



Bermuda Regulations 2022

REGULATION

Updates to economic substance and reporting process

The economic substance regime has continued to develop, with the most notable change being the amendment to the definition of the 'relevant activity' of 'fund management', which was effective from 1 January 2022. As a result of the amendments, an entity will be carrying on the 'relevant activity' of 'fund management' if it manages investments for an investment fund, as defined under the Investment Funds Act 2006 (as amended), whether or not it is required to be licensed under the Investment Business Act 2003 (as amended) and will therefore include all entities even if they do not have a physical presence in Bermuda.

In March 2022, the ROC issued the first Notice to Comply and Warning Notices (the "Notices") for non-compliance with the economic substance requirements. These Notices were issued to entities that self-declared on their economic substance declarations filed with the Registrar of Companies for the 2019 and 2020 relevant financial

period that the entity was non-compliant with the economic substance requirements as defined in section 3 of the Economic Substance Act 2018 and the Economic Substance Regulations 2018. The Notices permitted entities to make representations to the ROC for the ROC to decide whether the actions taken by the entity are adequate to meet the economic substance requirements or whether further enforcement action is required.

In light of COVID-19 and acknowledging the travel restrictions and health warnings, the BMA and the ROC extended their Notices to the Public, waiving the requirements to have physical board meetings in Bermuda, for the purposes of complying with the economic substance requirements until 31 December 2022. However, it is a requirement of directors to make good faith decisions in relation to meeting the economic substance requirements and any decisions relating to the corporate governance requirements should be well documented in the relevant board meeting minutes.

Updates on Regulation of the Investment Business Act 2003

The BMA has issued a number of consultation papers with suggested enhancements to the investment business regime in Bermuda. These changes will see significant amendments to the legislation, codes of conduct, rules and statement of principles and are expected to be effective in the latter half of 2022. At a high level, the amendments will require that entities either register as a Class A, Class B or Non Registrable Person and will require any entity that is incorporated or formed in Bermuda that is carrying on investment business activities to be licensed by the BMA, regardless of whether the entity is carrying on the investment business activities from a place of business, where it employs staff and pays salaries. Also proposed is a new sandbox license for investment business related innovation, which will be introduced in the form of Class T and Class F license categories. Certain license classes will also be required to appoint a Senior Representative.

Continued updates to digital asset regulatory framework

As a leading fintech and digital assets sector jurisdiction, Bermuda continues to enhance its regulatory framework in connection with digital assets. The BMA continue to ensure that the digital asset legislative framework is fit for purpose and keep pace with the digital asset business environment, which continues to evolve rapidly. Proposed changes to the Digital Asset Business Act 2018 seek to provide further clarity to applicants and to facilitate more effective administration of the legislative framework.

Personal Information Protection Act 2016

The Bermuda Privacy Commissioner has appointed an Assistance Commissioner of Operations, as well as an Assistant Commissioner of Policy and Engagement and has been active in developing guidance notes and training platforms to assist organisations in Bermuda to meet their obligations under the Personal Information Protection Act 2016 ("PIPA"). There is still no confirmed date for the substantive provisions of PIPA to be operative, however, we anticipate PIPA to be introduced by the end of 2022 with a phased approach for entities to be compliant. We recommend organisations in Bermuda to review their current handling of personal information now and ensure that they are ready to satisfy the obligations of PIPA when it comes into force.



Regulatory trends in Bermuda's AML regime

The BMA issued a series of consultations papers on proposed enhancements to the general guidance notes and sector specific guidance notes for anti-money laundering and anti-terrorist financing purposes (the "AML Guidance Notes"). The proposed changes to the AML Guidance Notes do not propose any material changes that would affect the operations of a regulated financial institution, however there are enhancements that regulated financial institutions should be aware of, such as who the BMA will regard as 'fit and proper' to conduct the statutory independent audit.

As a result of a change to the definition of 'occasional transaction' digital asset businesses are now required to conduct customer due diligence on single transactions or a series of linked transactions where the threshold of such transactions meets USD1,000. This brings Bermuda fully into compliance with the FATF requirements and maintains Bermuda's reputation as a reputable jurisdiction.

The BMA continue to conduct on-sites of regulated financial institutions and issue enforcement actions, which has resulted in a significant increase in independent audit instructions as well as legal and regulatory advice, to ensure that on an ongoing basis, regulated financial institutions are operating within the laws and regulations of Bermuda.

Introduction of cyber reporting requirements

All financial sectors licensed, registered and supervised by the BMA are required to comply with the Operational Cyber Risk Management Code of Conduct, which was first implemented for registered insurers and insurance intermediaries. There is also the requirement to report to the BMA any 'cyber reporting events' that are suffered by a Bermuda regulated entity or where a Bermuda entity is implicated in a 'cyber reporting event' of its global operations. As a result of these new requirements, there has been a significant increase in the number of instructions in relation to legal and regulatory reviews of cyber and information security policies and procedures as well as assisting entities with reporting to the BMA, where necessary.

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