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A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text.

## Bermuda Investment Funds Act 2006 and Related Legislation

Last Updated: February 2021



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## Preface

As a service to our clients, we have prepared this compendium of the Investment Funds Act 2006 together with related rules and regulations (in some instances, select provisions only) and incorporates all amendments to date.

The most recent legislative update includes amendments made by the Investment Funds Amendment Act 2021, operative 21 January 2021.

Previous updates include amendments to the Fourth Schedule (Fees) to the Bermuda Monetary Authority Act 1969, made by the Bermuda Monetary Authority Amendment Act 2020, operative 19 March 2020.

Other recent updates include amendments to the Fifth Schedule to the Companies Act 1981 made by section 74 of the Incorporated Segregated Accounts Companies Act 2019, operative 15 January 2020; amendments made by the Investment Funds Amendment Act 2019, operative 1 January 2020; consequential amendments to the Investment Funds Act 2006 made by Schedule 2 to the Fund Administration Provider Business Act 2019, operative 31 December 2019; and amendments to the Fourth Schedule (Fees) to the Bermuda Monetary Authority Act 1969, Part B - 2020 and Part C - 2021 under the heading Investment Funds Act 2006 made by section 5 of the Bermuda Monetary Authority Amendment Act 2019, operative 31 December 2019, and the Investment Funds Amendment Act 2019 operative 1 January 2020.

The following new legislation has been added to this compendium: the Investment Funds (Definition) Order 2019, the Investment Fund Rules 2019, the Investment Fund Offering Document Rules 2019, operative 1 January 2020, and the Fund Administration Provider Business Act 2019, operative 31 December 2019.

**Conyers Dill & Pearman**

**Bermuda**

**Revised: February 2021**

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 Investment Funds Amendment Act 2021 (2021:4)

### **Investment Funds (Definition) Order 2019 (BR 133/2019)**

Investment Funds Amendment Act 2021 (2021:4)

### **Investment Fund Offering Document Rules 2019 (BR 134/2019)**

### **Investment Fund Rules 2019 (BR 135/2019)**

### **Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012 (BR 40/2012)**

### **Investment Funds (Specified Jurisdiction Fund) (Japan) Rules 2012 (BR 43/2012)**

### **Bermuda Monetary Authority Act 1969 (1969:57) (Fourth Schedule - Investment Funds Act Fees)**

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 Bermuda Monetary Authority Amendment Act 2019 (2019:49)  
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### **Companies Act 1981 (1981:59) (Select Provisions - Exempted Company Fees)**

Incorporated Segregated Accounts Companies Act 2019 (2019:44)

## BERMUDA

**INVESTMENT FUNDS ACT 2006****2006: 37**

[Assent Date: 28 December 20060]

[Operative Date: 7 March 2007]

WHEREAS it is expedient to make new provisions for the regulation of investment funds; to make provision for regulating fund administrators; and for connected matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**PART I - PRELIMINARY****1. Short title and commencement**

This Act may be cited as the Investment Funds Act 2006 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

*Interpretation***2. Interpretation**

(1) In this Act —

“auditor” means —

- (a) a person entitled to practise as a public accountant in Bermuda;
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or
- (c) a person recognized by the Authority as an auditor;

“Authority” means the Bermuda Monetary Authority;

“authorised” means authorised under this Act;

“chief executive” means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the company;

“closed-ended investment fund” has the meaning given in section 3(5);<sup>1</sup>

“company fund” “ means a fund under which the property is held for the participants by— <sup>2</sup>

- (a) a company, within the meaning of section 2(1) of the Companies Act 1981, and includes a mutual fund company within the meaning of section 156A of that Act;
- (b) an incorporated segregated accounts company, as defined by section 2 of the Incorporated Segregated Accounts Companies Act 2019;
- (c) an incorporated segregated account, as defined by section 2 of the Incorporated Segregated Accounts Companies Act 2019;”. <sup>3</sup>

“constitution” in relation to –

- (a) a unit trust fund, means its trust deed or other instrument establishing the trust;
- (b) a company fund means its memorandum of association and bye-laws;<sup>4</sup>
- (c) a partnership fund, means its partnership agreement;
- (d) a limited liability company fund or LLC fund, means its LLC agreement;<sup>5</sup>

“controller” has the meaning given in section 2A;<sup>6</sup>

“custodian” means the person entrusted with the safekeeping of the fund property and includes the trustee of a unit trust fund and the persons mentioned in section 18(1);

“decision notice” means a notice prepared in accordance with section 67K;<sup>7</sup>

“fund administrator” means a person carrying on one or more of the fund administration provider business services specified in section 2(2) of the Fund Administration Provider Business Act 2019 in compliance with that Act and other applicable laws in Bermuda or in compliance with the applicable rules and requirements of the relevant overseas regulatory authority;<sup>8 9</sup>

“fund offering document rules” means rules made by the Authority under section 38 relating to the issuance and content of an offering document;<sup>10</sup>

“fund prospectus” means particulars of a fund prepared in accordance with fund offering document rules and “prospectus” has a corresponding meaning;<sup>11</sup>

“fund prospectus rules” means fund prospectus rules made under section 38;

“fund rules” means rules made under section 37;

“investment fund” has the meaning given in section 3; and “fund” has a corresponding meaning;

“investment manager” means a person acting on behalf of a fund who manages its investments under the terms of a management agreement;

“limited liability company fund” or “LLC fund” means a fund under which the property is held on behalf of the members of a limited liability company formed under the Limited Liability Company Act 2016;<sup>12</sup>

“manager” has the meaning assigned to it in section 2 of the Limited Liability Company Act 2016;<sup>13</sup>

“minimum criteria” means the minimum criteria for licensing set out in the Schedule;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act<sup>14</sup>;

“mutual fund company” [DELETED by 2019:46 s. 2(2)(c)]<sup>15</sup>;

“offering document” means a fund prospectus or other document setting out the terms and conditions upon which units or shares in an investment fund are offered, as may be applicable, and prepared in accordance with fund offering document rules;<sup>16</sup>

“officer”, in relation to an undertaking, includes a director, secretary or senior executive of the undertaking by whatever name called, and any manager;<sup>17 18</sup>

“open-ended investment fund” has the meaning given in section 3(5);<sup>19</sup>

“operator”, in relation to –

- (a) a unit trust fund, means the trustee;
- (b) a company fund, means the board of directors;<sup>20 21</sup>
- (c) a partnership fund, means the general partner; and<sup>22</sup>
- (d) an LLC fund, means the manager;<sup>23 24</sup>

“Overseas Fund” means an overseas investment fund that has been designated by the Authority as an Overseas Fund under section 5A(7), following its compliance with requirements under section 5A(2);<sup>25</sup>

“overseas investment fund” means an investment fund incorporated or established in a jurisdiction outside Bermuda;<sup>26</sup>

“overseas regulatory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act;<sup>27</sup>

“parent undertaking” has the meaning given in section 5 of the Investment Business Act 2003;<sup>28</sup>

“participant” in relation to a fund has the meaning given by section 3(2);

“participate” in relation to a fund means become a participant in the fund;

“partnership fund” means a fund under which the property is held on behalf of participating partners of a partnership registered under the Limited Partnership Act 1883;

“prime broker” means a person who provides services under a prime brokerage agreement which may include any one or more of the following—<sup>29</sup>

- (a) custody of assets or arranging safe keeping of assets;
- (b) clearing services and financing;
- (c) capital introduction;
- (d) margin financing;
- (e) stock lending;
- (f) entering into repurchase or reverse repurchase transactions;
- (g) consolidated reporting and other operational support;

“Private fund” has the meaning given in section 6;<sup>30</sup>

“Professional Class A fund” has the meaning given in section 6A;<sup>31</sup>

“Professional Class B fund” has the meaning given in section 7;<sup>32</sup>

“Professional Closed Fund” means a fund that has been classified by the Authority as a Professional Closed Fund under section 8B(1), following its compliance with requirements under section 8B(2);<sup>33</sup>

“promotion” means the following activities initiated by or on behalf of an overseas investment fund—<sup>34</sup>

- (a) advertising;
- (b) issuing an offering document, application form or proposal form and stating the method of issue;

- (c) circulating or making available promotional material, including describing the general nature of the material and the persons to whom, and the manner in which, it is to be circulated or made available.

“register” has the meaning given in section 20;

“registrar” means the person appointed to establish and maintain the register;

“senior executive” means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the company –

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the undertaking.

“service provider” means a fund’s auditor,<sup>35</sup> custodian, fund administrator, investment manager corporate service provider<sup>36</sup> or registrar, and includes any person to whom a service provider has delegated part or all of his functions;

“shareholder controller” has the meaning given in section 2A(4);<sup>37</sup>

“Tribunal” means a Tribunal constituted in accordance with section 56;

“trustee” in relation to a unit trust fund, means the person holding the trust property on trust for the participants;

“units” means the rights or interests (however described) of the participants in a fund;

“unit trust fund” means a fund under which the property is held on trust for the participants.

“warning notice” means a notice prepared in accordance with section 67J.<sup>38</sup>

(2) [Repealed]<sup>39</sup>

**2A. Meaning of “controller” and “associate”<sup>40</sup>**

(1) In this Act, “controller” shall be construed in accordance with this section.

(2) “Controller” in relation to an undertaking, means—

- (a) in the case of an undertaking which is a company, a managing director of the company, or of its parent undertaking;
- (b) in the case of an undertaking which is a firm—
  - (i) if a partnership, the managing partner;
  - (ii) if an unincorporated association, a member of the firm;
- (c) in the case of an undertaking which is neither a company nor a firm, a sole proprietor;
- (d) a chief executive of the undertaking or of its parent undertaking;
- (e) a person who satisfies the requirements of this paragraph; and
- (f) a person in accordance with whose directions or instructions the directors of the undertaking or of its parent undertaking or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

(3) A person satisfies the requirements of subsection (2)(e) in relation to an undertaking if, either alone or with any associate or associates—

- (a) he holds 10% or more of the shares in the undertaking which is a company or its parent undertaking;

- (b) he is entitled to exercise or control the exercise of 10% or more of the voting power in the undertaking or in the parent undertaking; or
  - (c) he is able to exercise a significant influence over the management of the undertaking or the parent undertaking by virtue of the voting power in the undertaking or the parent undertaking.
- (4) A person who is a controller of an undertaking by virtue of subsection (2)(e) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act—
- (a) "ten per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is not less than ten; and
  - (b) "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is fifty or more.
- (5) In subsection (4), "the relevant paragraph" in relation to a shareholder controller means whichever one of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.
- (6) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—
- (a) if that person is an individual —
    - (i) the spouse, child, step-child or parent of that person;
    - (ii) the trustees of any settlement under which that person has a life interest in possession;
    - (iii) an undertaking of which that person is a director;
    - (iv) a person who is an employee or partner of that person;
  - (b) if that person is an undertaking which is a company or a firm—
    - (i) a director of that undertaking;
    - (ii) a subsidiary undertaking;
    - (iii) a director of a subsidiary of that undertaking;
  - (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or under which they undertake to act together in exercising their voting power in relation to it, that other person.
- (7) For the purpose of subsection (6), "settlement" includes any disposition or arrangement under which property is held in trust.

## **2B. Authority's statement of principles**<sup>41</sup>

- (1) The Authority shall as soon as practicable after the coming into force of this section, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—
- (a) in exercising its powers to grant or revoke an authorisation under Part II;
  - (b) in interpreting the minimum criteria;
  - (c) in exercising its powers to—
    - (i) grant, revoke or restrict a licence under Part III;



- (ii) obtain information and to require the production of documents;
- (iii) issue directions under sections 30 and 51;
- (iv) impose a civil penalty under section 67A;
- (v) publish a statement in respect of an authorised fund<sup>42</sup> pursuant to section 67C;
- (vi) make a prohibition order under section 67E; and
- (vii) publish information about any matter to which a decision notice relates under section 67M.

(2) If the Authority makes a material change to the statement of principles, it shall publish a statement of the change or the revised statement of principles in the same manner as it published under subsection (1).

## **PART II - INVESTMENT FUNDS**

### **3. Investment fund**

(1) In this Act, “investment fund” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that –

- (a) the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
- (b) [REPEALED by 2019:46 s. 3(a) effective 1 January 2020].<sup>43</sup>

(3) The arrangements must also have one or both of the following characteristics –

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the operator of the fund.

(3A) The arrangements shall be an open-ended investment fund or a closed-ended investment fund.<sup>44</sup>

(4) The Minister acting on the advice of the Authority, may by order, subject to negative resolution procedure provide that arrangements do not amount to an investment fund –

- (a) in specified circumstances; or
- (b) if the arrangements fall within a specified category of arrangement.

(5) In this Act -<sup>45</sup>

“open-ended investment fund” means an arrangement in which the participants are entitled to have their units redeemed in accordance with the fund’s constitution and offering document at a price determined in accordance with such constitution and offering document;

“closed-ended investment fund” means an arrangement in which the participants are not, at their election, entitled to have their units redeemed.

#### **4. Registered and authorised funds: segregated accounts**<sup>46</sup>

- (1) This section applies to a registered or authorised investment fund which is permitted under the terms of its constitution to operate segregated accounts.
- (2) In this section, “segregated account” means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a registered or authorised fund, relating to an identified or identifiable pool of assets and liabilities of such registered or authorised fund which are segregated or distinguished from other assets and liabilities of the registered or authorised fund.
- (3) Subject to the Segregated Accounts Companies Act 2000, the constitution of a registered or authorised fund to which this section applies may make provision for any of the matters set out in subsections (4) to (7).
- (4) The operator of a registered or authorised fund which operates segregated accounts shall hold the assets of each segregated account for the benefit of the participants of such segregated account exclusively.
- (5) Any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account.
- (6) Where a liability arises from a transaction or matter relating to, or is otherwise imposed or attributable to, a particular segregated account, that liability shall—
- (a) extend only to the assets linked to that segregated account; and
  - (b) not extend to the assets linked to any other segregated account.
- (7) Any assets of the registered or authorised fund not readily identifiable as belonging to any particular segregated account shall be allocated by the operator between all of the segregated accounts on the basis of the respective net asset values of each segregated account or, subject to the terms of the registered or authorised fund’s constitution, on such other basis as the operator may in its absolute discretion determine.

#### **4A. “Fit and Proper”**<sup>47</sup>

- (1) For the purposes of this Part, paragraph 1(2) and (3) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator, officers or service providers are fit and proper persons to act as such in relation to any fund.
- (2) Paragraph 2(1) and (2) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator will conduct or is conducting business as the case may be, in a prudent manner.

#### **4B. Codes of Conduct**<sup>48</sup>

- (1) The Authority may issue codes of conduct for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by operators of, or service providers to, an investment fund.
- (2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.
- (3) Every registered, authorised or designated investment fund shall in the conduct of its business have regard to any code of conduct issued by the Authority.
- (4) A failure on the part of an investment fund to comply with the provisions of such code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by section 5(2A).

