

提示简报

Amendments to Investment Business Act 2003 对《2003年投资业务法》的修正

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Bermuda passed the Investment Business Amendment Act 2022 (the “Amendment Act”) amending our Investment Business Act 2003 (“IBA”). The amendments are expected to come into force on 1 July 2022 (the “Effective Date”), although there will be a 12-month transition period for existing entities conducting investment business.

Historically, the IBA provided that a person could not carry out “investment business in or from Bermuda” unless they were licenced or qualified for an exemption from the requirement to be licenced under the IBA. “Investment business” was broadly defined to mean engaging in one or more “investment activities by way of business” with “investment activities” being those which were set out in a schedule to the IBA. However, the IBA also defined “in or from Bermuda” as meaning that the entity had premises in Bermuda that it occupied for the purpose of the investment business and at which it employed staff and paid salaries and other expenses in connection with the investment business. As a result, entities which carried on investment business outside of Bermuda with no such premises in Bermuda (“Non Resident Providers”) and entities qualifying for an exemption from the requirement to be licenced under the IBA were not regulated under the IBA.

For those entities which did have physical premises and staff in Bermuda at which they carried out investment business, they could elect to either be licenced under the IBA or to avail themselves of one of a number of exemptions from the requirement to be licenced (each an “Exemption”). Exemptions involved a one-time process of notifying the Bermuda Monetary Authority (the “BMA”) of the entitlement to be exempted from the provisions of the IBA.

After consultation, the BMA decided that the IBA needed to be amended to reflect the global trend towards increasingly decentralised and geographically mobile operating models. The BMA’s stated intent is that the changes will allow for more effective monitoring of the regulatory perimeter and allow the BMA to better meet

百慕大通过了《2022年投资业务修正法案》（下称“《修正案》”），对我们的《2003年投资业务法》（下称“《投资业务法》”）进行了修正。这些修正预计于2022年7月1日（下称“生效日期”）生效，但现有从事投资业务的实体将有12个月的过渡期。

之前，《投资业务法》规定，除非根据《投资业务法》获得许可或者有资格免除《投资业务法》规定的许可要求，否则不得“在百慕大或从百慕大开展投资业务”。“投资业务”被广义地定义为从事一项或多项“以业务方式进行的投资活动”，其中“投资活动”是指在《投资业务法》的附件中列出的活动。但是，《投资业务法》还把“在百慕大或从百慕大”定义为实体在百慕大拥有用于投资业务的场所，而且在此场所雇佣员工并支付工资及其他与投资业务相关的费用。因此，在百慕大境外开展投资业务且在百慕大没有此类场所的实体（下称“非常驻提供者”）和有资格免除《投资业务法》规定的许可要求的实体不受《投资业务法》的管制。

对于那些在百慕大拥有实体场所和员工并在此场所开展投资业务的实体而言，可以选择根据《投资业务法》获得许可，或者利用其中的某个豁免项，免除许可要求（每项均称为“豁免”）。豁免涉及一次性通知百慕大金融管理局（下称“百慕大金管局”）其有权不受《投资业务法》条款的管制。

经过磋商，百慕大金管局决定有必要对《投资业务法》进行修正，以反映日益分散、地域流动运营模式的全球趋势。百慕大金管局的既定目的是，这些修正将使监管范围得到更有效的监测，使百慕大金管局能够进一步满足国际监管合作的期望。因此，“在百慕大或从百慕

international regulatory cooperation expectations. As such, “in or from Bermuda” will be defined as meaning the entity in question is incorporated or formed in Bermuda or is incorporated or formed outside Bermuda but carries on investment business in or from Bermuda. The removal of the reference to having physical premises in Bermuda means that all Bermuda incorporated entities carrying out an investment activity must now consider whether they are subject to the IBA or not.

It should be noted that the Amendment Act does provide that the Minister of Finance may pass an Order deeming certain persons to be non-registrable and therefore not required to be licenced or registered under the IBA. The current expectation is that the Order will cover those entities already registered and regulated in Bermuda under other pieces of legislation including:

- Investment funds authorised or registered under the Investment Funds Act 2006;
- Persons who are registered under the Insurance Act 1978 to carry on insurance business (as defined under that Act), where such persons provide investment services in connection with the insurance business for which those persons are registered under the Insurance Act 1978;
- Persons who are registered under the Insurance Act 1978 as insurance managers, brokers, agents, salespeople, or members of an association of underwriters recognised by the BMA, where such persons provide investment services in connection with the business for which those persons are registered under the Insurance Act 1978;
- Persons who are registered under the Insurance Act 1978 as insurance marketplace providers, where such persons arrange deals in investments in connection with the business for which those persons are registered under the Insurance Act 1978;
- Persons licensed under the Digital Asset Business Act 2018 to carry on digital asset business, where such persons provide investment services ancillary to the digital asset business for which those persons are licensed under the Digital Asset Business Act 2018.

