

提示简报

Foreign Investment Funds Managed or Promoted In or From Within Bermuda Subject to New Registration Requirements

在百慕大或从百慕大境内管理或促销外国投资基金须符合新的注册规定

作者：Elizabeth Denman, 董事

Recent amendments to Bermuda’s Investment Funds Act now require certain investment funds, organized in jurisdictions outside of Bermuda, to be designated and register as “Overseas Investment Funds” with the Bermuda Monetary Authority. These new registration requirements potentially apply to all “in scope” investment funds including, but not limited to, closed-ended and private equity vehicles.

The Investment Funds Amendment Act 2019 (the “Amendment Act”), which amends the Investment Funds Act 2006 (the “Act”) came into force on 1 January 2020, and provides for a new system of registration in Bermuda for foreign (i.e. non Bermuda organized) investment funds, where such funds are managed, marketed, promoted and/or sold “in and from within” Bermuda (collectively “Fund Promotion”). Previously, Fund Promotion undertaken by non-Bermuda organized investment funds was not subject to regulation pursuant to the provisions of the Act. Commencing on 1 January 2020, no foreign investment fund which is in scope of the Act may be managed or carry on promotion in or from within Bermuda, unless designated and registered as an “Overseas Investment Fund” by the Bermuda Monetary Authority (BMA) pursuant to the terms of the Act.

The Amendment Act contains a transitional provision for those foreign investment funds (FIFs) which: (i) now meet the new definition of an “Overseas Investment Fund”; and (ii) were engaged in Fund Promotion prior to 1 January 2020 (each a “Grandfathered Fund”). Each Grandfathered Fund has been granted a period ending on 30 June 2020 (the “Grandfather Period”) to comply with the terms of the Act and to become registered. Grandfathered Funds may continue to undertake Fund Promotion during the Grandfather Period provided the registration of such Grandfathered Fund is affected on or before 30 June 2020.

百慕大的《投资基金法》最新修正案现在要求在百慕大以外的管辖区设立的某些投资基金必须定名为“海外投资基金”并在百慕大金融管理局以相同的名称注册。这些新的注册要求可能适用于所有“范围”的投资基金，包括但不限于封闭式和私募股权工具。

对《2006年投资基金法》（“《法令》”）进行了修改的《2019年投资基金修正法》（“《修正法》”）于2020年1月1日生效，规定了外国（即非百慕大设立的）投资基金在百慕大的新注册制度，此类基金“在百慕大或从百慕大境内”进行管理、营销、促销和/或出售（统称为“基金促销”）。在此之前，非百慕大设立的投资基金进行的基金促销不受《法令》规定的监管。从2020年1月1日起，除非《法令》范围内的外国投资基金在百慕大金融管理局（BMA）根据《法令》定名为并注册为“海外投资基金”，否则不得在百慕大或从百慕大境内管理或促销此类基金。

《修正法》包含针对以下外国投资基金的过渡性条款：(i) 现在符合“海外投资基金”的新定义；和 (ii) 在2020年1月1日之前从事过基金促销活动（每个基金均称为“祖父基金”）。每个祖父基金皆获许可可在2020年6月30日（“祖父期”）之前遵照《法令》条款进行注册。祖父基金可在祖父期内继续进行基金促销，但须在2020年6月30日或之前办理注册。

It is important to note that: (i) FIFs that become in scope of the Act after the Commencement Date and which have not been grandfathered are required to complete their registration immediately and prior to any Fund Promotion being undertaken; and (ii) the new registration requirements are fund-specific. There is no sheltering for an investment fund which may be a member of a wider group of investment funds, some of which may already be duly registered.

What entities does this apply to?

As part of the legislative amendments, the definition of what constitutes an “investment fund” has been broadened for the purposes of the Act. An investment fund is now defined as:

“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 or income”.

Additionally, the arrangements must be such that (i) investors do not have day-to-day control over the management of the assets of the fund; (ii) the assets of the fund, and its profits and losses represent a pooling of investors’ contributions; and/or (b) the property is managed as a whole by or on behalf of the operator of the fund.

Where an investment fund incorporated or established in a jurisdiction outside of Bermuda, meets the above noted definition and is also managed or carries on promotion in or from within Bermuda, it must be designated and register as an Overseas Investment Fund with the BMA.

Management and Promotion

The Act does not include a definition of what constitutes “management” of a fund, but the generally accepted industry understanding is that an entity manages an investment fund if it is responsible for its investment strategy, manages its portfolio trading and investment activities and otherwise supervises and monitors the fund’s investment program and risk parameters. Consideration and analysis should be undertaken when determining if a specific fund is in fact managed from Bermuda.

“Promotion” is defined in the Amendment Act as:

- (a) advertising;
- (b) issuing an offering document, application form or proposal form and stating the method of issue;
- (c) circulating or making available promotional material, including describing the general nature of the material and the persons to whom, and the manner in which, it is to be circulated or made available.