## PROHIBITION OF UNAUTHORISED, UNREGISTERED AND UNDESIGNATED FUNDS<sup>49</sup>

### **5. Prohibition of unauthorised, unregistered and undesignated funds**<sup>50 51</sup>

- (1) This section applies to investment funds and overseas investment funds.<sup>52 53 54 55</sup>
- (2) Subject to sections 6, 6A and 7<sup>56 57</sup>, no person shall operate a fund to which this section applies or purport to operate such a fund, in or from Bermuda, unless –
  - (a) the fund has been authorised or registered<sup>58</sup> under section 13 or section 6, 6B, 8A or 8C; or<sup>59 60</sup>
  - (b) the fund is registered under sections 6, 6A, 7 or 8B,<sup>61 62 63</sup>
  - (c) the fund is designated under section 5A.<sup>64</sup>
- (2A) Every fund operator, or person or body of persons, by whatever name called, authorised by an overseas regulatory authority to perform functions relating to any activity carried on by an operator, shall operate a fund in a prudent manner in accordance with the minimum criteria for licensing.<sup>65</sup>
- (3) It shall be an offence for a person to operate a fund in contravention of subsection (2).
- (4) A person guilty of an offence under subsection (3) is liable –
  - (a) on summary conviction to a fine of \$50,000 or to imprisonment for 2 years or to both, and
  - (b) on conviction on indictment to a fine of \$200,000 or imprisonment for 5 years or to both.
- (5) In proceedings for an offence under this section, it is a defence for the accused to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

## DESIGNATION<sup>66</sup>

### **5A. Overseas Fund: designation**<sup>67</sup>

- (1) Subject to this Act and notwithstanding any other Act, no overseas investment fund shall be managed or carry on promotion in or from within Bermuda, unless it is designated as an Overseas Fund by the Authority under subsection (2).
- (2) An investment fund qualifies for designation by the Authority as an Overseas Fund if it—
  - (a) is an overseas investment fund;
  - (b) complies with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established; and
  - (c) complies with—
    - (i) all requirements of this section; and
    - (ii) any conditions imposed on it by the Authority.
- (3) The Authority may impose such conditions on an Overseas Fund as it determines necessary.
- (4) The Authority may delete, vary or modify a condition imposed on an Overseas Fund under subsection (3).
- (5) An operator of an overseas investment fund shall notify the Authority in writing prior to the overseas investment fund being managed or promoted in or from within Bermuda, and such notification shall be in such form as may be determined by the Authority and shall contain such information as the Authority may require.
- (6) At the time of notification under subsection (5), the operator shall also submit the following to the Authority—

- (a) a copy of the offering document;
- (b) details of any regulatory approval given by, or notification given to the overseas regulatory authority in the country or territory in which the overseas investment fund is incorporated or established;
- (c) the prescribed notification fee.

(7) Where the Authority is satisfied that an overseas investment fund has met the requirements of subsection (2), the Authority shall designate such fund as an Overseas Fund.

**5B. Overseas Fund: annual declaration**<sup>68</sup>

(1) The operator of an Overseas Fund shall certify to the Authority annually within six months of its financial year end, that it continues to satisfy the requirements of section 5A(2), after it has been designated by the Authority under section 5A(7).<sup>69</sup>

(2) A certificate under subsection (1) shall be in such form as the Authority may prescribe and shall include the following information—

- (a) material changes to the offering document during the relevant year previously provided by it to the Authority;
- (b) a statement in such form as the Authority may direct confirming that the Overseas Fund has at all times during the preceding financial year been in compliance with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established;
- (c) a statement in such form as the Authority may direct confirming that the fund has at all times during the preceding financial year been in compliance with the provisions of this Act.

(3) The Authority may consider an incomplete certificate where it determines it appropriate to do so.

(4) An Overseas Fund that is not in compliance with this Act, shall furnish the Authority with a statement setting out the particulars of noncompliance.

(5) For the purposes of this section—

“relevant year” means the most recent accounting period of the Overseas Fund;

“material change” means a change that would, if known, reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund.

**5C. Overseas Fund: cancellation of designation other than by way of consent**<sup>70</sup>

The Authority may cancel the designation of an Overseas Fund, if it appears to the Authority that—

- (a) one or more requirements for designating the Overseas Fund are no longer satisfied;
- (b) the operator of the Overseas Fund—
  - (i) has contravened or is likely to contravene a requirement imposed on the operator or under this Act; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular.

**5D. Overseas Fund: procedure on cancellation of designation**<sup>71</sup>

(1) If the Authority proposes to cancel a designation under section 5C it shall give a warning notice to the operator of the Overseas Fund.

(2) If the Authority decides to cancel a designation, it shall without delay give the operator a decision notice and the operator may refer the matter to the Tribunal.

#### **5E. Overseas Fund: request for cancellation of registration**<sup>72</sup>

(1) A designation may be cancelled by the Authority at the request in writing of the operator of the Overseas Fund.

(2) If the Authority cancels a designation under subsection (1), it shall give written notice of the cancellation to the operator of the Overseas Fund.

(3) The Authority may refuse a request to cancel a designation under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether a designation should be cancelled.

### **REGISTERED FUNDS**<sup>73</sup>

#### **REGISTRATION**<sup>74</sup>

#### **6. Private funds**<sup>75</sup>

(1) [REPEALED]<sup>76</sup>

(2) A fund is a private fund if the number of participants does not exceed 20 persons and if the fund does not promote itself by communicating an invitation or inducement to the public generally.<sup>77</sup>

(2A) The operator of the fund is required to appoint a local service provider authorised and regulated by the Authority.<sup>78</sup>

(2AA) The operator of the fund shall be fit and proper to perform the function of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such.<sup>79</sup>

(2B) The operator of an open-ended investment fund shall appoint a custodian with regard to ensuring safekeeping of the fund's assets.<sup>80 81</sup>

(2C) The operator of an open-ended investment fund shall appoint a fund administrator.<sup>82 83</sup>

(2D) The operator of a private fund shall appoint for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund.<sup>84</sup>

(3) [Repealed]<sup>85</sup>

(3A) An operator of a private fund falling within this section shall apply to the Authority, in such form as the Authority may direct, confirming that the private fund qualifies for registration under this section.<sup>86</sup>

(3B) When submitting an application under this section, the operator must also provide to the Authority.<sup>87</sup>

- (a) information related to the fund;
- (b) a copy of the fund offering document;<sup>88</sup>
- (c) details of the service providers;
- (d) the registration fee.

(3C) If on application under this section in respect of a private fund, the Authority is satisfied that the fund complies with the requirements of this section, the Authority may grant the application for the fund to be registered as a private fund.<sup>89</sup>

(3D) The operator of a private fund must certify to the Authority annually within six months of its financial year end, in such form as the Authority may direct, that the fund satisfies the qualifying criteria and requirements for registration and will continue to satisfy them on an ongoing basis.<sup>90 91</sup>

- (3E) The operator of a private fund must at the time of filing the certificate, also file with the Authority.<sup>92</sup>
- (a) information on the net asset value of the fund and its underlying assets;
  - (b) a copy of the fund's management accounts or audited financial statements;
  - (c) information on any material changes that took place during the course of the year (reporting or accounting period).
- (4) [REPEALED]<sup>93</sup>
- (5) The Authority may determine an incomplete application if it considers it appropriate to do so.<sup>94</sup>
- (6) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.<sup>95</sup>
- (7) [REPEALED by 2019:46 s. 8(d) effective 1 January 2020]<sup>96 97</sup>
- (8) An operator may apply to the Authority for a change of classification of a private fund.<sup>98</sup>
- (9) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.<sup>99 100</sup>

#### **6A. Professional Funds**<sup>101 102 103 104</sup>

- (1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Class A Fund.<sup>105 106</sup>
- (2) The requirements referred to under subsection (1) are that—
- (a) the fund is open only to qualified participants;
  - (b) the operator of the fund has appointed as an investment manager for the fund a person who—
    - (i) is licensed under the Investment Business Act 2003;
    - (ii) is authorised or licensed by a foreign regulator recognised by the Authority; or
    - (iii) for the purposes of this Act is carrying on business in or from Bermuda or in a jurisdiction recognised by the Authority, being a person who—
      - (A) has gross assets under management of an amount that is not less than \$100 million; or
      - (B) is a member of an investment management group that has consolidated gross assets under management of an amount that is not less than \$100 million;
  - (c) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;
  - (d) the operator of the fund has appointed the following persons ('service providers') to provide services to the fund—
    - (i) a fund administrator;
    - (ii) [REPEALED];<sup>107</sup>
    - (iii) an auditor; and
    - (iv) a custodian or prime broker, except where subsection (2A) applies<sup>108</sup>; and

- (e) the financial statements of the fund are prepared in accordance with any one of the following standards—
  - (i) International Financial Reporting Standards (“IFRS”);
  - (ii) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
  - (iii) any such other GAAP as the Authority may recognise.

(2A) [REPEALED by 2019:46 s. 9(2)(c) effective 1 January 2020]<sup>109 110</sup>

(3) In this section—

“investment management group” means a group that carries on the business of managing investments within the meaning of paragraph 3 of Part 2 of the First Schedule to the Investment Business Act 2003;

“qualified participants” has the meaning given in sections 9(2) and 9(3).

**6B. Professional Class A fund: procedure for registration<sup>111 112 113</sup>**

(1) The operator of a Professional Class A fund<sup>114</sup> must, on or before the date of commencement of the fund’s business, apply to the Authority for registration<sup>115</sup>, in such form as the Authority may direct, that the requirements for registration<sup>116</sup> specified in section 6A(2) are satisfied.

(2) The operator must also certify to the Authority annually within six months of its financial year end in such form as the Authority may direct that the fund satisfies the requirements for registration<sup>117</sup> specified in section 6A(2) and will continue to satisfy them.<sup>118</sup>

(3) The operator of a Professional Class A fund<sup>119</sup> must—

- (a) at the time of filing the certificate required by subsection (1) also file with the Authority a copy of the fund’s prospectus;
- (b) at the time of filing the annual certificate required by subsection (2), also file with the Authority—
  - (i) a copy of the fund’s audited financial statements for the preceding year; and
  - (ii) a statement of any material changes to the fund’s prospectus.

(3A) The operator of the fund shall be fit and proper to perform the function of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such.<sup>120</sup>

(4) If, on an application under subsection (1) above in respect of a Professional Class A fund, the Authority is satisfied that the fund complies with the requirements of section 6A, the Authority may grant the application for the fund to be registered as a Professional Class A fund.<sup>121 122</sup>

(5) The Authority may determine an incomplete application if it considers it appropriate to do so.<sup>123</sup>

(6) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.<sup>124</sup>

(7) An operator may apply to the Authority for a change of classification of a Professional Class A fund.<sup>125</sup>

(8) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.<sup>126</sup>



**7. Professional Class B fund: qualification<sup>127 128 129</sup>**

(1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Class B Fund.<sup>130 131</sup>

(2) The requirements referred to under subsection (1) are that—

- (a) the fund is only open to qualified participants;
- (b) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;
- (c) the operator of the fund has appointed the following persons (“service providers”) to provide services to the fund—
  - (i) an investment manager;
  - (ii) a fund administrator;
  - (iii) [REPEALED];<sup>132</sup>
  - (iv) an auditor; and
  - (v) a custodian or prime broker,

being persons who, in the Authority’s view, are fit and proper to perform the respective functions of their office; and

- (d) the financial statements of the fund are prepared in accordance with any one of the following standards—
  - (i) International Financial Reporting Standards (“IFRS”);
  - (ii) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
  - (iii) any such other GAAP as the Authority may recognise.

(2A) [REPEALED by 2019:46 s. 11(b) effective 1 January 2020]<sup>133 134</sup>

(2B) The operator must notify the Authority immediately if it is no longer operating within the qualifying criteria set out for the fund.<sup>135</sup>

(3) In this section “qualified participants” has the meaning given in sections 9(2) and 9(3).

**8. Professional Class B Fund: procedure for registration<sup>136 137</sup>**

(1) The operator of a fund that qualifies for registration<sup>138</sup> as a Professional Class B fund<sup>139</sup> may apply to the Authority for registration<sup>140</sup>.

(2) An application must be in such form as the Authority may direct and be accompanied by a copy of the fund’s prospectus.

**8A. Professional Class B Fund: application for registration<sup>141 142 143</sup>**

(1) The Authority may grant an application for registration<sup>144</sup> made under section 8 if it is satisfied that the fund meets the requirements for registration<sup>145</sup> specified in section 7(2).

(2) [REPEALED by 2019:46 s. 8(a) effective 1 January 2020]<sup>146</sup>

(3) In considering an application for registration<sup>147</sup>, the Authority may serve notice on the applicant requiring him to provide it with such information and documents as it requires for the purpose.



(4) Where the Authority has requested information or documents pursuant to a notice under subsection (3), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2).

(5) [REPEALED by 2019:46 s. 8(b) effective 1 January 2020] <sup>148 149</sup>

(6) The operator of a Professional Class B fund<sup>150</sup> must certify to the Authority annually within six months of its financial year end in such form as the Authority may direct that the fund satisfies the requirements for registration<sup>151</sup> under section 7(2) and will continue to satisfy them. <sup>152</sup>

(7) The operator of a Professional Class B fund<sup>153</sup> must, at the time of filing the certificate required by subsection (6), also file with the Authority—

- (a) a statement of any material changes to the fund's prospectus;
- (b) a copy of its audited financial statements for the preceding year; and
- (c) a schedule of any changes made to its directors and service providers.

(8) The operator of a Professional Class B fund<sup>154</sup> shall be fit and proper to perform the functions of operator of the fund and shall not appoint a person to act as a director or service provider of the fund unless it applies to the Authority in writing seeking the Authority's approval to the proposed appointment. <sup>155</sup>

(9) [REPEALED] <sup>156 157</sup>

(10) [REPEALED] <sup>158</sup>

(11) An operator may apply to the Authority for a change of classification of a Professional Class B fund. <sup>159</sup>

(12) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund. <sup>160</sup>

### **8B. Professional Closed Fund: qualification**<sup>161</sup>

(1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Closed Fund.

(2) The requirements referred to under subsection (1) are that—

- (a) the fund shall be a closed-ended investment fund;
- (b) the fund is open only to qualified participants;
- (c) all qualified participants shall be provided with an investment warning prior to the time of the purchase of units, which shall be in such form and contain such statements and information as the Authority deems appropriate;
- (d) the operator of the fund has appointed—
  - (i) a local service provider who is licensed by the Authority; or
  - (ii) an officer, trustee or representative resident in Bermuda, who has authority to access the books and records of the fund;
- (e) the operator of the fund has appointed an auditor;
- (f) the financial statements of the fund are prepared in accordance with any one of the following standards—

- (i) International Financial Reporting Standards (“IFRS”);
- (ii) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
- (iii) any such other GAAP as the Authority may recognise.