Following the Effective Date, entities carrying out investment business which previously enjoyed an Exemption as well as Non Resident Providers will be required either to be licensed under the IBA or to be registered as either a (i) Class A Registered Person; or (ii) Class B Registered Person. The regime for obtaining a full licence under the IBA as amended is not expected to change materially following the Effective Date. Registration as a Class A Registered Person or Class B Registered Person will involve the making of an

“大” 将被定义为相关实体在百慕大注册或成立，或者在百慕大境外注册或成立但在百慕大或从百慕大开展投资业务。删除在百慕大拥有实体场所的提法意味着所有开展投资活动的百慕大注册实体现在必须考量其是否受《投资业务法》的管制。

应该注意的是，《修正案》确实规定，财政部长可以下达一项命令，认为某些人无法注册，因此无需按照《投资业务法》的规定获得许可或进行注册。目前的预想是，该命令将涵盖已根据其他立法在百慕大注册并受到监管的实体，包括：

- 根据《2006 年投资基金法》授权或注册的投资基金；
- 根据《1978 年保险法》注册从事保险业务（定义见该法）的人士，他们提供与其根据《1978 年保险法》注册的保险业务相关的投资服务；
- 根据《1978 年保险法》注册为保险经理、经纪人、代理人、销售员或百慕大金管局认可的承销商协会成员的人士，他们提供与其根据《1978 年保险法》注册的业务相关的投资服务；
- 根据《1978 年保险法》注册为市场提供者的人士，他们安排与其根据《1978 年保险法》注册的业务相关的投资交易；
- 根据《2018 年数字资产业务法》获得许可从事数字资产业务的人士，他们提供与其根据《2018 年数字资产业务法》获得许可的附属于数字资产业务的投资服务。

生效日期之后，那些先前享有豁免的、从事投资业务的实体以及非常驻提供者将被要求获得《投资业务法》规定的许可，或者注册为以下两者之一：（i）A 类注册人；（ii）B 类注册人。根据修正的《投资业务法》获得全面许可的制度预计不会在生效日期后发生重大变化。注册为A类注册人或 B 类注册人需要向百慕大金管局申请在适当类别注册，并且需要遵守适用于该类别的监管要求和提交某些连续性报告。

application to the BMA to be registered in the appropriate category and will involve compliance with the applicable regulatory requirements of the category and certain on-going reporting.

Based on current information, entities which already hold a licence under the IBA on the Effective Date shall be deemed by the BMA to hold a standard licence and will not need to take any further action.

Class A Registered Persons will consist of those entities which (i) do not maintain a place of business in Bermuda; and (ii) are already licensed, authorised or registered by a “recognised regulator” in another jurisdiction. A Class A Person will be required to appoint an individual in Bermuda approved by the BMA as its “Senior Representative” who will serve as the entity’s point of contact in Bermuda.

Entities who do not qualify for the Class A Registered Person category and who previously qualified for one of the prior Exemptions or which have historically been Non Resident Providers are expected to either apply to be registered as Class B Registered Persons or to be licensed under the IBA. The Class B Registered Person category will likely enjoy a “lighter touch” from a regulatory perspective than licenced persons. A Class B Registered Person will be required to maintain a “principal place of business” in Bermuda. A “principal place of business” means (i) in the case of an individual who is a sole trader, the premises occupied for the purpose of carrying out such investment business or (ii) in any other case, the premises from which the entity carries on investment business and which it occupies for that purpose and at which it employs staff and pays salaries and other expenses in connection with the investment business.

There will be a transition period of 12 months from the Effective Date during which Entities previously granted an Exemption as well as Non Resident Providers will be required to apply to be either licensed or registered as a Registered Person in the applicable Class, pursuant to the terms of the IBA. As such, relevant entities engaging in investment business should start planning to apply for licensing/registration under the IBA in the near future.

Entities incorporated after the Effective Date and which intend to carry on investment business will need to be licensed or registered under the Act prior to commencing such business. Equally, the 12-month transition period will not be available for existing entities that do not presently carry on investment business but intend to after the Effective Date. For such entities they will need to be licensed or registered under the Act prior to commencing such investment business after the Effective Date.

For more information, please contact one of the individuals listed below or your usual Conyers contact.

根据目前的信息，在生效日期已持有《投资业务法》规定的许可的实体被百慕大金管局视为持有标准许可，无需采取任何进一步行动。

A类注册人将包括以下实体：（i）在百慕大没有营业场所；（ii）已从另一个司法管辖区的“认可的监管机构”获得了许可、授权或注册。A类注册人需要在百慕大任命一名经百慕大金管局批准的人员作为其“高级代表”，担任该实体在百慕大的联络人。

不符合 A 类注册人类别资格、之前有资格获得先前某项豁免或历来是非常驻提供者的实体预计需申请注册为 B 类注册人或根据《投资业务法》获得许可。从监管的角度看，B 类注册人类别与获得许可的人士相比，受到的监管力度可能要轻一些。B 类注册人需要在百慕大维持一个“主要营业场所”。“主要营业场所”意思是（i）如果是位个体经营者，指的是为开展此类投资业务而占用的场所；或者（ii）如果是任何其他情况，指的是实体开展投资业务的场所，并为此目的而占用该场所，而且在该场所雇用员工并支付工资和其他与投资业务相关的费用。

从生效日期起将有一个 12 个月的过渡期，在此期间，之前获得某项豁免的实体以及非常驻提供者需要根据《投资业务法》的条款申请许可或注册为适当类别的注册人。因此，从事投资业务的相关实体应开始计划在不久的将来根据《投资业务法》申请许可/注册。

在生效日期之后成立并打算开展投资业务的实体，在开始此类业务之前，需要根据该法案获得许可或进行注册。同样，12 个月的过渡期不适用于目前不开展投资业务但打算在生效日期之后开展此类业务的现有实体。对于此等实体，在生效日期后开始此类投资业务前，需要先根据该法案获得许可或进行注册。

欲了解更多信息，请与下列律师或本所您惯常联络的律师联系。

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.

For further information please contact:
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