



Council of the
European Union

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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Bermuda: final legislation and assessment under criterion 2.2
= Bermuda: final legislation on collective investment funds and assessment under criterion 2.2

The ECOFIN Council acknowledged on 12 March 2019 that further work was needed to define acceptable economic substance requirements for collective investment funds (CIVs) under criterion 2.2 and invited the Code of Conduct Group to "*continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019*". In June 2019, the ECOFIN Council subsequently endorsed a technical guidance on substance requirements for CIVs that had been developed by the Group. The deadline of end of 2019 was confirmed for Bermuda to address COCG's concerns relating to economic substance in the area of CIVs.

A/ FINAL LEGISLATION:

On 20 December 2019 Bermuda published the Investment Funds Amendment Act:

<http://www.bermulaws.bm/laws/Annual%20Laws/2019/Acts/Investment%20Funds%20Amendment%20Act%202019.pdf>

On 23 December 2019 Bermuda published:

1/ Investment Funds (Definition) Order 2019:

[http://www.bermulaws.bm/laws/Annual%20Laws/2019/Statutory%20Instruments/Investment%20Funds%20\(Definition\)%20Order%202019.pdf](http://www.bermulaws.bm/laws/Annual%20Laws/2019/Statutory%20Instruments/Investment%20Funds%20(Definition)%20Order%202019.pdf)

2/ Investment Fund Rules 2019:

<http://www.bermulaws.bm/laws/Annual%20Laws/2019/Statutory%20Instruments/Investment%20Fund%20Rules%202019.pdf>

3/ Investment Fund Offering Document Rules 2019:

<http://www.bermulaws.bm/laws/Annual%20Laws/2019/Statutory%20Instruments/Investment%20Fund%20Offering%20Document%20Rules%202019.pdf>

B/ FINAL ASSESSMENT:

Bermuda's legislative framework on CIVs, comprising the Investment Funds Act 2006 (IFA), Fund Rules, Fund Prospectus Rules, Enforcement Guide and Investment Fund Guidelines, was found inadequate under all 4 pillars in September 2019. Therefore, Bermuda proposed to amend the IFA (IFA Amendment) and its Fund Rules and Fund Prospectus Rules and to adopt an Investment Funds Definition Order.

In November and December 2019, Member States examined the final versions of the proposed amendments and agreed that these addressed their concerns, subject to monitoring of certain aspects.

Under pillar 1, authorization/registration requirements extend to open and close ended funds and designation is required of foreign funds managed or marketed in or from Bermuda. Under pillar 2, the Bermuda Monetary Authority (BMA) is an IOSCO member, with staff, resources and significant supervisory and enforcement powers, and its powers to make exemptions are limited. Under pillar 3, funds' valuation policies should adhere to specific principles, while accounting and audit should comply with IFRS, Bermuda, Canada, UK or US GAAP with no other standards recognized at this stage. Under pillar 4, open-ended funds must appoint a custodian for the segregation and safekeeping of their property and close-ended funds must designate responsibility for these functions.

Since December 2019, Bermuda confirmed the adoption of the above amendments to its CIVs framework with effect from 1 January 2020 and shared the official versions of the relevant acts.

Conclusion

Bermuda's revised legislative framework for CIVs complies with the requirements of the 4 pillars. Therefore, Bermuda has implemented its commitment to introduce economic substance in the area of collective investment funds under criterion 2.2 and was removed from Annex II at the ECOFIN meeting on 18 February 2020.