(3) In this section, “qualified participants” has the meaning given in section 9(2) and 9(3).

**8C. Professional Closed Fund: procedure for registration**<sup>162 163</sup>

(1) The operator of a Professional Closed Fund shall, on or before the date of commencement of the fund’s business, apply to the Authority for registration, in such form as the Authority may direct, and certify to the Authority that the requirements for registration specified in section 8B(2) are satisfied.

(2) The operator shall also certify to the Authority annually within six months of its financial year end in such form as the Authority may direct that the fund satisfies the requirements for registration specified in section 8B(2) and will continue to satisfy them.<sup>164</sup>

(3) The operator of a Professional Closed Fund shall—

- (a) at the time of filing the certificate required by subsection (1) also file with the Authority an offering document for the fund, which shall contain such information and be in such form as the Authority may determine;
- (b) at the time of filing the annual certificate required by subsection (2), also file with the Authority—
  - (i) information on the net asset value of the fund and its underlying assets;
  - (ii) a copy of the fund’s audited financial statements for the preceding year; and
  - (iii) a statement of material changes to the fund’s terms of offering.

(4) The operator of a Professional Closed Fund shall be fit and proper to perform the functions of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such.

(5) If, on an application under subsection (1) above in respect of a Professional Closed Fund, the Authority is satisfied that the fund complies with the requirements of section 8B, the Authority may grant the application for the fund to be registered as a Professional Closed Fund.

(6) The Authority may determine an incomplete application if it considers it appropriate to do so.

(7) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.

(8) An operator may apply to the Authority for a change of classification of a Professional Closed fund.

(9) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.

**9. Qualified Participants**<sup>165</sup>

(1) [REPEALED]<sup>166 167</sup>

(1A) [REPEALED]<sup>168 169</sup>

(1B) [REPEALED]<sup>170 171</sup>

(2) In sections 6A(2) and 7(2)<sup>172</sup> “qualified participants” means –

- (a) high income private investors;
  - (b) high net worth private investors;
  - (c) sophisticated private investors;
  - (d) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
  - (e) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
  - (f) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this subsection;
  - (g) partnerships, all of whose members fall within one or more of the paragraphs of this subsection;
  - (h) trusts, all of whose beneficiaries fall within one or more of the paragraphs of this subsection;<sup>173</sup>
  - (i) limited liability companies (LLCs), all of whose members fall within one or more of the paragraphs of this subsection.<sup>174</sup>
- (3) In sections 6A(2) and 7(2)<sup>175</sup> –
- “high income private investor” means an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year or has had a joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and “current year” means the year in which he purchases an investment;
- “high net worth private investor” means an individual whose net worth or joint net worth with that person’s spouse in the year in which he purchases an investment exceeds \$1,000,000, excluding the value of that person’s residence and any benefits or rights under a contract of insurance; and net worth means the excess of the total assets at fair market value over total liabilities;<sup>176</sup>
- “group” has the meaning given in section 2 of the Investment Business Act 2003;
- “sophisticated private investor” means an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.

**9A. Registered<sup>177</sup> fund: notice of disqualifying event<sup>178</sup>**

- (1) The operator of a registered<sup>179</sup> fund of any class must give notice in writing to the Authority of the occurrence of any default (“a disqualifying event”) of a requirement under section 6A(2) or 7(2).
- (2) Such notice must be given within 14 days of the operator becoming aware of the occurrence of the disqualifying event.
- (3) In addition to the notice under subsection (2), the operator must, within 45 days of becoming aware of the occurrence of a disqualifying event, give notice in writing to the Authority specifying the particular circumstances leading to the disqualifying event and of the manner and time within which the operator intends to rectify the default.

(4) The Authority may give such directions to the operator of the fund as it considers appropriate to safeguard the interests of investors in the fund, and may direct that the fund ceases to qualify as a registered<sup>180</sup> fund of the class for which it has registered<sup>181</sup>.

(5) An operator who fails to notify the Authority as required by subsection (2) or (3) is liable to a default fine of \$5000 and a further fine of \$500 for every day that the fund is in default.

(6) An operator who fails to comply with a direction given by the Authority under subsection (4) is liable to a civil penalty of an amount not exceeding \$100,000.

(7) The Authority may recover as a civil debt owing to it any unpaid fine imposed under subsection (5) or (6) in a court of competent jurisdiction.

#### **10. Registered fund may apply to be authorised**<sup>182</sup>

(1) An investment fund registered under sections 6, 6B, 8 or 8C may make an application under section 12 for authorisation.<sup>183 184</sup>

(2) Where pursuant to such application, the Authority grants the application for authorisation, then from the date of such authorisation –

- (a) such fund shall cease to be a registered<sup>185</sup> fund; and
- (b) the provisions of this Act shall apply to the fund as an authorised fund.

#### **10A. Revocation of registration of a registered fund other than by way of consent**<sup>186</sup>

The Authority may revoke the registration of a registered fund, if it appears to the Authority that—

- (a) one or more requirements for registering the fund are no longer satisfied;
- (b) the operator of the registered fund or any of the registered fund's service providers—
  - (i) has contravened or is likely to contravene a requirement imposed on the operator or service provider by or under this Act; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
- (c) no investment activity has been carried on in relation to the registered fund for the previous twelve months.

#### **10B. Procedure on revocation of registration**<sup>187</sup>

(1) If the Authority proposes to revoke a registration under section 10A it shall give separate warning notices to the operator and service providers of the registered fund.

(2) If the Authority decides to revoke a registration, it shall without delay give each of the persons referred to in subsection (1) a decision notice and either of them may refer the matter to the Tribunal.

#### **10C. Request for cancellation of registration**<sup>188</sup>

(1) A registration may be cancelled by the Authority at the request in writing of the operator of the registered fund.

(2) If the Authority cancels a registration under subsection (1), it shall give written notice of the cancellation to the operator of the registered fund.

(3) The Authority may refuse a request to cancel a registration under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether a registration should be cancelled.

**10D. Registered Funds: exemption from requirements<sup>189</sup>**

(1) The Authority may, on the application of the operator of a registered fund, grant a modification of or an exemption from any requirement of sections 6(2A), 6(2B), 6(2C), 6A(2), 7(2) or 8B(2) if it is satisfied that—

- (a) appropriate arrangements are in place to safeguard the interests of participants in the fund;
- (b) compliance with the requirements would be unduly burdensome or would not achieve the purpose for which the requirements were made; and
- (c) the exemption would not result in undue risk to persons whose interests the requirements are intended to protect.

(2) A modification or an exemption may be granted subject to such conditions as the Authority deems appropriate.

**AUTHORISATION****11. Classes of funds**

(1) The Authority may authorise funds in the following classes –

- (a) institutional fund;
- (b) administered fund;
- (c) specified jurisdiction fund<sup>190</sup>;
- (d) standard fund<sup>191</sup>.

(2) A fund qualifies for classification as an institutional fund if –

- (a) pursuant to its constitution and offering document –<sup>192</sup>
  - (i) it is only open to qualified participants; or
  - (ii) it requires each participant to invest a minimum amount of \$100,000 in the fund; and
- (b) it has an officer, trustee or representative resident in Bermuda who is a person who has access to the books and records of the investment fund.

(3) In this section “qualified participants” has the meaning given in section 9(2).

(4) A fund qualifies for classification as an administered fund if it is a fund whose administrator is licensed under Part III of this Act and –

- (a) pursuant to its constitution and offering document<sup>193</sup> it requires participants to invest a minimum amount of \$50,000 in the fund; or
- (b) it is listed on a stock exchange recognized by the Authority for the purposes of this section.

(5) A fund qualifies for classification as a specified jurisdiction fund—

- (a) if the Minister by Order recognizes—
  - (i) the jurisdiction, outside Bermuda, in which the fund operates; and
  - (ii) a particular law, or particular set of laws, of such jurisdiction as applicable to such fund; and

- (b) if the fund satisfies the requirements set out in the fund rules made by the Authority relating to that class of fund and that jurisdiction.<sup>194</sup>
- (6) An Order made under subsection (5) is subject to the negative resolution procedure.<sup>195</sup>
- (7) A fund qualifies for classification as a standard fund if it does not fall within any other class of fund.<sup>196</sup>
- (8) The Minister acting on the advice of the Authority may, by order subject to negative resolution procedure, amend the qualifications for any class of fund, and may add additional classes of funds.<sup>197</sup>

*[Transitional Provision]*

*Section 14 of the Investment Funds Amendment Act 2021, operative 21 January 2021*

*Transitional: section 11*

14 (1) *In this section, “existing” in relation to a fund, means a fund which exists under the provisions of the Investment Funds Act 2006 on the date of the coming into operation of section 11 of this Act.*

(2) *An existing fund shall, within six months of the date of the coming into operation of this Act, comply with the applicable provisions of the Investment Funds Act 2006 as amended by section 11 of this Act.*

## **12. Applications for authorisation**

- (1) An application for the authorisation of a fund must be made to the Authority by the operator or proposed operator of the fund.
- (2) The application –
  - (a) must be made in such manner as the Authority may direct;
  - (b) must state the corporate name and registered or principal office of each service provider of the fund;
  - (c) must be accompanied with a certificate signed by the operator to the effect that the fund complies, or will on authorisation comply, with section 14;
  - (d) must contain or be accompanied with such information as the Authority may reasonably require for the purpose of determining the application; and
  - (e) must be accompanied by an application fee.
- (3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) The Authority may require an applicant to present information which it is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications.
- (6) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application, but in any such case no application fee shall be refunded to the applicant.

## **13. Authorisation**

- (1) If, on an application under section 12 in respect of a fund, the Authority is satisfied that the fund complies with the requirements of section 14, the Authority may grant the application for the fund to be authorised in the appropriate class.
- (2) The Authority may determine an incomplete application if it considers it appropriate to do so.

- (3) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.
- (4) An operator may apply to the Authority for a change of classification of an authorised fund.
- (5) Section 12 (Applications for authorisation) applies to an application under subsection (4) as it applies to an application for authorisation.
- (6) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of authorisation set out in section 14, the Authority may reclassify the fund.

#### **14. Requirements for authorisation**<sup>198</sup>

- (1) The requirements referred to in section 13(1) are as follows —
- (a) the fund shall prepare annual financial statements which will be audited;
  - (b) the fund has appointed, or will on authorisation appoint, an investment manager, an auditor and a fund administrator;
  - (c) the fund property has been or will on authorisation be entrusted to a custodian;
  - (d) the person appointed as custodian of the fund must—
    - (i) if incorporated in Bermuda, be licensed under the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 or the Investment Business Act 2003;
    - (ii) if incorporated elsewhere, be subject to regulatory supervision equivalent to that imposed by or under the Acts referred to in subparagraph (i); and
    - (iii) be independent of the operator and—
      - (A) in the case of a company fund, of the persons appointed as directors of the company;<sup>199</sup>
      - (B) in the case of a partnership fund, of the partners;
      - (C) in the case of an LLC fund, of the managers;<sup>200</sup>
  - (e) the operator of the fund, its officers and its proposed service providers are fit and proper persons to act as such;
  - (f) in relation to the operator and service providers, the combination of their experience and expertise is such as is appropriate for the purposes of the fund; and
  - (g) the fund complies, or will on authorisation, comply with the requirements of fund rules and fund offering document rules.<sup>201</sup>
- (2) The person appointed as auditor of the fund must be independent of the operator of the fund and its service providers.
- (3) The constitution of a fund must include provisions for the following –
- (a) the rights and restrictions attaching to the units;
  - (b) the terms for valuation of assets and liabilities;
  - (c) the manner of calculation of the net asset value of each unit and the issue price and redemption price of units;
  - (d) the terms upon which units are issued;



- (e) the terms upon which units may be transferred or converted, if applicable;
  - (f) the terms upon which units may be redeemed and the circumstances in which redemptions may be suspended; and
  - (g) the investment restrictions or borrowing limitations, if any.
- (4) The Authority may on the application of the operator of a fund disapply the requirement that the custodian must –
- (a) be independent of the operator of a fund;
  - (b) in the case of a company fund, be independent of the directors or any one or more of them;<sup>202 203</sup>
  - (c) in the case of a partnership fund, be independent of the partners, or any one or more of them; or<sup>204</sup>
  - (d) in the case of an LLC fund, be independent of the managers, or any one or more of them,<sup>205</sup>

in any particular case where the Authority determines that it is appropriate to do so.<sup>206</sup>

(5) The Authority may on the application of the operator of a fund disapply the requirement that the financial statements of a fund shall be audited in any particular year, where the Authority considers it appropriate to do so.

#### **15. Authority may exempt from requirement for fund property to be entrusted to a custodian**

The Authority may, on the application of the operator of a fund, and<sup>207</sup> where satisfied that appropriate alternative arrangements are in place for safeguarding fund property, exempt a fund in any particular case from the requirement of section 14(1)(c) that the fund property be entrusted to a custodian.

#### **16. List of authorised, registered and designated funds to be on Authority's website**<sup>208 209</sup>

The Authority shall establish and maintain a list of all investment funds authorised, registered or designated by it to operate in or from within Bermuda on its website at [www.bma.bm](http://www.bma.bm).<sup>210 211</sup>

### **FEES**

#### **17. Fees**

- (1) The operator of a fund shall pay to the Authority –
- (a) on the making of an application for authorisation;
  - (aa) on the giving of notice of a proposal for which an approval is required under section 25(2);<sup>212</sup>
  - (b) on the making of an application for a change of classification;<sup>213</sup>
  - (ba) on the initial filing of the application for registration in accordance with sections 6, 6B, 8A and 8C, in relation to a registered fund;<sup>214 215 216</sup>
  - (bb) [REPEALED]<sup>217 218</sup>
  - (bc) on the making of an application under section 10D, 14(4), 14(5), 15 or 40(1);<sup>219 220</sup>
  - (bd) on the filing of notification under section 5A;<sup>221</sup>
  - (c) annually thereafter on or before 31 March<sup>222</sup>,



such fees as may be prescribed under section 20B and the Fourth Schedule of the Bermuda Monetary Authority Act 1969; but no annual fee shall be payable in the calendar year in which an application fee shall have been paid.

