

Bermuda

Regulation

FUNDS AND FUND MANAGEMENT 2009

Hedge fund managers/advisors

Regulation

Investment advisors carrying on business in or from Bermuda must be licensed under the Investment Business Act 2003 unless their activity falls within one of the specific exemptions of the Act (see discussion below).

Under the Investment Funds Act 2006 administrators are licensed by the Bermuda Monetary Authority and are required to act as the principal office of the funds they administer. Licensing helps to ensure that the licensed fund administrators are managed in a prudent manner by fit and proper persons with the requisite experience.

Authorization requirements and process

The Investment Business Act 2003 requires any person carrying on investment business in Bermuda to have a license unless their activity falls within one of the specific exemptions of the Act. The categories of activity under which a manager/advisor may qualify for exemption include provision of services to an investment fund authorized or exempted under the Investment Funds Act 2006 or to a qualified participant (see definition under Investors – regulation)

Applications for an Investment Business License are to be made to the BMA under the Investment Business Act following a prescribed application process as outlined in the Investment Business Regulations 2004.

Typical timescale to receive approval

Approximately two to four weeks.

Regulatory capital requirements

If carrying on investment business under the Investment Business Act, the minimum required capital is as follows:

- As a principal: BSD 250,000
- As an agent: BSD 100,000
- Other than as a principal or agent: BSD 12,000

Significant restrictions on marketing to investors

No specific restrictions except as under the Investment Business Act as described above.

Hedge fund structures

Regulation

As defined by the Investment Funds Act 2006 (the IFA), an investment fund is any arrangement with respect to property of any description, including money, the purpose 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 property or sums paid out of such profits, or income.

The arrangements must be such that the participants in the investment fund do not have on-going control over the management of the property and are entitled to have their units redeemed in accordance with the constitutional documents of the investment fund. Accordingly, closed-ended investment funds are excluded from the scope of the IFA.

The arrangement may take the form of a company, unit trust or a partnership provided that the contributions made by the participants are pooled and/or the property is managed as a whole by or on behalf of the operator of the investment fund.

Investment funds are prohibited from being operated in or from Bermuda unless the investment fund is authorized or exempted under the IFA. An investment fund is excluded from authorization or exemption if it is deemed to be private. A private fund is one with 20 or less participants and for which the promotion, communications, and offers to participate are restricted and not made to the general public.

A fund may apply for exemption if it meets the following criteria:

- Opened to qualified participants (see discussion under Investors – regulation below)
- Administered by an administrator recognized by the Bermuda Monetary Authority (the BMA)

- Has appointed an independent auditor
- Has an officer, trustee, or representative resident in Bermuda with access to its books and records

If approved by the BMA, the fund will be registered as an exempted fund

Under the IFA, there are three categories of authorized funds being an institutional fund, an administered fund, and a standard fund.

- Institutional fund: open only to qualified participants or requires each participant to invest a minimum of BSD 100,000 in the investment fund
- Administered fund: must have an administrator licensed under the IFA, requires its participants to invest a minimum of BSD 50,000 in the investment fund or is to be listed on a stock exchange authorized by the BMA
- Standard fund: one that does not qualify to be classified under any other category

There is also an exempted class of funds (see discussion above).

Authorization requirements

For an investment fund to be authorized, it must:

- prepare annual audited financial statements;
- appoint an investment manager, auditor and administrator;
- entrust its property to a custodian which, if incorporated in Bermuda is licensed under one of Bermuda's Financial Services Acts or, if incorporated elsewhere, be subject to regulatory supervision similar to that provided by the Financial Services Acts and generally be independent of the operator of the investment fund; and
- have an operator and employ service providers who are fit and proper persons with the necessary experience and expertise to operate the investment fund.

There are no jurisdictional requirements pertaining to the manager.

Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and/or strategies

There are no such restrictions.

Rules regarding the publishing of the accounts and prospectuses

The investment fund must prepare audited financial statements on an annual basis as required under the Companies Act. The BMA can waive the requirement for an audit in any particular year.

All authorized funds shall prepare a prospectus in accordance with the rules as set out in the Fund Prospectus Rules 2007. Upon application for authorization, the investment fund shall submit a copy of the prospectus it proposes to issue to the BMA.

The fund shall publish the prospectus or otherwise make it available to participants or potential participants.

The prospectus shall include:

- specific details of the fund, its directors, and its service providers (including name, date of incorporation, addresses);
- investment objectives and any investment techniques and borrowing powers;
- material risks;
- principal rights and restrictions of units;
- intentions with respect to declaration of any dividends or distributions of profits;
- procedures and conditions for the issue and redemption of units and the circumstances under which redemptions may be suspended;
- basis and the frequency of valuing the fund's assets and determining issue and redemption prices;
- material provisions of any major contracts;
- description of any conflicts of interest;
- date of the financial year-end;
- description of the nature and financial reports to be distributed to participants; and
- experience of the investment manager

Time-scale of establishment of a hedge fund

It takes approximately three to five business days to incorporate an investment fund and two to four weeks to license an investment fund once all documentation has been received.

Investors

Regulation

Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

See Hedge fund structures – regulations above for the requirements related to institutional funds, administered funds, excluded funds, and exempted funds.

A qualified participant is defined as any of the following:

- An individual who has had a personal income in excess of BSD 200,000 in each of the two years preceding the current year or has a joint income with that person's spouse in excess of BSD 300,000 in each of those years, and has a reasonable expectation of reaching the same level of income in the current year.
- An individual whose net worth or joint net worth with that person's spouse in the year in which he purchases an investment exceeds BSD 1,000,000.
- An individual who has such knowledge of, and experience in, financial and business matters as would enable him/her to properly evaluate the merits and risks of a prospective purchase of investments.
- A body corporate which has total assets of not less than BSD 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.
- An unincorporated association, partnership, or trust which has total assets of not less than BSD 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.
- A body corporate whose shareholders fall within one or more of the above paragraphs.
- A partnership whose members fall within one or more of the above paragraphs.

- A trust whose beneficiaries fall within one or more of the above paragraphs.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.