

Business Community Applauds Passing of New 'Investment Funds Act 2006'

The Bermuda International Business Association (BIBA) soundly endorsed the passing, in Bermuda's House of Assembly, of the eagerly anticipated Investment Funds Act 2006, which more clearly outlines how public funds are regulated and refines the framework for non-public, institutional funds.

BIBA CEO Cheryl Packwood, commented, "This is yet another example of the positive results of collaborative consultation between Bermuda's private and public sector partnerships. When the Ministry of Finance and the Bermuda Monetary Authority (BMA) commenced writing this Act, as is the policy in Bermuda, they asked for the input of the Financial Industry in reviewing and recommending pertinent changes or additions to it prior to presenting the Act before the House of Assembly.

"BIBA's Collective Investment Scheme Committee, which is chaired by Sharon Beesley, Executive Director and General Counsel of ISIS Limited, and comprises more than 40 members who represent the executive levels of all areas of legal, accounting and other financial services in Bermuda, spent enormous hours scrutinizing, reviewing and suggesting changes throughout the ongoing consultation with Government and the BMA.

The result is an Act that brings clarity and certainty about the process for registering and licensing funds and greatly enhances Bermuda's competitive edge in the international fund community."



Highlights of the Bill

- There is a clearly defined distinction between public (retail) funds and institutional or non-public funds.
- The powers to exclude funds from particular requirements are more refined so that there is certainty as to what minimum requirements must be met by fund operators.
- Exclusions from fund regulation are more clearly defined so funds of a private nature are not captured.
- Under previous legislation, partnerships were not covered but this gap has been now closed and they are included, as well as mutual fund companies and unit trusts.
- Fund administrators are now regulated and licensed.
- A new class of funds, known as "administered funds" has been introduced. With the introduction of licensed administrators, it is now possible to register funds under this class with the level of regulation adapted based on the grounds that the administrator is based in Bermuda and subject to codes of conduct and fund rules that will ensure the proper level of governance of the fund.
- There is clearer definition of the rules for the appointment of service providers and delegation of powers.
- A new section clearly enables unit trustees to hold property in segregated accounts and defines how these accounts will be managed. This affords trustees the same benefits as companies operating with segregated accounts.
- The rules for prospectuses of funds are clearly set down and distinguished from the general rules under the Companies Act of 1981.
- The powers of the BMA to require more information and to inspect are enhanced.
- The requirements and powers for sharing of information with other regulators are more clearly defined.
- Similar to other financial institutions, a right of appeal to an appeal tribunal was introduced.

Finance Minister Paula Cox, who successfully piloted the Act to unanimous approval by the House of Assembly, is confident that the legislation enhances Bermuda's abilities and reputation as a premier fund jurisdiction. Ms. Cox commented that Bermuda had to streamline the incorporation process for investment funds and eliminate unnecessary administrative procedures to augment Bermuda's competitive edge by bringing more clarity and certainty to the authorization process.

She explained, "There will be less time required to set up a fund as the rules are more clearly stated. The Bill is another example of Bermuda's continued efforts to ensure that we maintain the right balance as a reputable international financial centre."

Licensed and Regulated Fund Administrators

For the first time, Bermuda's fund administrators will be licensed. Minister Cox was quick to point out, however, that even though fund administrators had not been licensed in the past, it would not be true to say that there has been no regulation of these providers. She said, "Presently, fund administrators are regulated as regulated entities under the Proceeds of Crime Act 1977 and are subject to a higher level of due diligence when handling subscriptions and redemptions similar to those imposed on banks, trust companies and investment providers.

"Regulation has become more important to the ongoing successful development of this sector. In fact, to gain recognition in the global marketplace, the stakeholders of this sector support regulation.

"It is important that these service providers are recognised to have proper personnel operating their businesses with the proper systems in order to continue to secure business from all parts of the world."

Cheryl Packwood pointed out that while many funds register in other jurisdictions, Bermuda is one of the leading choices for companies to administer their funds, regardless of where they choose to domicile and in fact, Bermuda administers a substantial proportion of the funds which register in Cayman, for instance.

BIBA's members are enthusiastic about both the intent and content of this legislation. Combined with Bermuda's superior infrastructure, reputation and intellectual capital, the Island is poised to garner effectively its share of the booming global fund business. □

Sharon Beesley, Executive Director
& General Counsel of ISIS Limited