- (2) Different fees may be prescribed for different classes of investment funds.<sup>223</sup>
- (3) If an operator of a fund fails to pay the prescribed fee as provided in subsection (1), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.<sup>224</sup>
- (4) The Authority may recover any fee and any penalty fee as a civil debt owing to it in any court of competent jurisdiction.<sup>225</sup>
- (5) The Authority may, where it has made a determination that it is appropriate—<sup>226</sup>
  - (a) exempt an operator from the requirement to pay any fee under this section, as may be prescribed under the Bermuda Monetary Authority Act 1969; or
  - (b) reduce any fee required to be paid by an operator under this section by such amount as it considers appropriate, as may be prescribed under the Bermuda Monetary Authority Act 1969.
- (6) In granting an exemption from, or reduction of, any fee payment under subsection (5), the Authority may impose any condition on such exemption or reduction, as it may determine appropriate.<sup>227</sup>
- (7) The Authority shall not grant an exemption from, or reduction of, any fee payment under subsection (5) unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the business carried on by the operator.<sup>228</sup>

## CUSTODIANS

### **18. Custodian may entrust property to third party**

- (1) Nothing in this Part prevents a custodian from—
  - (a) entrusting to a third party all or some of the property in its safekeeping; or
  - (b) in a case falling within paragraph (a), authorising the third party to entrust all or some of that property to other specified persons.
- (2) In every case where property is entrusted to third parties, the custodian shall give notice in writing of that fact together with particulars of such person to —
  - (a) the operator of the authorised fund; and
  - (b) the fund administrator of the authorised fund.

## TITLE AND TRANSFER OF UNITS

### **19. The registrar**<sup>229</sup>

- (1) Every authorised fund and registered fund shall appoint a registrar.<sup>230</sup>
- (2) The registrar shall establish and maintain in Bermuda, in a legible form or in a form capable of being reproduced in a legible form a register of the participants in the authorised or registered fund in accordance with the provisions of the following sections and fund rules.<sup>231</sup>
- (3) The registrar may also appoint such person as it considers fit to be a sub-registrar or branch registrar to carry out on its behalf any or all of its obligations.

(4) Where an appointment is made under subsection (3), the registrar shall remain responsible for the discharge of all the registrar's duties in relation to the register under this Act and fund rules and shall be responsible for the acts and omissions of the appointed person.

(5) Where the registrar delegates any of its functions to a sub-registrar or branch registrar it shall give notice in writing to —<sup>232</sup>

- (a) the operator of the authorised fund; and
- (b) the authorised or registered fund's administrator.

## **20. The register**

(1) There shall be entered in the register –

- (a) the name and address of each participant;
- (b) the number of units (including fractions of a unit) of each type held by each such participant; and
- (c) the date on which the participant was registered in the register in respect of the units standing in his name;

but the registrar shall not be obliged to register more than four persons as the joint participants of any units.

(2) The registrar shall—

- (a) take all reasonable steps; and
- (b) exercise all due diligence,

to ensure that the information contained in the register is, at all times, accurate, complete and up to date.

(3) In pursuance of subsection (2), the registrar shall in particular take such steps as are necessary to obtain information concerning any new participant to enable the entry in the register to be made.

## **21. Application of sections 20, 22 to 24 to company funds.**<sup>233</sup>

Sections 20, 22, 23 and 24 shall apply to the units of company funds<sup>234</sup> without prejudice to sections 65 to 68 of the Companies Act 1981, and the register maintained under this Part in respect of such a company shall be treated as if it is the register of members for all purposes.

## **22. Identification procedures**

Nothing in section 20 shall be construed as requiring the registrar to make or alter any entry in the register or any certificate or other document or accept any transfer or conversion in any case where he considers it necessary or appropriate to carry out or complete identification procedures in relation to the participant or another person pursuant to any statutory or regulatory obligation.

## **23. The register as evidence of title**

(1) The register shall be conclusive evidence as to the persons respectively entitled to the units entered therein.

(2) No notice of any trust which may be entered in the register in respect of any unit shall be binding on the registrar.

## **24. Inspection of register and copies of entries**

(1) Except where otherwise provided in a fund's constitution or offering document, the registrar shall make the register available in Bermuda for inspection by or on behalf of the participants free of charge at

all times during ordinary office hours but the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the registrar may from time to time determine.<sup>235</sup>

(2) The registrar shall supply a participant or his authorised representative at such reasonable charge, if any, as the registrar shall determine, with a copy in print of the entries on the register relating to that participant.

## CHANGES TO INVESTMENT FUNDS

### **25. Notice of certain changes to be given to Authority**<sup>236</sup>

(1) Subject to this section, the operator of an authorised fund shall forthwith give written notice to the Authority of any proposal to –

- (a) make a material change in the authorised fund's offering document;<sup>237</sup>
- (b) replace a service provider of the authorised fund;
- (c) in relation to an authorised unit trust fund, replace a trustee of the unit trust or appoint any additional trustee or decrease the number of trustees;
- (d) in relation to an authorised company fund, replace a director of the company or appoint any additional director or decrease the number of directors in post;<sup>238</sup>
- (e) in relation to an authorised partnership fund, replace a general partner of the fund;
- (f) in relation to an authorised company fund, reconstruct or amalgamate the company;<sup>239 240</sup>
- (g) wind up the affairs of the authorised fund; and<sup>241</sup>
- (h) in relation to an LLC fund, replace a manager of the limited liability company or appoint any additional manager or decrease the number of managers in post.<sup>242</sup>

(2) Subject to subsections (3) and (4), effect is not to be given to any proposal of which notice has been given under subsection (1) unless the Authority shall have first approved such proposal by notice in writing served on the operator.

(3) No approval is required to a proposal of which notice has been given under paragraph (d) of subsection (1).

(4) No approval is required to a proposal of which notice has been given under paragraphs (c), (e), (f), (g) and (h) of subsection (1) if such proposal were given by the operator of an institutional fund or an administered fund.<sup>243</sup>

(5) For the purpose of this section, a change is a material change if it would, if known, reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund; and “materially” has a corresponding meaning.

(6) [REPEALED]<sup>244</sup>

## REPORTS TO THE AUTHORITY

### **26. Reports to the Authority**

(1) The operator of an authorised fund shall –

- (a) at such time or times or at such intervals or in respect of such period or periods as may be required, furnish the Authority with a report on such activities of the fund as the Authority may reasonably require for the performance of its functions under this Act;
- (b) submit to the Authority within six months of its financial year end –

- (i) a statement in such form as the Authority may direct<sup>245</sup> confirming that the fund has at all times during the preceding financial year been in compliance with the provisions of this Act, fund rules and prospectus rules applicable to it;
- (ii) (in the event that the fund has not been in such compliance) a statement setting out particulars of the breach.

(2) Where a service provider becomes aware of any of the matters specified in subsection (3), the service provider shall—

- (a) within 14 days of the occurrence of any specified matter notify the Authority of its occurrence and the circumstances applicable thereto; and
- (b) make a report in writing of such event to the operator;

and that report shall be included in the authorised fund's next annual report and next periodic report if such periodic report is to be distributed before the annual report.

(3) The specified matters are –

- (a) that the assets of an authorised fund have not been invested materially in accordance with its prospectus; or
- (b) that the general management of an authorised fund is not materially in accordance with the fund's constitution.

(3) A service provider shall not be in breach of any duty to which it is subject as a service provider of an authorised fund under this section by reason of its making a report to the Authority in good faith of any reportable event or any information on any matter of which it becomes aware in its capacity as such service provider of that fund and which relates to the business or affairs of that fund.

(4) For the purposes of this section

- “reportable event” means an event in relation to which a report is required under subsection (2);
- “materially” has the meaning given in section 25(5).

(5) [REPEALED]<sup>246</sup>

## REVOCATION OF AUTHORISATION

### **27. Revocation of authorisation other than by consent**

The Authority may revoke the authorisation of an authorised fund, if it appears to the Authority that –

- (a) one or more requirements for authorising the fund are no longer satisfied;
- (b) the operator of the authorised fund or any of the authorised fund's service providers –
  - (i) has contravened or is likely to contravene a requirement imposed on the operator or service provider by or under this Act; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
- (c) no investment activity has been carried on in relation to the authorised fund for the previous twelve months.

### **28. Procedure on revocation of authorisation**

(1) If the Authority proposes to revoke an authorisation under section 27, it must give separate warning notices to the operator and service providers of the authorised fund.

(2) If the Authority decides to revoke an authorisation, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

## **29. Request for revocation of authorisation**

(1) An authorisation may be revoked by the Authority at the request of the operator of the authorised fund concerned.

(2) If the Authority revokes an authorisation under subsection (1), it must give written notice of the revocation to the operator of the authorised fund.

(3) The Authority may refuse a request to revoke an authorisation under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether authorisation should be revoked.

## **POWERS OF INTERVENTION**

## **30. Directions to an authorised, registered or designated fund**<sup>247</sup>

(1) Where the Authority is satisfied that the matters specified in, section 10A, section 5C or paragraph (a) or (b) of section 27 apply but the circumstances are not such as to justify revocation, the Authority may in relation to an authorised or registered<sup>248</sup> fund give directions under this section.<sup>249</sup>

(2) The Authority may also give a direction under this section if it concludes that neither paragraph (a) or (b) of section 27, or section 10A or section 5C apply, but that it is desirable to give directions in order to protect the interests of participants or potential participants in such a fund.<sup>250</sup>

(3) For the purposes of subsection (2), the Authority may take into account any matter relating to –

- (a) the authorised or registered<sup>251</sup> fund and any of its service providers or Overseas Fund;<sup>252</sup>
- (b) any director or controller of any service provider or Overseas Fund;<sup>253</sup>
- (c) any operator of an authorised or registered<sup>254</sup> fund; or
- (d) any person exercising influence over any operator of an authorised or registered<sup>255</sup> fund, or any of its service providers or Overseas Fund<sup>256</sup> by virtue of provisions contained in the authorised or registered<sup>257</sup> fund's constitution; or
- (e) any person employed by or associated, for the purposes of the business of the authorised or registered<sup>258</sup> fund, with the authorised or registered<sup>259</sup> fund, or any [of] its service providers or Overseas Fund.<sup>260</sup>

(4) A direction under this section may—

- (a) require the operator of an authorised, registered or overseas<sup>261</sup> fund to cease communicating an invitation or inducement to the public to participate in the authorised or registered<sup>262</sup> fund; or<sup>263</sup>
- (b) require the operator of an authorised, registered or overseas<sup>264</sup> fund to cease the issue, or redemption, or both, of units.<sup>265</sup>

(5) The Authority may, on its own initiative or on the application of the operator revoke or vary a direction given under this section if it appears to the Authority—

- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
- (b) in the case of variation, that the direction should take effect or continue in force in a different form.

(6) It shall be an offence for a person to fail without reasonable excuse to comply with a direction given under this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine of \$25,000.

### **31. Notice of direction**<sup>266</sup>

(1) If the Authority proposes to give a direction under section 30, it must give the operator of a fund a warning notice.

(2) If the Authority decides to give a direction under section 30, it must give the operator of the fund a decision notice.

### **31A. Directions in cases of urgency – authorised, registered or designated**<sup>267 268</sup>

(1) No notice need be given under section 31 in respect of the giving of a direction in any case in which the Authority considers that the direction should be given as a matter of urgency.

(2) In any such case, the Authority may by written notice to the operator of the fund impose a direction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (4) and section 55.

(4) The operator of a fund to which a notice is given under this section of the giving of a direction may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Authority.

(5) After giving a notice under subsection (2), giving a direction and taking into account any representations made in accordance with subsection (4), the Authority shall decide whether—

- (a) to confirm its original decision; or
- (b) to vary the direction.

(6) The Authority shall, within the period of 28 days beginning with the day on which the notice was given under subsection (2), give the operator of the fund concerned written notice of its decision under subsection (5) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(7) Where the notice under subsection (6) is of a decision to take the action specified in subsection (5)(b), the notice under subsection (6) shall have the effect of varying the direction with effect from the date on which it is given.

### **32. Procedure: refusal to revoke or vary direction**

(1) If on an application under section 30(5) for a direction to be revoked or varied the Authority proposes—

- (a) to vary the direction otherwise than in accordance with the application, or
- (b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

**33. Procedure on revocation of direction and grant of request for variation**

- (1) If the Authority decides on its own initiative to revoke a direction under section 30 it must give separate written notices of its decision to the operator of the authorised or registered<sup>269</sup> fund and its service providers or Overseas Fund.<sup>270</sup>
- (2) If on an application made under section 30(5) for a direction to be revoked or varied, the Authority decides to revoke or vary it in accordance with the application, it must give the applicant written notice of its decision.
- (3) A notice under this section must specify the date on which the decision takes effect.

**34. [REPEALED]**<sup>271</sup>**35. [REPEALED]**<sup>272</sup>**36. Winding up on petition from the Authority**

- (1) The Authority may present a petition to the Supreme Court for the winding up of a fund which –
- (a) having been authorised or registered<sup>273</sup> under this Act has had its authorisation revoked or been disqualified from registration<sup>274</sup>; or
  - (b) is operating, or has been operating, as an investment fund in contravention of any provision of this Act.
- (2) On such a petition, the Supreme Court may wind up the fund if it is of the opinion that it is just and equitable that the fund be wound up.
- (3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company fund under this section.<sup>275</sup>
- (4) Part 13 (Dissolution) of the Limited Liability Company Act 2016 shall apply to the winding up of an LLC fund under this section.<sup>276</sup>

**36A. Overseas Fund: notification of windup**<sup>277</sup>

- (1) The operator of an Overseas Fund must, within 14 days of the winding up of the fund, notify the Authority in writing.
- (2) The Authority shall, within 30 days upon being notified by the operator of an Overseas Fund under subsection (1), remove the fund from the list of investment funds maintained by the Authority.

**RULES****37. Fund rules**

- (1) The Authority may make rules (“fund rules”) as to –
- (a) the constitution, management and operation of authorised or registered<sup>278</sup> funds;
  - (b) the powers, duties, rights and liabilities of –
    - (i) the operators of an authorised or registered<sup>279</sup> fund;
    - (ii) any of its service providers;
    - (iii) the directors of an authorised or registered company fund<sup>280 281</sup>;
  - (c) the rights of the participants in any such authorised or registered<sup>282</sup> fund; and
  - (d) the winding up of any authorised or registered<sup>283</sup> fund; and<sup>284</sup>



- (e) prudential requirements of the fund and obligations of the fund operator with respect to its services providers.<sup>285</sup>
- (2) Fund rules may, in particular, make provision—
  - (a) as to the issue and redemption of the units by an authorised or registered<sup>286</sup> fund;
  - (b) as to the expenses of an authorised or registered<sup>287</sup> fund and the means of meeting them;
  - (c) for the appointment, removal, powers and duties of a service provider of an authorised or registered<sup>288</sup> fund;
  - (d) requiring any of the service providers of an authorised or registered<sup>289</sup> fund to be resident, or have a place of business in Bermuda;
  - (e) for restricting or regulating the investment and borrowing powers exercisable in relation to an authorised or registered<sup>290</sup> fund;
  - (f) requiring the keeping of records whether in Bermuda or elsewhere, with respect to the transactions and financial position of an authorised or registered<sup>291</sup> fund and for the inspection of those records; and
  - (g) requiring the preparation of periodical reports with respect to the fund<sup>292</sup> and the provision of those reports to the participants and to the Authority.
  - (h) obligations with respect to depositary functions and safekeeping obligations;<sup>293</sup>
    - (i) for additional requirements related to—
      - (i) reports to the Authority;<sup>294</sup>
      - (ii) public disclosure;
      - (iii) disclosure to investors.
- (3) Fund rules may make different provisions for different classes of authorised or registered<sup>295</sup> funds and shall be published in such manner as the Authority may determine.