It is important to note that these amendments to the Act only apply to fund promotion and management carried out either directly or indirectly in or from within Bermuda and

需要重点强调的是：(i) 在生效日期之后被纳入《法令》范围但未成为祖父基金的外国投资基金必须在进行任何基金促销之前立即完成注册；以及 (ii) 新的注册要求是针对基金的。对于可能是一个更广泛的投资基金集团的其中一个基金来说，注册无法避免，其中一些基金可能已按规定注册。

这适用于哪些实体？

作为立法修正案的一部分，“投资基金”的定义已因《法令》的目的而扩大。投资基金现定义为：

“与任何种类的财产有关的任何安排（包括金钱），其目的或作用是使参与该安排的人员能够分享或接收通过收购、持有、管理或处置财产而产生的利润或收入，或从此类利润或收入中支付的款项”。

此外，安排必须使 (i) 投资者对基金资产的管理没有日常控制权；(ii) 基金的资产及其损益体现投资者的共同出资；以及/或者 (b) 财产由基金运营人或其代表整体管理。

如果在百慕大以外的管辖区注册或设立的投资基金满足上述定义，而该基金在百慕大或从百慕大境内进行管理或促销，则必须将该基金定名为海外投资基金并在 BMA 以相同的名称注册。

管理与促销

《法令》没有对基金的“管理”进行定义，但是业界普遍接受的理解是，如果某个实体负责其投资策略，管理其投资组合交易和投资活动以及以其他方式监督和监控基金的投资计划和风险参数，则该实体就属于管理该投资基金。在确定某个特定基金是否实际上从百慕大进行管理时，应进行审议和分析。

《修正法》把“促销”定义为：

- (a) 广告宣传；
- (b) 发行销售文件、申请表或建议书并说明发行方法；
- (c) 分发或提供促销资料，包括描述资料的一般性质以及资料分发和提供的对象及方式。

需要重点强调的是，这些对《法令》的修正仅适用于在百慕大或从百慕大境内直接或间接促销和管理基金的情况。如果是促销活动，则是外国投资基金或相关方发起的促销活动

where, in the case of promotional activities, the foreign investment fund or related parties are initiating the promotion (as opposed to a client reverse solicitation).

Registration requirements and process

An FIF qualifies for registration as an Overseas Investment Fund if:

- (a) it is an overseas investment fund;
- (b) it complies with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established; and
- (c) it complies with all requirements of the Act and any condition which may be imposed on it by the BMA.

The Act permits the BMA to impose such conditions on the registration of the Overseas Investment Fund as the BMA may determine appropriate, and to delete, vary and modify those conditions.

Pursuant to the terms of the Act, registration as an overseas investment fund will require the operator of the fund to:

- (a) notify the BMA, through its online registration system “ERICA”, of the fund’s existence and operations;
- (b) provide the BMA with a copy of the fund’s offering document and details of any regulatory approval given by, or notification given to, the overseas regulatory authority in the country or territory in which the fund is incorporated or established; and
- (c) pay an application fee of US\$900. The annual fee thereafter is US\$1,200.

Upon the BMA being satisfied that the fund meets the requirements of the Act, it will designate it an “overseas investment fund”.

On-going requirements

Once an Overseas Investment Fund is designated and registered as such by the BMA, it is required, on an annual basis on or before 30 June each year, to submit a certificate of compliance to the BMA. The certificate of compliance must include the following:

- (a) a statement that the fund continues to satisfy the requirements of the Act and has at all times during its prior fiscal year been in compliance with the applicable rules and requirements of its overseas regulatory authority;
- (b) details of any material changes made to its offering document during the period;
- (c) a statement that it has at all times during the preceding period been in compliance with the requirements of the Act as applicable to overseas investment funds.

(与客户反向请求相反)。

注册要求和流程

在下列情况下，外国投资基金有资格注册为海外投资基金：

- (a) 是海外投资基金；
- (b) 符合在其注册或设立的国家或地区监管机构的适用规则和要求；以及
- (c) 符合《法令》的所有要求及BMA可能对其施加的任何条件。

《法令》允许 BMA 在其认为适当的情况下对海外投资基金的注册施加此类条件，并允许删除、更改和修改这些条件。

根据《法令》的条款，注册为海外投资基金将要求该基金的经营者的：

- (a) 通过 BMA 在线注册系统 “ERICA” 通知BMA基金的存在和运作；
- (b) 向 BMA 提供一份基金发售文件的副本及基金注册或设立的国家或地区的监管机构发出的任何监管批准或通知的详细信息；以及
- (c) 支付 900 美元申请费。此后的年费为 1,200 美元。

在 BMA 确信该基金符合《法令》的要求后，就会将其定名为“海外投资基金”。

持续要求

在 BMA 定名并注册为海外投资基金后，每年必须于 6 月 30 日或之前向 BMA 提交一份合规证明。合规证明必须包括以下内容：

- (a) 一份声明书，说明该基金继续满足了《法令》的要求，在上一财政年度一直都遵守其海外监管机构的适用规则和要求；
- (b) 在此期间对其发售文件进行的任何重大更改的详细内容；
- (c) 一份声明书，说明在此期间始终符合《法令》对海外投资基金的要求。

The BMA may determine to cancel an overseas investment fund's designation and registration in the event of the fund breaching a provision of the Act. Additionally, an Overseas Investment Fund may voluntarily, at any time, apply to have its designation and registration cancelled. The BMA may reject any request for cancellation in the event it determines that it is in the public interest to investigate any matter prior to permitting the designation to be cancelled.

We are here to help

The regulatory treatment of foreign funds in Bermuda has changed dramatically and we are here to help. Please feel free to reach out to your usual Conyers contacts with questions on the process and whether it applies to your or your client's foreign investment fund.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

如果基金违反《法令》的规定，则 BMA 可决定取消其名称和注册。此外，海外投资基金可随时自行申请取消其名称和注册。如果 BMA 认为在允许基金取消其名称之前对其任何事项进行调查符合公众利益，则可拒绝取消申请。

我们在此竭诚为您服务

百慕大对外国基金的监管方式发生了巨大变化，我们在此竭诚为您提供帮助。请随时与康德明律师事务所中您惯常联络的律师联系，询问所涉流程问题以及该流程是否适用于您或您客户的外国投资基金。

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作者 Authors:

Elizabeth Denman

董事

elizabeth.denman@conyers.com

+1 441 278 7842