



Bermuda Allows Cannabis Investment Funds

Author:

Elizabeth Denman, Director

[Bermuda's authorities have given the go-ahead for investment vehicles interested in taking advantage of the legal cannabis sector. Elizabeth Denman of Conyers Dill & Pearman explains why this offshore jurisdiction is the clear choice for setting up ventures investing in cannabis-related enterprises.](#)

Investment in cannabis businesses, either directly or through an investment fund, was until recently a questionable business-line for Bermuda organized entities. That changed on 14 December, 2018 when the Bermuda Monetary Authority (BMA) confirmed that it will permit Bermuda incorporated/organized investment entities whose investment strategy is linked to the cannabis industry to register with it provided such business activity is legal on all government levels where it is being conducted.

In Canada, the 33 U.S. states and other jurisdictions where marijuana has been legalized for either medical or both medical and recreational use, investment in commercial production and uses of cannabis has soared. Start-ups abound in ventures ranging from development of branded strains and medicinal varieties, to spin-off data and technology businesses. Cannabis and its related products have started to hit the mainstream.

Investors smell opportunity. The number of investment funds and exchange-traded funds focusing on the sector has been growing steadily. For institutional investors and asset allocators looking for new ways to diversify, legal cannabis presents a promising alternative. Parties looking to capital-raise for investment in cannabis-related industries are now looking to establish investment structures that streamline the process and provide protection to both investors and investment managers.

Bermuda has been a "go to" jurisdiction for incorporating investment funds for decades and continues to leverage its global position as an international centre for innovative and flexible solutions for raising and deploying capital.

Bermuda's investment funds regime falls into two broad categories: open-ended funds (where investors may redeem their investment as and when they desire on a predetermined schedule) which are subject to registration and/or authorization by the BMA; and closed-ended "private equity" style funds (where only the fund itself can decide if and when to redeem investors) which require no regulatory approval and are treated more like traditional holding structures. Investment funds can take a variety of forms in Bermuda including companies, limited partnerships, unit trusts and limited liability companies (LLCs).

Speed to market and regulatory certainty is paramount when raising capital for a new venture and Bermuda has recognized and responded to this business reality. In the case of closed-ended funds, structures can normally be organized within twenty-four hours and launched very quickly thereafter. There are no prescribed service providers (other than a secretary and registered office) and no regulatory approvals or fees payable in order to be able to start taking in subscription monies immediately following organization.

Open-ended funds usually fall under BMA oversight and authorization. Reflecting Bermuda's entrepreneurial heritage, the BMA takes a responsive and flexible approach which aims to regulate innovative products in an effective and sensible manner. Similarly, the *Investment Funds Act, 2006* (IFA) which governs the sector has been designed to meet the diverse needs of today's investment professionals.

The IFA offers a variety of fully regulated investment fund authorisation categories. However, the professional categories of open-ended investment funds will be of particular interest to those involved in raising and deploying capital for investment in the newly legalized cannabis industry, in jurisdictions such as Canada. Aimed at sophisticated investors and their advisors, the Professional Funds range offers operators swift access to market. While these funds must be registered with the BMA, they are subject to streamlined regulation by the BMA ensuring speed to market and the utmost agility in raising capital quickly.

Class A Professional Funds (formerly known as Class A Exempted Funds) can be established and launched within one business day. Documentation is minimal, with the BMA's focus being on the qualifications of the service providers and the contents of an offering memorandum.

In order to be registered as a Class A Professional Fund, a fund must meet certain requirements. These include limiting the offering of its securities to qualified participants (essentially equivalent to accredited investors in the U.S. and Canada and sophisticated investors in the U.K.) and employing an investment manager that satisfies one of the following requirements: (i) is licensed under Bermuda's *Investment Business Act, 2003* or (ii) is authorised or licensed by the U.S. Securities and Exchange Commission or the U.K. Financial Conduct Authority) or (iii) has either individually, or as part of an investment management group, gross assets under management of US\$100 million or more (or its currency equivalent). The initial and annual BMA registration fee for a Class A Professional Fund is US\$1,545. Ongoing requirements for Class A Professional Funds are minimal and essentially reporting based, at annual intervals.

Class B Professional Funds (formerly known as Class B Exempted Funds) are designed for use by fund operators who meet all of the eligibility requirements of the Class A Professional Fund, except their investment managers do not meet the more stringent pre-qualification criteria. Funds desiring to be registered as Class B Professional Funds need pre-approval from the BMA, which usually turns around applications in a matter of days. The initial and annual registration fee for a Class B Professional Fund is US\$1,030 and the ongoing obligations are identical to those for Class A Professional Funds, with the additional requirement that approval of the BMA must be obtained for any change to the fund's directors or service providers as and when these changes happen.

Still in its infancy, there will undoubtedly be successes and failures, as well as changes in direction, as the legal cannabis industry matures and develops. For example, it is likely that there will be a clearer split between the medical and recreational sectors, which we can expect to see reflected in the focus of investment vehicles. Whatever the form it eventually takes, there will be many looking to take advantage of the opportunities offered by this booming new industry. Those planning to launch an investment vehicle to capitalize on its potential should look to Bermuda. A highly respected offshore financial centre less than three hours flying time from Canada and the USA, offering swift set-up and light but effective regulation, the island is an excellent choice.

AUTHOR:

ELIZABETH DENMAN

DIRECTOR

elizabeth.denman@conyersdill.com

+1 441 278 7842

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: media@conyersdill.com