### **38. Fund offering document rules**<sup>296</sup>

- (1) The Authority may make fund offering document rules requiring the operator of an authorised or registered fund—<sup>297 298</sup>
  - (a) to submit the offering document to the Authority; and
  - (b) to publish the offering document or make it available to the public on request.
- (2) “Fund offering document” means an offering document containing particulars in such form, containing such information about the fund and complying with such requirements as are specified in fund offering document rules.<sup>299</sup>
- (3) Fund offering document rules may require the operator of an authorised or registered<sup>300</sup> fund to submit, and to publish or make available, a revised or further fund offering document if there is a significant change affecting any matter —<sup>301</sup>
  - (a) which is contained in a fund offering document previously published or made available; and
  - (b) whose inclusion in the offering document was required by the rules.
- (4) Fund offering document rules may require the operator of an authorised or registered fund<sup>302</sup> to submit, and to publish or make available, a revised fund offering document if —<sup>303</sup>



- (a) a significant new matter arises; and
  - (b) the inclusion of information in respect of that matter would have been required in a previous offering document if it had arisen when that offering document was prepared.
- (5) Fund offering document rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any fund particulars, of compensation to any qualifying person who has suffered loss as a result of —<sup>304</sup>
- (a) any untrue or misleading statement in the particulars; or
  - (b) the omission from them of any matter required by the rules to be included.
- (6) “Qualifying person” means a person who has become or agreed to become a participant in the fund.
- (7) Fund offering document rules do not affect any liability which any person may incur apart from the rules.<sup>305</sup>
- (8) Fund offering document rules made under this section may make different provisions for different classes of funds and shall be published in such manner as the Authority may determine.<sup>306</sup>

### **39. Disapplication of the Statutory Instruments Act 1977**

Sections 6, 7 and 8 of The Statutory Instruments Act 1977 shall not apply to rules made under sections 37 and 38.

### **40. Modification or waiver of rules**

- (1) The Authority may, on the application or with the consent of any person to whom any fund rules or fund offering document rules apply, direct that any of such rules—<sup>307</sup>
- (a) are not to apply to him as respects a particular authorised or registered<sup>308</sup> fund; or
  - (b) are to apply to him as respects a particular authorised or registered<sup>309</sup> fund with such modifications as may be specified in the direction.
- (2) An application must be made in such manner as the Authority may direct.
- (3) The Authority may not give a direction unless it is satisfied that—
- (a) compliance with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
  - (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.
- (4) A direction may be given subject to conditions.
- (5) The Authority may—
- (a) revoke a direction; or
  - (b) vary it on the application, or with the consent, of the person to whom it relates.
- (6) “Direction” means a direction under subsection (1).

## **PART III - FUND ADMINISTRATORS – [REPEALED]<sup>310</sup>**

### **41. Restriction on carrying on fund administration without a licence [repealed]<sup>311</sup>**

[Repealed by 2019 : 32 s. 69]

**42. Application for a licence [repealed]**<sup>312</sup>

[Repealed by 2019 : 32 s. 69]

**43. Grant and refusal of application for a licence [repealed]**<sup>313314</sup>

[Repealed by 2019 : 32 s. 69]

**44. Form, display and registration of licences [repealed]**<sup>315316</sup>

[Repealed by 2019 : 32 s. 69]

**45. Fees [repealed]**<sup>317318 319</sup>[Repealed by 2019 : 32 s. 69]<sup>320 321</sup>**OBJECTION TO SHAREHOLDER CONTROLLERS**<sup>322 323</sup>**45A. Notification of new or increased control [repealed]**<sup>324325</sup>

[Repealed by 2019 : 32 s. 69]

**45B. Objection to new or increased control [repealed]**<sup>326327</sup>

[Repealed by 2019 : 32 s. 69]

**45C. Objection to existing shareholder controller [repealed]**<sup>328329</sup>

[Repealed by 2019 : 32 s. 69]

**45D. Contraventions by shareholder controller [repealed]**<sup>330331</sup>

[Repealed by 2019 : 32 s. 69]

**45E. Restriction on and sale of shares [repealed]**<sup>332333</sup>

[Repealed by 2019 : 32 s. 69]

**46. Notification of change of director, senior executive and controller [repealed]**<sup>334335</sup>

[Repealed by 2019 : 32 s. 69]

**47. Statement of compliance [repealed]**<sup>336337 338</sup>

[Repealed by 2019 : 32 s. 69]

**48. Offences [repealed]**<sup>339340 341</sup>

[Repealed by 2019 : 32 s. 69]

**49. Codes of conduct [repealed]**<sup>342343</sup>

[Repealed by 2019 : 32 s. 69]

**50. Surrender of licence [repealed]**<sup>344345</sup>

[Repealed by 2019 : 32 s. 69]

**DIRECTIONS AND REVOCATIONS****51. Directions to protect interests of clients [repealed]**<sup>346347</sup>[Repealed by 2019 : 32 s. 69]<sup>348</sup>**51A Directions in cases of urgency – fund administrator [repealed]**<sup>349350 351</sup>

[Repealed by 2019 : 32 s. 69]

**52. Revocation of licence [repealed]**<sup>352353</sup>

[Repealed by 2019 : 32 s. 69]

**53. Notice of direction or revocation of licence [repealed]**<sup>354355 356</sup>

[Repealed by 2019 : 32 s. 69]

**54. Winding up on petition from the Authority [repealed]**<sup>357358</sup>

[Repealed by 2019 : 32 s. 69]

**PART IV - APPEAL TRIBUNALS****55. Rights of appeal**<sup>359</sup>

(1) An operator of an authorised, registered or designated <sup>360</sup> fund which is aggrieved by a decision of the Authority –<sup>361</sup>

- (a) to revoke an authorisation of the fund under section 27;
- (aa) to revoke registration of the fund under section 10A; <sup>362</sup>
- (ab) to cancel a designation of an Overseas Fund under section 5C; <sup>363</sup>
- (b) under section 29(3) refusing a request to revoke an authorisation of the fund;
- (c) giving a direction under section 30(4);
- (d) varying a direction on its own initiative under section 30(5);
- (e) refusing to revoke or vary a direction under section 32;
- (f) to publish a statement in respect of an operator under section 67C; or <sup>364</sup>
- (g) to impose a civil penalty against a person concerned under section 67A, <sup>365</sup>

may appeal against the decision to a Tribunal constituted in accordance with section 56.

(2) Where the ground or a ground for a decision within subsection (1)(a) or (c) is that mentioned in section 27(b), the service provider to whom the ground relates may appeal to the Tribunal constituted as aforesaid against the finding that there is such a ground for the decision.

(3) [Repealed by 2019:32 s. 69] <sup>366 367 368</sup>

(3A) Any person in respect of whom a prohibition order has been made under section 67E may appeal to the Tribunal against the decision. <sup>369</sup>

(3B) Any person in respect of whom a decision notice has been issued refusing to revoke or vary a prohibition order may appeal to the Tribunal. <sup>370</sup>

(4) [Repealed by 2019:32 s. 69] <sup>371</sup>

(4A) Any person on whom notice of objection is served under section 45B or 45C may appeal to a tribunal constituted as aforesaid, against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a shareholder controller in circumstances in which his doing so, constitutes an offence under section 45D(1), (2) or (3).<sup>372</sup>

(5) The Tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision. <sup>373</sup>

(6) The revocation of an authorisation pursuant to a decision against which there is a right of appeal under this section shall not have effect –<sup>374</sup>

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

#### **56. Constitution of Tribunal**

- (1) A Tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.
- (2) The Chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.
- (3) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.
- (4) The Minister shall appoint a panel of not less than six persons three of whom shall have experience of investment fund business and three of whom shall have experience of fund administration, to serve as members of appeal Tribunals.
- (5) A person shall not be eligible for appointment as chairman, deputy chairman or member of a Tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority.
- (6) There shall be paid to the members of the Tribunal such remuneration and such allowances as the Minister may determine, after consultation with the Minister of Finance when another Minister has been appointed to administer this Act.<sup>375</sup>

#### **57 Determination of appeals**

- (1) Where an appeal is brought under the provisions of this Act the chairman or as the case may be the deputy chairman shall nominate two other members from the panel of members, who together with him shall constitute the Tribunal which shall determine the appeal.
- (2) On an appeal under section 55<sup>376</sup> the question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- (3) On any such appeal the Tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that –
  - (a) where the decision was to impose or vary any direction the Tribunal may direct the Authority to impose different directions or to vary them in a different way; or
  - (b) where the decision was to revoke an authorisation or a licence the Tribunal may direct the Authority to issue directions instead.
- (4) Notice of a Tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the Tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

#### **58. Costs, procedure and evidence**

- (1) A Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.
- (2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision –
  - (a) as to the period within which and the manner in which such appeals are to be brought;

- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
  - (c) as to the procedure to be adopted where appeals are brought both by an operator of an investment fund and a service provider, including provision for the hearing of the appeals together and for the mutual disclosure of information;<sup>377</sup>
  - (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
  - (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
  - (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
  - (g) for taxing or otherwise settling any costs or expenses which the Tribunal directs to be paid and for the enforcement of any such direction;
  - (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the Tribunal; and
  - (i) as to any other matter connected with such appeals.
- (3) Regulations made under subsection (2) shall be subject to negative resolution procedure.
- (4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.
- (5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable –
- (a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

## **59. Further appeals on a point of law**

- (1) An authorised or registered<sup>378</sup> fund or other person who has appealed to a Tribunal may appeal to the Supreme Court on any question of law arising from the decision of the appeal by the Tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the Tribunal for re-hearing and determination by it.<sup>379</sup>
- (2) No appeal to the Court of Appeal shall be brought from a decision of the court under subsection (1) except with leave of the Court of Appeal.

## **PART V - INFORMATION GATHERING AND INVESTIGATION**

### **INFORMATION GATHERING**

## **60. Power to obtain information**

The Authority may by notice in writing served on –

- (a) the operator of an authorised or registered<sup>380</sup> fund; or<sup>381</sup>
- (b) any of its service providers;<sup>382</sup>
- (c) [REPEALED by 2019:32 s. 69]<sup>383</sup>

require such person to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act.

## **61. Power to require production of documents**

(1) The Authority may –

- (a) by notice in writing served on the operator of an authorised or registered<sup>384</sup> fund require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;<sup>385</sup>
- (b) authorise an officer, servant or agent of the Authority on producing such evidence of his authority, to require such person to provide him forthwith with such information, or to produce to him such documents, as he may specify;

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from the operator of an authorised or registered<sup>386</sup> investment fund, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them and, in the case of a fund, from any of its service providers; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.<sup>387</sup>

(3) The power under this section to require the operator of an authorised or registered<sup>388</sup> investment fund or other person to produce any documents includes power —<sup>389</sup>

- (a) if the documents are produced, to take copies of them or extracts from them and to require the operator of that authorised or registered<sup>390</sup> investment fund or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the operator of the authorised or registered<sup>391</sup> investment fund or licensed fund administrator in question, to provide an explanation of any of them; and<sup>392</sup>
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of participants or potential participants of an authorised or registered<sup>393</sup> investment fund (“A”) to do so, it may also exercise the powers conferred by section 60 and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been —<sup>394</sup>

- (a) a member of A’s group;
- (b) a controller of A; or
- (c) any other member of a partnership of which A is a member.

(5) The Authority may, by notice in writing, served on any person who is or is to be a controller or officer of an operator of an authorised or registered<sup>395</sup> investment fund require him to provide the

Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.<sup>396</sup>

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

## **62. Right of entry to obtain documents**

(1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 60 and 61(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 61(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 60 and 61(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

## **63. Communication with Authority**

(1) No duty to which an auditor of an authorised or registered<sup>397</sup> fund may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor of an authorised or registered<sup>398</sup> fund this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the investment fund or any connected person.

(3) In this section “connected person”, in relation to an authorised or registered<sup>399</sup> fund (“A”), means any such person as is mentioned in sections 61(4)(a) to (c).

## **INVESTIGATIONS**

### **64. Investigations on behalf of the Authority**

(1) If it appears to the Authority desirable to do so in the interests of participants or potential participants of an authorised or registered<sup>400</sup> fund, the Authority may appoint one or more competent persons to investigate and report to the Authority on —<sup>401</sup>

- (a) the nature, conduct or state of the authorised or registered<sup>402</sup> fund or licensed fund administrator’s business or any particular aspect of it; or
- (b) the ownership or control of the operator of an authorised or registered<sup>403</sup> fund;<sup>404</sup>

and the Authority shall give written notice of any such appointment to the authorised or registered<sup>405</sup> fund or licensed fund administrator concerned.



(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been a member of the group of which the person under investigation ("A") is part; or a partnership of which A is a member, or of a person who is or has at any relevant time been a service provider of the fund under investigation.

(3) Where a person appointed under subsection (1) decides to investigate the business of any person referred to in subsection (2) he shall give that person written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant or barrister and attorney of an operator of an authorised or registered<sup>406</sup> fund which is under investigation by virtue of subsection (1) or a person who is under investigation under subsection (2) —<sup>407</sup>

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation<sup>408</sup> which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer such questions relevant to the investigation as the persons appointed under subsection (1) may require<sup>409</sup>; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by an operator of an authorised or registered<sup>410</sup> fund which is being investigated by him under this section; but he shall not do so without prior notice in writing.<sup>411</sup>

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(6A) Unless the Authority otherwise directs, the person under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.<sup>412</sup>

(7) Any person who —

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an authorised or registered<sup>413</sup> fund which is under investigation or a person who is being investigated by virtue of subsection (2); or<sup>414</sup>
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5);

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.



(9) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

**64A. Investigations of suspected contraventions<sup>415</sup>**

- (1) The Authority may conduct an investigation if it appears to the Authority that—
- (a) a person may have contravened section 5 or section 41;
  - (b) a private<sup>416</sup> fund may not qualify for registration<sup>417</sup> under section 6;
  - (c) a professional<sup>418</sup> fund may have failed to satisfy the criterion of registration<sup>419</sup> required by section 9;
  - (d) the operator of an authorised fund, a service provider or a fund administrator may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act or rules made by the Authority under section 37;
  - (e) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 67E.
- (2) The power conferred by subsection (1)(d) may be exercised in relation to a former authorised or registered<sup>420</sup> fund or, as the case may be, fund administrator, but only in relation to—
- (a) business carried on at any time when the fund or fund administrator was authorised, registered<sup>421</sup> or licensed, as the case may be, under this Act; or
  - (b) the ownership or control of a fund or fund administrator at any time when it was authorised, registered<sup>422</sup> or licensed under this Act, as the case may be.
- (3) In this section, “regulated activity” has the meaning given in section 67E.

