pension asset management. Bermuda is becoming increasingly attractive as a place to invest pension assets, particularly with respect to ILS investment (as referred to above).

### **iii Real property**

There are no specific legal or regulatory rules that apply to property fund management in Bermuda, and most are organised as mutual fund companies or limited partnerships.

### **iv Hedge funds**

Where hedge funds are open-ended funds, they will need to comply with the IFA. We are seeing a growing increase in hedge fund-backed reinsurers being formed. Where, previously, hedge funds chose to invest indirectly into the insurance and reinsurance markets through ILS structures or by investing in the equity of holding companies operating reinsurance business, hedge funds have been establishing their own reinsurance companies.

### **v Private equity**

There are no specific legal or regulatory rules that apply only to private equity funds. As mentioned above, private equity structures tend to be closed-ended and fall outside the IFA.

### **vi Other sectors**

The legislative framework relating to funds is of general application to all forms of investment fund irrespective of their strategy.

## VII TAX LAW

Bermuda is fiscally neutral in the sense of having no tax applicable to the establishment and operation of investment funds. Bermuda investment funds are not subject to any tax, as there are no Bermuda corporation, profit, withholding, capital gains or income taxes applicable to an investment fund, or to its share or unitholders or partners that are not resident in Bermuda. Upon application, usually made just after incorporation of a mutual fund company or formation of a unit trust fund or partnership fund, the Minister of Finance will issue a certificate confirming the exemption of the investment fund from such taxes, which is presently expressed to operate until 31 March 2035. This assurance is given as a matter of course to any investment fund with exempted status. Instruments executed by or in relation to an investment fund are exempt from stamp duties. Thus, stamp duties are not payable upon, for example, an instrument that affects the transfer or assignment of a share, unit or interest in an investment fund.

### i Foreign Account Tax Compliance Act

Bermuda has entered into Model 2 intergovernmental agreements (IGAs) with the United States and the United Kingdom. Consequently, reporting Bermuda financial institutions report directly to the United States' Internal Revenue Service (IRS) and Her Majesty's Revenue and Customs Service (HMRC) in the UK respectively. Financial institutions in jurisdictions that have adopted the Model 1 IGA are required to report to their government, which in turn reports to the IRS and HMRC as required. The government considered that the Model 2 IGA was preferable, as it does not require information to be provided to and therefore held by a central government repository. This greatly streamlines the reporting process and removes the possibility of unintended disclosure of information or disclosure of incorrect information.

### ii The Common Reporting Standard (CRS)

On 3 February 2014, the OECD released a framework document for the Common Reporting Standard for Automatic Exchange of Financial Account Information based on Article 6 of the Convention on Mutual Administration Assistance in Tax Matters. On 29 October 2014, 50 jurisdictions (onshore and offshore and including Bermuda) signed a multilateral competent authority agreement to automatically exchange information by September 2017. It is expected that the CRS will supersede and replace Bermuda's IGA with the UK's, which is expected to be terminated during 2016.

### iii Tax treaties

Bermuda has exchange of information relationships with 43 jurisdictions through four double tax conventions with Bahrain, Qatar, the Seychelles and the United States; and 39 tax information exchange agreements. Bermuda also has over 60 multilateral tax information exchange agreement partners following Bermuda's recent adoption of the Multilateral Convention on Mutual Assistance in Tax Matters and one multilateral mechanism.

## **VIII OUTLOOK**

If investor appetite for ILS continues, then there will certainly be, over the next 12 months, more opportunities for investors, and we anticipate further diversification of ILS products, including additional risk categories.

Bermuda will continue its commitment to developing new and innovative products. Bermuda will also continue to strengthen its relationship with Latin American funds, particularly the use of Bermuda vehicles in compliant tax structures for residents of Latin America including Argentina, Brazil, Colombia, Peru and Mexico.

We also anticipate seeing a growing number of asset managers basing themselves on the island, and not just domiciling their funds here, particularly if Bermuda becomes eligible for a passporting regime, which is currently only available to EU-based alternative investment fund managers. Bermuda welcomes foreign companies and their employees, as exemplified by the Incentives for Job Makers Act and the work-permit policies, which were updated in 2015 and which create exemptions from work permits for senior executives or those who are responsible for creating jobs for Bermudians and who are critical to the continuity of the company in Bermuda.

## Appendix 1

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# ABOUT THE AUTHORS

### **SARAH DEMERLING**

*Appleby*

Sarah Demerling (née Moule) is a partner in the corporate department and a senior member of the funds and investment services team.

She has extensive experience in advising hedge fund managers and fund of funds managers in connection with structuring, formation and the day-to-day operations of investment vehicles including mutual funds, hedge funds, unit trusts, partnerships, private equity and master/feeder structures.

She works very closely with the insurance team to advise Bermuda reinsurance managers seeking to raise capital through closed and open-ended investment vehicles and to advise on structures using fund vehicles to invest indirectly into insurance-linked securities products. She also has broad expertise in all aspects of Bermuda corporate law but particularly specialises in over-the-counter derivative transactions, ISDA transactions, securities offerings, mergers and acquisitions and, more recently, Islamic finance.

### **SALLY PENROSE**

*Appleby*

Sally Penrose is a senior associate and member of the corporate practice group. She has wide corporate experience acting for corporates and management teams on multi-jurisdictional mergers and acquisitions, as well as acting for private equity houses on new investments (including co-investment transactions) and joint ventures portfolio management.

She also advises on the structuring, management and operation of investment funds with a particular emphasis on private equity vehicles.

**APPLEBY**

Appleby

Canon's Court

22 Victoria Street

PO Box HM 1179

Hamilton HM EX

Bermuda

Tel: +1 441 295 2244

Fax: +1 441 292 8666

[sdemerling@applebyglobal.com](mailto:sdemerling@applebyglobal.com)

[spenrose@applebyglobal.com](mailto:spenrose@applebyglobal.com)

[mfubler@applebyglobal.com](mailto:mfubler@applebyglobal.com)

[www.applebyglobal.com](http://www.applebyglobal.com)