

# Amendment to Bermuda Investment Business Act 2003 (IBA) broadens the scope of the regime

**Briefing Summary:** In March of this year the Investment Business Amendment Act 2022 (Amendment) was passed by the House of Assembly and Senate. The Bermuda Monetary Authority (BMA), by notice dated 18 July 2022, confirmed that the Amendment will take effect on 27 July 2022.

**Service Area:** Corporate, Corporate Structuring, Investment Funds, Bermuda Legal Services, Regulatory, Family Office

**Sector:** Investment and Wealth Management, Trust and Company Business

**Location:** Bermuda

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## Prior to the Amendment

Prior to the Amendment coming into effect, a person carrying out investment business in or from Bermuda was required to be licensed under the IBA unless they were excluded in accordance with the provisions the IBA or exempt pursuant to the Investment Business (Exemptions) Order 2004 (**2004 Order**).

Investment business was defined in the IBA as the undertaking of a relevant activity (e.g. dealing or advising on) in respect of an investment (e.g. shares or options) from a place of business maintained in Bermuda.

## After the Amendment

The Amendment, amongst other things:

- broadens the scope of the IBA beyond those persons with a place of business maintained in Bermuda such that in or from Bermuda now includes persons:
  - carrying on investment business and incorporated or formed in Bermuda; and
  - formed or incorporated outside Bermuda and carrying on investment business in or from Bermuda.

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- introduces a concept of a “Class A Registered Person” (see section “Class A Registered Person” below).
- does not make material amendments to the exclusions such that persons that were previously excluded will remain excluded after the Amendment;
- repeals the 2004 Order such that persons are no longer “exempt” but instead fall within two categories of either “Class B Registered Persons” (see section “Class B Registered Person” below) or “Non-Registerable Persons” (see section “Non-Registerable Person” below);
- introduces a new relevant activity of promoting investments to the public;
- introduces a concept similar to the existing re/insurance and digital asset sandbox facility whereby a “test license” may be issued to carry out certain investment business for a defined period and subject to any restrictions imposed by the BMA; and
- enhances reporting requirements for entities that fall within the scope of the IBA.

## Class A Registered Person

**Criteria:** a Bermuda formed or incorporated person carrying on investment business that is: (a) licensed, authorised or registered by a recognised regulator ; and (b) does not maintain a place of business in Bermuda will be required to register as a Class A Registered Person.

**Obligations:** a Class A Registered Person shall appoint a senior representative, being an individual approved by the BMA who will serve as the point of contact in Bermuda and be responsible for notifying the BMA of anticipated insolvency as well as various compliance failures or criminal proceedings. A Class A Registered Person must also prepare and submit annual and quarterly returns to the BMA and appoint an auditor.

If a Bermuda formed or incorporated person carrying on investment business is not licensed, authorised or registered by an approved regulator they must apply for a license or register as a Class B Registered Person (if applicable).

## Class B Registered Person

**Criteria:** a person falling within the class of persons specified by the Minister by order. Whilst the final order has not been made it is proposed that any person who was exempt pursuant to Schedule 1(1) and (3), of the 2004 Order (e.g. providing investment services to high income/high net worth/sophisticated investors, funds or qualifying entities or providing investment services to not more than 20 persons and not providing investment services to, or soliciting from, the public) will be required to register as a Class B Registered Person.

**Obligations:** a Class B Registered Person shall be required to maintain a place of business in Bermuda, which shall be its principal place of business. A Class B Registered Person must also prepare and submit annual returns to the BMA and appoint an auditor.

## Non-Registerable Person

**Criteria:** a person falling within the class of persons specified by the Minister by order. Whilst the final order has not been made it is proposed that those persons who were exempted pursuant to Schedule 1(2), (4), (5) and (6) of the 2004 Order (e.g. funds, qualifying insurers, qualifying insurance managers, brokers, and government) will be non-registerable persons. The BMA has also recognised that there will be persons that are licensed under the Digital Asset Business Act 2018 (**DABA**) or licensed insurance marketplace providers that also undertake investment business in a manner ancillary to their digital asset business/insurance marketplace activities and it is proposed that such persons shall also be non-registerable persons.

**Obligations:** non-registerable persons shall not have any obligations other than such limitations or conditions that may attach to their designation.

## DABA convergence

It is proposed that DABA will be amended such that, where certain investment providers under the IBA wish to conduct ancillary digital asset business, a DABA license will not be required.

## Other regulations

When the Amendment takes effect, additional regulations will be adopted. These regulations will set out new requirements for systems and controls, handling client money and net assets and liquidity. The BMA has issued consultation papers on the new regulations and has noted that it will provide guidance in due course.

## Timeline

A transition period of 12 months from the operative date of the Amendment (27 July 2022) is proposed to achieve compliance with all applicable requirements.

Please reach out to your usual Carey Olsen contact if you wish to discuss further.

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