**65. Power to require production of documents<sup>423</sup>**

- (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 64A (“the person under investigation”) or any person connected with the person under investigation—<sup>424</sup>
- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
  - (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
  - (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.
- (1A) The Authority may by notice in writing require every person who is or was a director, controller, partner, senior executive, officer, employee, agent, banker, auditor, accountant, service provider or barrister and attorney of an authorised fund, registered fund<sup>425</sup> or licensed fund administrator which is under investigation by virtue of subsection (1)—<sup>426</sup>
- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation and which are in his custody or power;

- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
  - (c) to take such actions as the Authority may direct in connection with the investigation.
- (2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.
- (3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).
- (4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.
- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.
- (6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.
- (7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—<sup>427</sup>
- (a) a member of the group of the person under investigation;
  - (b) a controller of the person under investigation;
  - (c) a partner of a partnership of which the person under investigation is a member.

## **66. Powers of entry**

- (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 64A —<sup>428</sup>
- (a) that a person has failed to comply with a notice served on him under section 65;
  - (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
  - (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers —
- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of or extracts from any such documents;

- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 65(1).
- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken under this section may be retained —
  - (a) for a period of three months; or
  - (b) until the conclusion of proceedings if, within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 65(1).<sup>429</sup>
- (5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable —
  - (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both;
  - (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both.

## **67. Obstruction of investigations**

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out —
  - (a) into a suspected contravention of section 5 or 41; or
  - (b) under section 64;

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

- (2) A person guilty of an offence under this section shall be liable —
  - (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both;
  - (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both.

## **PART VA - DISCIPLINARY MEASURES<sup>430</sup>**

### **67A Power to impose civil penalties for breach of requirements<sup>431</sup>**

- (1) Except as provided in sections 9A, 17 and 45, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a civil penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.
- (2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.
- (3) The Authority shall not impose a civil penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

### **67B Civil penalties procedure<sup>432</sup>**

- (1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person concerned a decision notice.

### **67C Public censure** <sup>433</sup>

(1) If the Authority considers that the fund operator or a fund administrator has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the operator of the fund or, as the case may be, the fund administrator.

### **67D Public censure procedure** <sup>434</sup>

(1) If the Authority proposes to publish a statement in respect of a fund operator or, as the case may be, a fund administrator under section 67C, it must give the operator of the fund or, as the case may be, the fund administrator, a warning notice.

(2) If the Authority decides to publish a statement under section 67C (whether or not in the terms proposed), it must give the operator of the fund or, as the case may be, the fund administrator a decision notice, which shall set out the terms of the statement.

### **67E Prohibition orders** <sup>435</sup>

(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by the operator of a fund, a person who is licensed by the Authority under this Act or a person performing functions in relation to the activities of a service provider ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria, as the Authority may establish in a statement of principles.

(5) An operator of a fund and a fund administrator must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, revoke or vary the prohibition order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is a registered person<sup>436</sup> in relation to that activity as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both;

- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for four years or to both.

(10) In this section—

“exempted person”[REPEALED]<sup>437</sup>;

“registered person” means a person who is registered under any of the provisions of this Act;<sup>438</sup>

“regulated activity” means any activity that is carried on by way of business requiring licensing or other authority by the Authority under any provision of this Act;

“regulated person” has the meaning given in subsection (1);

“specified” means specified in the prohibition order.

#### **67F Prohibition Orders: procedure**<sup>439</sup>

(1) If the Authority proposes to make a prohibition order, it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order, it must give the individual concerned a decision notice.

#### **67G Applications relating to prohibition orders: procedures**<sup>440</sup>

(1) This section applies to an application for the revocation or variation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

#### **67H Determination of applications for variation etc.**<sup>441</sup>

(1) The Authority may grant an application made under section 67G if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or
- (c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

### **INJUNCTIONS**<sup>442</sup>

#### **67I Injunctions**<sup>443</sup>

(1) If, on the application of the Authority, the Supreme Court (the “Court”) is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement", in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

## PART VB - NOTICES <sup>444</sup>

### **67J Warning notices** <sup>445</sup>

(1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority and, where such representations are made, the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 31 must specify the proposed terms of the direction or, as the case may be, a variation and, where the direction imposes a requirement under section 30(4)(b), must also specify that the requirement has effect until a specified date or a further direction.

(5) A warning notice given for purposes of section 51 must specify the proposed terms of the direction or, as the case may be, a variation.

(6) A warning notice about a proposal to publish a statement under section 67D must set out the terms of the statement.

(7) A warning notice given under section 67F must set out the terms of the prohibition.

### **67K Decision notices** <sup>446</sup>

(1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the Tribunal under section 55.

- (2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 67J was given and, if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 67L.
- (3) A decision notice about the giving of a direction or variation under section 30 must set out the terms of the direction or variation.
- (4) A decision notice about the giving of a direction under section 51 must set out the terms of the direction.
- (5) A decision notice about the imposition of a civil penalty under section 67A must state the date of payment.
- (6) A decision notice about public censure under section 67C must—
  - (a) set out the terms of the statement;
  - (b) give details of the manner in which, and the date on which, the statement will be published.
- (7) A decision notice about a prohibition order made under section 67F must—
  - (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the individual named in the order.
- (8) A decision notice shall state the day on which it is to take effect.
- (9) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (10) The Authority may give a further decision notice as a result of subsection (9) only if the person to whom the original notice was given consents.
- (11) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (9).

## **CONCLUSION OF ACTIONS**<sup>447</sup>

### **67L Notices of discontinuance**<sup>448</sup>

- (1) Subject to section 67K(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.
- (2) A notice of discontinuance must identify the action which is being discontinued.

## **PUBLICATION**<sup>449</sup>

### **67M Publication**<sup>450</sup>

- (1) Subject to sections 67C and 67E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.
- (2) The Authority must not publish a decision under subsection (1)—
  - (a) before notifying the person concerned; and
  - (b) pending an appeal under section 55.



## **PART VI - RESTRICTION ON DISCLOSURE OF INFORMATION**

### **68. Restricted information**

- (1) Except as provided by sections 69, 70 and 71 –
- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
  - (b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid;

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section is guilty of an offence and is liable –

- (a) on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

### **69. Disclosure for facilitating the discharge of functions of the Authority**

(1) Section 68 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge its functions under this Act or any other Act or regulations.

(2) Without prejudice to the generality of subsection (1), section 68 does not preclude the disclosure of information by the Authority to the auditor or accountant of an authorised or registered<sup>451</sup> fund, if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the participants or potential participants.

### **70. Disclosure for facilitating the discharge of functions by other authorities**

(1) Section 68 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 68 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 68, 69 and this section.

(4) Section 68 does not preclude the disclosure of information –

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
- (b) in connection with any other proceedings arising out of this Act.



(5) Section 68 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 64, 65 or 66 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

#### **71. Information supplied to the Authority by relevant overseas authority**

(1) Section 68 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 68 or –

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section –

“relevant functions” in relation to the Authority means its functions under this Act;

“relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

### **PART VII - MISCELLANEOUS AND SUPPLEMENTAL**

#### **72. False documents or information**

(1) Any person who, for any purposes of this Act —

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or
- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect;

is guilty of an offence and is liable –

- (i) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
- (ii) on conviction on indictment to a fine of \$100,000 or to imprisonment for four years or to both.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove –

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) if not an individual, that every person acting on its behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

### **73. Offences by companies**

(1) Where an offence under this Act committed by a company or limited liability company<sup>452</sup> is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company or limited liability company<sup>453</sup>, or any person who was purporting to act in any such capacity, he, as well as the company or limited liability company<sup>454</sup>, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company or limited liability company<sup>455</sup> are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company or manager of the limited liability company<sup>456</sup>.

### **73A Criminal conviction or civil penalties<sup>457</sup>**

(1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 67A in relation to the same matter.

(2) When a person is liable to a civil penalty imposed by or under section 67A, such person shall not also be charged with an offence under this Act in relation to the same matter.

(3) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

### **74. Section 80 of the Criminal Jurisdiction and Procedure Act 2015<sup>458</sup> not to apply**

(1) Subject to subsection (2), section 80 of the Criminal Jurisdiction and Procedure Act 2015<sup>459</sup> shall not apply to summary offences under this Act.

(2) No prosecution for a summary offence under this Act shall be instituted more than three years after the offence was committed.

### **75. Repeals**

The Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998 are repealed ('repealed provisions').

### **76. Transitionals**

(1) Notwithstanding the requirements for authorisation under Part II of this Act, every fund approved under the repealed provisions shall on the commencement of this Act be authorised and classified as follows –

<b>Classification under repealed provisions</b>	<b>Reclassification under this Act</b>
Bermuda Standard Scheme	Standard Scheme
Bermuda Institutional Scheme	Institutional Scheme

(2) Where the approval of a fund for classification under the repealed provisions was subject to conditions imposed on its classification, such conditions shall continue to apply to the fund.

(3) The Authority shall enter particulars of such authorisation in the register established under section 16.

(4) Subject to this section, upon the registration of such authorisation, the provisions of this Act shall apply to such fund as it applies to funds authorised under section 13 pursuant to an application made under section 12.

- (5) Every fund exempted by or under regulation 3A of the repealed provisions shall on the commencement of this Act be exempted under this Act, and the Authority shall enter particulars of such exemption in the register established under section 16.
- (6) Upon the registration of such exemption, the provisions of this Act shall apply to such fund as if it applies to funds exempted under section 7 pursuant to an application made under section 8.
- (7) The operator of a fund to which subsections (1) and (5) apply may, within a period of 6 months from the date of commencement of this Part, apply to the Authority for a change of classification.
- (8) Sections 13(5) and (6) apply to an application under subsection (7) as they apply to an application under section 13(4).
- (9) Where an application is made under subsection (7) no fee shall be payable under section 17.
- (10) A company which, on the day of commencement of this Part, is carrying on fund administration business may continue to carry on such business without a licence under Part III of this Act –
- (a) for a period not exceeding twelve months beginning with that date; and
  - (b) if within that period application is made for a licence, until that application is disposed of or withdrawn.

## **77. Consequential amendments**

[OMITTED]

**SCHEDULE - (SECTION 5(2A)) - MINIMUM CRITERIA FOR LICENSING**<sup>460 461 462 463 464</sup>**1. Operators, officers and service providers to be fit and proper persons**

(1) Every person who is, or is to be an operator or officer of, or service provider to, an investment fund that is authorised, registered or designated under this Act is a fit and proper person to act as such in relation to the fund.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed any offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

**2. Business to be conducted in prudent manner**

(1) The operator, officer or service provider conducts, or, in the case of a operator, officer or service provider which is not yet carrying on business shall conduct, its business in a prudent manner.

(2) In determining whether an operator, officer or service provider is conducting its business in a prudent manner, the Authority shall take into account any failure by the operator, officer or service provider to comply with the provisions of—

- (a) this Act;
- (b) any other enactment, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (c) the code of conduct; and
- (d) international sanctions in force in Bermuda.

## BERMUDA

**INVESTMENT FUNDS (DEFINITION) ORDER 2019****BR 133/2019**

The Minister of Finance, in exercise of the power conferred by section 3(4) of the Investment Funds Act 2006 and acting on the advice of the Bermuda Monetary Authority, makes the following Order:

**1. Citation**

This Order may be cited as the Investment Funds (Definition) Order 2019.

**2. Interpretation**

In this Order—

“participant” has the meaning given in section 2 of the Act;

“the Act” means the Investment Funds Act 2006;

“investment fund” has the meaning given under section 2 of the Act;

“shareholder controller” has the meaning given under section 2 of the Act.

**3. Arrangements not to be defined as “investment funds” for purposes of section 3 of Act**

The following arrangements are not arrangements which fall within the definition of “investment fund” for the purposes of section 3 of the Act—

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business (other than investment business, as that term is defined in section 3(1)(b) of the Investment Business Act 2003) and enters into the arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a body corporate, trust, partnership or other similar entity, legal arrangement or person that is in the same group as the operator;
- (d) arrangements which are holding entities pursuant to regulation 14 of the Economic Substance Regulations 2018;
- (e) arrangements under which—
  - (i) the units of participants consist of instruments which confer rights (other than options to purchase) in respect of only one asset; or
  - (ii) each participant owns a part of the property but such property is not “pooled property” as referred to in section 3(3)(a) of the Act and is instead a property managed as referred to in section 3(3)(b) of the Act on the basis that each participant’s property is not separately bought and sold except when a person becomes or ceases to be a participant;
- (f) arrangements where—
  - (i) each of the participants is an employee or former employee (or spouse, widow, widower, child or step-child under the age of eighteen, of such employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and

- (ii) the property to which the arrangements relate consists of money or securities in or of a member of that group;
- (g) arrangements where the entire contribution of each participant is a deposit (as such term is defined under section 3 of the Banks and Deposit Companies Act 1999) or sum—
  - (i) paid by an institution (as such term is defined under section 2 of the Banks and Deposit Companies Act 1999);
  - (ii) paid by one company to another at the time when the shareholder controller of both companies would be treated as the same person;
  - (iii) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of the person receiving it;
- (h) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons;
- (i) arrangements, other than open-ended investment funds, under which the rights or interests of the participants are transferable securities listed on a stock exchange.<sup>465</sup>
- (j) arrangements the purpose of which is the provision of clearing services and which are operated by a recognized clearing house or recognized investment exchange;
- (k) pension funds;
- (l) sovereign wealth funds;
- (m) securitization special purpose vehicles;
- (n) joint ventures;
- (o) debt issues;
- (p) contracts of insurance;
- (q) occupational pension schemes;
- (r) credit unions licensed under the Credit Unions Act 2010;
- (s) insurers registered under the Insurance Act 1978;
- (t) digital asset businesses licensed under the Digital Asset Business Act 2018.

#### **4. Commencement**

This Order shall come into operation on 1 January 2020.

Made this 23rd day of December 2019

Acting Minister of Finance

[Operative Date: 01 January 2020]

## BERMUDA

**INVESTMENT FUND OFFERING DOCUMENT RULES 2019****BR 134/2019**

In exercise of the powers conferred upon it by section 38 of the Investment Funds Act 2006, the Bermuda Monetary Authority makes the following Rules:

**1. Citation**

These Rules may be cited as the Investment Fund Offering Document Rules 2019.

**2. Interpretation**

In these Rules—

- “the Act” means the Investment Funds Act 2006;
- “investment fund” has the meaning given in section 2 of the Act;
- “offering document” has the meaning given in section 2 of the Act;
- “operator” has the meaning given in section 2 of the Act;
- “participant” has the meaning given in section 2 of the Act.

**3. Application**

These Rules shall apply to all investment funds that are authorised or registered by the Authority under the Investment Funds Act 2006.

**4. Requirement for, and approval of the offering document**

- (1) Every investment fund shall prepare an offering document which shall—
  - (a) comply with these Rules; and
  - (b) be submitted to, and approved by, the Authority,

before such offering document is used by the investment fund for the offering of units to participants or potential participants.

- (2) Upon application for authorisation or registration—
  - (a) the operator of an investment fund shall submit to the Authority a copy of the offering document that it proposes to issue; and
  - (b) in the case of a company fund registered under section 6 of the Segregated Accounts Companies Act 2000, or a unit trust fund operating segregated accounts, the operator of such a fund shall submit to the Authority a copy of the offering document or supplement for each segregated account that is to be operated as an investment fund.

**5. Publication and availability of offering document**

- (1) Subject to paragraph 3, every operator of an investment fund shall publish the offering document, or otherwise make copies available to participants and potential participants.
- (2) The offering document shall be made available to participants without charge at the registered or principal office of the investment fund in Bermuda or at the office in Bermuda of at least one of the fund's service providers.

## **6. Contents of offering document**

An offering document shall, in addition to any requirements under the Act and other applicable enactments, contain the following—

- (a) the name of the investment fund and the address of its registered or principal office in Bermuda;
- (b) a statement whether the investment fund is authorised or registered or has been given equivalent regulatory approval, as the case may be, (or intends to be authorised or registered or given equivalent regulatory approval) in any jurisdiction or with any supervisory or regulatory authority, outside Bermuda;
- (c) the date of incorporation or establishment of the investment fund (indicating whether or not the duration is limited);
- (d) where applicable, an indication of stock exchanges or markets where the securities are, or are to be, listed or dealt in;
- (e) the names, addresses and other relevant particulars of directors, officers, resident representatives, auditors, fund administrators, custodians, registrars, promoters, legal advisers, investment managers, and other persons having significant involvement in the affairs of the investment fund;
- (f) a description of the investment fund's investment objectives, including its financial objectives, investment policy and any limitations on that investment policy and an indication of any investment techniques and instruments, and any borrowing powers;
- (g) a description of the investment fund's material risks, including in relation to a company fund registered under section 6 of the Segregated Accounts Companies Act 2000 or a unit trust fund operating segregated accounts, a statement on any potential risks associated with the operation of segregated accounts;
- (h) details of the capital of the investment fund including, where applicable, any existing initial or founder capital;
- (i) details of the principal rights and restrictions attaching to the units, including with respect to currency, voting rights, circumstances of winding up or dissolution, certificates, entry in registers and other similar details;
- (j) a description of the intentions with respect to the declaration of dividends or distribution of profits;
- (k) the procedures and conditions for the issue of units;
- (l) the procedures and conditions for the redemption and sale of units and the circumstances in which such redemption may be suspended;
- (m) a description of the basis for the determination of the issue and redemption prices (including the frequency of dealings) and an indication of the places where information as to the prices may be obtained;
- (n) a description of the basis and frequency of valuation of the investment fund's assets;
- (o) particulars of any material provisions of any contract engaging the services of any and all directors, trustees, managers, partners, service providers and any other third parties receiving or likely to receive fees from the investment fund;
- (p) a description of the potential conflicts of interest between the investment fund, its directors, trustees, managers, partners and its service providers;



- (q) the date of the financial year end of the investment fund;
- (r) information on the nature and frequency of financial reports to be distributed to participants;
- (s) a statement of the place where copies of the constitution and any annual or periodic report of the investment fund may be inspected and obtained;
- (t) particulars relating to the main business activity of the custodian and any co-custodian;
- (u) in the case of a Professional Closed Fund or a Private Fund which is a closed-ended investment fund, the name of the designate responsible for segregation and safekeeping functions related to the investment fund property, and the relevant provisions that set out the segregation and safekeeping arrangements; and
- (v) particulars of the experience of investment managers.

## **7. Disclaimer**

The offering document shall state the following—

- (a) in relation to all authorised investment funds—  

"Authorisation by the Bermuda Monetary Authority does not constitute a guarantee by the Authority as to the performance of the investment fund or its creditworthiness.

Furthermore, in authorising such a fund, the Authority shall not be liable for the performance of the investment fund or the default of its operators or service providers, nor for the correctness of any opinions or statements expressed in the offering document.";
- (b) in relation to all registered investment funds—  

"Registration by the Bermuda Monetary Authority does not constitute a guarantee by the Authority as to the performance of the fund or its creditworthiness.

Furthermore, in registering such a fund, the Authority shall not be liable for the performance of the fund or the default of its operators or service providers, nor for the correctness of any opinions or statements expressed in the offering document."

## **8. Additional information**

The operator of a fund shall also include in the offering document any other material information which is within its knowledge or which it can obtain by making reasonable enquiries, being information which investors would reasonably require for the purpose of making an informed judgment about the merits of investing in the fund.

## **9. Revocation of Fund Prospectus Rules 2007**

The Fund Prospectus Rules 2007 are hereby revoked.

## **10. Commencement**

These Rules shall come into operation on 1 January 2020.

Made this 23rd day of December 2019

Executive Chairman

Bermuda Monetary Authority

[Operative Date: 01 January 2020]

## BERMUDA

**INVESTMENT FUND RULES 2019****BR 135/2019**

In exercise of the powers conferred upon it by section 37 of the Investment Funds Act 2006, the Bermuda Monetary Authority makes the following Rules:

**1. Citation**

These Rules may be cited as the Investment Fund Rules 2019.

**2. Interpretation**

In these Rules—

“the Act” means the Investment Funds Act 2006;

“external valuer” means a person who—

- (a) makes the final determination on the net asset value of an investment fund;
- (b) is independent of the investment fund, the investment manager and any other persons connected to the investment fund or the investment manager; and
- (c) is a fit and proper person to act as such in relation to the investment fund;

“fit and proper person” shall be construed as provided in paragraph 1 of the Schedule to the Act;

“fund administrator” has the meaning given in section 2 of the Act;

“fund administration provider business” has the meaning given under section 2(2) of the Fund Administration Provider Business Act 2019;

“investment fund” has the meaning given in section 2 of the Act;

“investment manager” has the meaning given in section 2 of the Act;

“offering document” has the meaning given in section 2 of the Act;

“operator” has the meaning given in section 2 of the Act;

“participant” has the meaning in under section 2 of the Act;

“service provider” has the meaning in under section 2 of the Act;

“standard fund” means a class of investment fund as provided under section 11(1) (d) of the Act.

**3. Application**

These Rules shall apply to all investment funds that are authorised or registered by the Authority under the Investment Funds Act 2006.

**4. Custodian appointed to standard fund to be licensed by Authority**

Except where the administrator of a standard fund is carrying on fund administration provider business in Bermuda, the custodian of the investment fund must be a person licensed by the Authority under the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 or the Investment Business Act 2003.

## **5. Professional Closed Fund to designate responsibility for segregation and safekeeping arrangements**

- (1) The operator of a Professional Closed Fund shall designate responsibility for segregating and safekeeping the investment fund property to a fit and proper person to act as such, based on the nature of the investment fund property.
- (2) The name of the designate and the relevant provisions that set out the segregation and safekeeping arrangements shall be disclosed to the Authority and to investors.

## **6. Private Fund to designate responsibility for segregation and safekeeping arrangements**

- (1) The operator of a Private Fund which is a closed-ended investment fund shall designate responsibility for segregating and safekeeping the investment fund property to a fit and proper person to act as such, based on the nature of the investment fund property.
- (2) The name of the designate and the relevant provisions that set out the segregation and safekeeping arrangements shall be disclosed to the Authority and to investors.

## **7. Valuations**

- (1) The operator of an investment fund shall carry out valuations of the assets and liabilities of an investment fund for the purposes of determining the net asset value of the investment fund.
- (2) The operator shall ensure that such valuations are performed at least—
  - (a) monthly for standard funds;
  - (b) quarterly for institutional funds, administered funds and specified jurisdiction funds; or
  - (c) annually for registered funds.

## **8. Valuation and pricing method to be disclosed to investors**

The valuation and pricing method adopted by an investment fund under paragraph 7 shall be disclosed to investors in the offering document, and the valuation method shall be consistently applied (unless change is desirable in the interests of investors).

## **9. Persons to perform valuation function**

- (1) The operator of an investment fund shall ensure that the valuation function is performed by—
  - (a) an external valuer;
  - (b) the investment manager, provided that the valuation task is functionally independent from the portfolio management, and any remuneration policy, or other appropriate measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented; or
  - (c) the fund administrator, provided that the fund administrator has systems in place that provide for the timely and accurate generation of net asset valuations.
- (2) Where a fund administrator performs the valuation function under subparagraph (1)(c) such fund administrator shall—
  - (a) be fully familiar with applicable valuation principles and pricing policies of the investment fund;
  - (b) ensure that it has satisfactory arrangements in place, designed to achieve appropriate independence in pricing decisions, as well as effective reconciliations of investment and cash positions.

**10. Condition applicable if external valuer does not perform valuation**

- (1) Where the valuation function is not performed by an external valuer, the investment fund shall have its valuation procedures or valuations, or both, verified by—
- (a) an external valuer; or
  - (b) where appropriate, its auditor during the annual audit procedures carried out in accordance with the Act and these Rules.
- (2) The operator shall ensure that the valuation procedures of the investment fund are at all times objective and proper.

**11. Constitution of fund to be available for inspection**

- (1) The operator of an investment fund shall make available copies of the fund's constitution for inspection by participants and potential participants.
- (2) The operator shall permit a copy of the constitution to be inspected without charge at the registered or principal office of the fund in Bermuda or at the office in Bermuda of at least one of the service providers of the fund.
- (3) The operator shall make available copies of the constitution to participants or potential participants who request them on payment of any reasonable costs associated with the making and distribution of such copies.

**12. Publication of prices for units**

The issue and redemption prices for units of an investment fund shall be published on its website or otherwise made available without charge at the registered or principal office of the fund in Bermuda, or at the office of at least one of the service providers of the fund located in Bermuda.

**13. Financial reports: authorised investment funds**

- (1) The operator of an authorised investment fund shall, within six months after the end of the financial year of the investment fund, prepare a financial report containing audited financial statements of the investment fund.
- (2) The financial report shall be distributed or otherwise made available to all participants in the investment fund without charge.

**14. Financial reports: registered investment funds**

- (1) The operator of a registered investment fund shall, within six months after the end of financial year of the fund, prepare a financial report that sets out the performance of the fund.
- (2) The financial report shall be distributed or otherwise made available to all participants in the investment fund without charge.

**15. Financial statements**

Where financial statements are required in respect of an investment fund, such fund shall prepare the financial statements in accordance with any one of the following standards or principles —

- (a) International Financial Reporting Standards (IFRS);
- (b) Generally Accepted Accounting Principles ('GAAP') in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise upon the grant of an application.

**16. Audit**

Where an audit of an investment fund is required, a registered or authorised investment fund shall have the audit of its financial statements conducted in accordance with any one of the following standards—

- (a) International Standards on Auditing (ISA);
- (b) Generally Accepted Auditing Standards ('GAAS') in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAS as the Authority may approve upon the grant of an application.

**17. Revocation of Fund Rules 2007**

The Fund Rules 2007 are hereby revoked.

**18. Commencement**

These Rules shall come into operation on 1 January 2020.

Made this 23rd day of December 2019

Executive Chairman

Bermuda Monetary Authority

[Operative Date: 01 January 2020]

**BERMUDA****INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND)  
(JAPAN) ORDER 2012****BR 40/ 2012**

The Minister, acting on the advice of the Board of Directors of the Bermuda Monetary Authority, in exercise of the powers conferred upon him by section 11 (5)(a) of the Investment Funds Act 2006, makes the following Order:

**1. Citation**

This Order may be cited as the Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012.

**2. Interpretation**

In this Order, unless the context otherwise requires:

“Act” means the Investment Funds Act 2006;

“Authority” means The Bermuda Monetary Authority;

“authorise” means authorise under the Act.

**3. Recognition of jurisdiction of Japan**

The jurisdiction of Japan is recognised for the purpose of the operations of a fund that qualifies as a specified jurisdiction fund for Japan under paragraph 5.

**4. Recognition of applicable law of Japan**

The law of Japan—

- (a) relating to units of a fund which have been or are intended to be offered to the public in Japan by way of a public offering of securities (referred to in Japan as “yukashoken-no-boshu”); and
- (b) defined under the Financial Instruments and Exchange Law of Japan,

is recognised as the applicable law in Japan for the purpose of the operations of a fund that qualifies as a specified jurisdiction fund for Japan under paragraph 5.

**5. Qualification as specified jurisdiction fund for Japan**

(1) Subject to subparagraph (2), the Authority may authorise and classify any investment fund established in Bermuda as a specified jurisdiction fund for Japan.

(2) A fund shall not qualify for classification as a specified jurisdiction fund for Japan under subsection (1) unless its units, which have been or are intended to be offered by way of a public offering of securities, are offered in compliance with the law of Japan referred to under paragraph 4.

**6. Rules**

The Authority may, from time to time, specify in the fund rules additional criteria that a fund, classified as a specified jurisdiction fund for Japan under regulation 5, is to comply with.

**7. Savings for funds in operation in Japan**

Notwithstanding paragraph 5, a fund which, before the coming into force of this Order, offered units to the public in Japan under the law of Japan referred to in paragraph 4 and that has been classified by the

Authority, shall continue to operate as a fund in accordance with such classification unless it has made an irrevocable election in writing to the Authority specifying that the Act, this Order and, where relevant, the fund rules shall apply to it.

Made this 4th day of June 2012

Premier and Minister of Finance

**BERMUDA****INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND)  
(JAPAN) RULES 2012****BR 43/ 2012**

The Bermuda Monetary Authority, in exercise of the power conferred by section 37 of the Investment Funds Act 2006, as read with paragraph 6 of the Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012, makes the following Rules:

**1. Citation**

These Rules may be cited as the Investment Funds (Specified Jurisdiction Fund) (Japan) Rules 2012.

**2. Application**

These Rules apply to a fund authorised and classified in accordance with paragraph 5 of the Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012 as a specified jurisdiction fund for Japan.

**3. Interpretation**

In these Rules, unless the context otherwise requires—

“accounting principles” or “GAAP” means generally accepted accounting principles;

“the Act” means the Investment Funds Act 2006;

“fund” means specified jurisdiction fund for Japan;

“registered or principal office” means the registered or principal office of the fund in Bermuda;

“reporting standards” or “IFRS” means International Financial Reporting Standards.

**4. Constitution of a fund**

(1) The constitution of a fund shall provide for the following matters—

- (a) the terms upon which units are issued, including the terms and circumstances, if any, upon which the rights and restrictions attaching to the units may be changed; and
- (b) the appointment of an auditor.

(2) The constitution of a fund shall be made available for inspection by a participant or prospective participant of the fund at the fund’s registered or principal office, or if the fund has a service provider in Bermuda, at the office of the service provider.

(3) Copies of the constitution shall be made available to a participant or prospective participant on payment of any reasonable costs associated with the making and forwarding of such copies.

**5. Publication of unit prices**

A fund shall ensure that the issue and redemption or repurchase prices for its units at the most recent issue and redemption or repurchase date is made available on request without charge at the fund’s registered or principal office, or if the fund has a service provider in Bermuda, at the office of the service provider.

**6. Annual and periodical reports**

(1) A fund shall, within six months of the end of its financial year or within such other period as may be specified in the fund’s prospectus, prepare and distribute, or cause to be prepared and distributed, an



annual report to participants of the fund without charge, which shall include the audited financial statements of the fund.

(2) The operator of a fund may prepare periodical reports in accordance with the fund's prospectus and distribute such reports, including interim financial statements, to participants of the fund.

## **7. Submission of activity reports**

(1) The operator of a fund shall submit to the Authority, no later than twenty business days from the last day of each month, a written report on the activities of the fund for the reporting period.

(2) A report shall contain the following information—

- (a) the name of the fund together with all previous names;
- (b) the net asset value of each unit held by participants of the fund;
- (c) the percentage change in the net asset value of the fund and each unit from the previous reporting period;
- (d) the value of the net assets of the fund;
- (e) the number and value of new subscriptions for the reporting period;
- (f) the number and value of redemptions or repurchases in the reporting period; and
- (g) the total number of units in issue at the end of the reporting period.

(3) In this Rule, "reporting period" means reporting on a monthly basis.

## **8. Functions of fund administrator**

(1) The fund administrator shall administer the fund in accordance with—

- (a) the Act and these Rules;
- (b) the fund's constitution;
- (c) the fund's prospectus;
- (d) the specific contractual arrangements; and
- (e) any proper directions given from time to time by the operator—
  - (i) pursuant to a power conferred on the operator by the fund's constitution; and
  - (ii) which is consistent with the provisions of the documents referred to in subparagraphs (a), (b), (c) and (d).

(2) Where relevant, the fund administrator shall ensure—

- (a) that the issue, transfer, conversion and redemption or repurchase of units of the fund are carried out in accordance with the fund's constitution, prospectus, subscription agreement, and all applicable laws and these Rules;
- (b) that the net asset value of the units and their issue, conversion and redemption or repurchase prices, are calculated in accordance with the fund's constitution, prospectus, and subscription agreement, and that such prices are made available to participants or potential participants of the fund;
- (c) that the following are available—
  - (i) the necessary office facilities, equipment, and personnel required to enable the fund administrator to carry out its functions; and

- (ii) the general administrative services required by the fund to carry out its business affairs and to ensure compliance with all applicable laws and these Rules;
  - (d) that subject to the Act, these Rules, and the Companies Act 1981, periodical reports are prepared for participants of the fund in such form as the operator of a fund may determine;
  - (e) that the accounts of the fund and financial books and records are maintained in good order where such accounts, books and records are required—
    - (i) by the Act and these Rules;
    - (ii) by the Companies Act 1981;
    - (iii) by any other law; and
    - (iv) by the fund's constitution, prospectus, and subscription agreement;
  - (f) except where a separate registrar is appointed, that the register required by the fund's constitution is maintained;
  - (g) except where the fund administrator maintains the register, that the procedures of the registrar and the directions given to the registrar relating to the maintenance of the register are effectively monitored; and
  - (h) that the distribution to the participants of the fund of all dividends, or other distributions which may from time to time be declared, are paid by the fund on its units.
- (3) A fund administrator shall—
- (a) keep a copy of the register at its offices for inspection by participants of the fund during normal office hours;
  - (b) prepare, or where a registrar has been appointed, ensure that the registrar prepares and, if required, seals new certificates and balance certificates on behalf of the fund;
  - (c) ensure that certificates for units in the fund are issued or cancelled in accordance with the provisions, if any, of the fund's constitution; and
  - (d) provide, or where a separate registrar is appointed, ensure that the registrar provides, such facilities as may from time to time be necessary with respect to the replacement of certificates or transfer of units of the fund.

## **9. Functions of custodian**

- (1) A custodian shall, where relevant—
- (a) provide for the safekeeping of the certificates and documents of title to investments of the fund; and
  - (b) carry out or cause to be carried out such directions of the fund administrator, investment manager, and the operator in relation to any investments as may be provided by contract, unless those directions conflict with the fund's constitution, prospectus, the subscription agreement, or applicable laws and these Rules.
- (2) A custodian shall be entitled to request from the fund administrator or from the fund, and the fund administrator or the fund shall provide upon such request, copies of records and information relating to the following—
- (a) the receipt and application of subscription monies for units of the fund;
  - (b) the issue, conversion, and redemption or repurchase of units of the fund;

- (c) the transfer of the net proceeds received on the sale of investments of the fund;
- (d) the application of all capital and income of the fund; and
- (e) the calculation in accordance with the fund's constitution, prospectus, and subscription agreement, of the net asset value of the units thereof and their issue, conversion, and redemption or repurchase prices.

#### **10. Custodian to supervise sub-custodian**

A custodian shall maintain an appropriate level of supervision over each sub-custodian and make necessary periodic enquiries to confirm that each sub-custodian continues to competently discharge its obligations.

#### **11. Functions of investment manager**

- (1) The fund's investment manager shall—
  - (a) ensure that the subscription monies received by the fund are applied in accordance with the fund's constitution, prospectus, and subscription agreement;
  - (b) ensure that on the sale of any assets of the fund the net proceeds of the sale are remitted to the custodian within reasonable time limits;
  - (c) ensure that the income of the fund is applied in accordance with the fund's constitution, prospectus, and subscription agreement;
  - (d) ensure that the investment of the assets of the fund is in accordance with the fund's investment objectives and within any investment restrictions as stated in the fund's constitution, prospectus, and subscription agreement; and
  - (e) provide within a reasonable time such information and directions as may be required to enable the custodian or any sub-custodian to perform its contractual obligations in respect of the fund.
- (2) The investment manager shall deposit with or to the order of the custodian, or any sub-custodian, all certificates or documents of title to the investments of the fund.
- (3) The investment manager shall establish or monitor procedures for the holding of investments of the fund by the custodian or any sub-custodian.
- (4) Except as provided in paragraph (5), the investment manager of a fund shall not on behalf of such fund—
  - (a) sell any units short if, as a result of such short sale, the total value of all units sold short on behalf of such fund would immediately following such short sale exceed the value of its net assets;
  - (b) borrow money if, as a result of such borrowing, the aggregate amount of outstanding borrowings effected on behalf of such fund would immediately following such borrowing exceed ten per cent of the value of its net assets, except that—
    - (i) the limitation on borrowing may be temporarily exceeded in special situations including, without limitation, a merger of the fund with another investment fund, or other type of collective investment scheme;
    - (ii) the limitation on borrowing may be exceeded if—
      - (A) the objective of such fund is to invest all, or substantially all, of the proceeds of the issue of its units in real property, including interests in real property; and

- (B) the investment manager considers that any borrowing in excess of such limitation is necessary to ensure the sound management of the assets of such fund or to protect the interests of the investors in such fund;
  - (c) acquire the shares of any one company which is not a fund if, as a result of such acquisition, the total number of shares of such company carrying voting rights held by all investment funds managed by the investment manager would exceed fifty per cent of the total number of all issued and outstanding shares of such company carrying voting rights;
  - (d) acquire any investment which is not listed on an appointed stock exchange or which is not readily realizable if, as a result thereof, the total value of all such investments held by such fund would immediately following such acquisition exceed fifteen per cent of the value of its net assets, provided that the investment manager shall not be restricted from acquiring any investment where the method of valuation of such investment is clearly disclosed in such fund's prospectus; or
  - (e) enter into any transactions which are detrimental to the interests of the fund's participants or which are contrary to the proper management of the assets of the fund including, without limitation, transactions which are intended to benefit the investment manager or third parties other than the participants in the fund.
- (5) Nothing in paragraph (4) shall prevent an investment manager on behalf of a fund from acquiring all or any shares, units, interests or other investments in any company, unit trust, partnership or other person where such company, unit trust, partnership or other person—
- (a) is an investment fund or other type of collective investment scheme;
  - (b) forms part of a master fund or feeder fund or other similar structure or group of companies or entities; or
  - (c) is a special purpose entity which directly facilitates the investment objective or strategy (in whole or in part) of the fund.

## **12. Investment manager may delegate**

An investment manager may appoint a sub-adviser, or sub-advisers, as it thinks fit to carry out on its behalf any and all of the obligations of the investment manager, but the investment manager shall remain responsible to the fund for the performance by such persons of any function so delegated.

## **13. Standards and principles of financial reports**

- (1) Financial statements and other financial information distributed by or on behalf of the fund, and financial information used in the determination of net asset value, shall be prepared in accordance with reporting standards or accounting principles as specified in the fund's prospectus.
- (2) A fund shall adopt IFRS or appropriate GAAP in preparing its financial statements, and in making such a determination, the operator of the fund shall consider—
  - (a) the requirements of any securities authorities or other agencies or supervisory or regulatory bodies to which the fund is subject;
  - (b) the jurisdiction in which the majority of participants, or potential participants, in the fund reside;
  - (c) the jurisdictions in which the sponsor, promoter and investment manager are located; and
  - (d) the proposed business of the fund and the nature of its proposed investments.

**14. Minimum information for inclusion in financial statements**

The financial statements of a fund shall disclose the following minimum information—

- (a) in relation to the statement of net assets, balance sheet, or statement of assets and liabilities—
  - (i) cash and bank balances;
  - (ii) accrued investment income receivable;
  - (iii) amounts receivable on subscriptions for the fund's units;
  - (iv) receivables in respect of sales of investments;
  - (v) unamortised organisation costs;
  - (vi) loans and other forms of borrowing;
  - (vii) the amounts payable on redemption or repurchase of the fund's units;
  - (viii) the amounts payable on distribution; and
  - (ix) net asset value of each investment;
- (b) in relation to the statement of operations, or statement of income and expenses—
  - (i) investment income by category;
  - (ii) other income;
  - (iii) such other expenses as are material, including amortisation of organisation costs, auditors' fees, legal fees, and other professional fees;
  - (iv) taxes;
  - (v) net income;
  - (vi) realised gains or losses on investments and foreign currencies, unless separately disclosed in the statement of changes in net assets or in the financial position; and
  - (vii) unrealised gains or losses on investments and foreign currencies, unless separately disclosed in the statement of changes in net assets or in the financial position;
- (c) a statement of material changes in net assets or in financial position of the fund; and
- (d) in relation to the notes to financial statements—
  - (i) unless the reporting standards have been followed, the jurisdiction whose accounting principles has been followed in the preparation of the financial statements;
  - (ii) significant accounting policies, including—
    - (A) the basis of valuation of investments including the basis of valuation of unquoted and unlisted investments;
    - (B) the basis of recognition of investment income;
    - (C) foreign currency translation policies and disposition of gains or losses;
    - (D) the basis of amortisation of organisation costs, if material; and

- (E) any other accounting policy adopted to deal with items which are judged material;
- (iii) any changes to accounting policies made during the period; and
- (iv) an analysis of the material contingent liabilities not provided for in the financial statements.

### **15. Functions of auditor**

(1) An auditor shall be responsible for determining which auditing standards shall be applied in his audit and, in making his selection, the auditor shall consider the reporting standards or accounting principles approved by the fund for the preparation of the financial statements to be audited.

(2) An auditor shall—

- (a) audit the financial statements to be included in an annual report to the participants of the fund in accordance with the reporting standards or the applicable accounting principles; and
- (b) make a report to the participants in accordance with the reporting standards or accounting principles, as the case may be.

### **16. Concurrence with auditing standards by auditor**

An auditor shall consider, in determining whether or not to accept the appointment as auditor, whether or not he concurs with the choice of reporting standards or applicable accounting principles to be applied in preparing the financial statements.

### **17. Additional audit adherence**

An auditor shall, in addition to the specific requirements of these Rules, adhere to the auditing requirements of any securities exchange or other supervisory or regulatory bodies to which the fund is subject.

### **18. Audited financial statements**

Subject to the requirements of the reporting standards or relevant accounting principles, as the case may be, and those of any relevant securities exchanges or other supervisory or regulatory bodies, audited financial statements of a fund shall include—

- (a) a statement of net assets, a balance sheet, or a statement of assets and liabilities;
- (b) a statement of operations, or a statement of income and expenses;
- (c) a statement of changes in net assets or in the financial position;
- (d) a statement of retained earnings or deficit, if appropriate; and
- (e) notes to the financial statements containing disclosure as required by—
  - (i) the reporting standards or the relevant accounting principles;
  - (ii) any securities exchanges or other supervisory or regulatory bodies to which the fund is subject; and
  - (iii) such further information as is required by the Act, these Rules, the Companies Act 1981, and any relevant provisions of the fund's constitution and prospectus.

### **19. Consent of auditor to publish report**

A fund shall not publish or distribute any report of the auditor in respect of the fund without receiving the written consent of the auditor.

Made this 4th day of June 2012

Chairman

Bermuda Monetary Authority

## BERMUDA

**FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019****2019:32**

[Date of Assent: 5 August 2019]

[Operative Date: 31 December 2019]

WHEREAS it is expedient to provide an improved and updated regulatory framework for fund administration provider businesses; to provide for the protection of the interests of clients or potential clients of persons carrying on fund administration provider business; and for purposes connected with the foregoing:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**PART 1 - PRELIMINARY****1. Citation**

This Act may be cited as the Fund Administration Provider Business Act 2019.

**2. Interpretation**

(1) In this Act, unless the context requires otherwise—

“the Authority” means the Bermuda Monetary Authority established under section 2 of the Bermuda Monetary Authority Act 1969;

“auditor” means a person approved by the Authority to audit the financial statements of a licensed undertaking under section 22;

“code of practice” means a code of practice issued by the Authority pursuant to section 7;

“company” means a body corporate wherever incorporated;

“controller” has the meaning given in section 3(3);

“Court” means the Supreme Court;

“decision notice” means a notice prepared in accordance with section 46;

“director” has the meaning given in section 3(2);

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“financial instrument” means an investment as prescribed by Part 1 of the First Schedule to the Investment Business Act 2003;

“financial statements” in relation to the business of an undertaking which is a company, means the statements specified in section 84(1)(a) of the Companies Act 1981 and the notes mentioned in subsection (1A) of that section;

“financial year” means the period not exceeding 53 weeks at the end of which the balance of an undertaking's accounts is struck or, if no such balance is struck or a period of more than 53 weeks is employed for that purpose, then calendar year;



“fit and proper person” shall be construed in accordance with the provisions of paragraph 1 of Schedule 1;

“fund administration provider business” has the meaning given in subsection (2);

“investment fund” has the meaning assigned to the term in section 2 of the Investment Funds Act 2006 and “fund” shall be construed accordingly;

“licence” means a licence granted by the Authority under section 10(1) and

“licensee” and “licensed” shall be construed accordingly;

“Minister” means the Minister of Finance;

“minimum criteria” means the minimum criteria for licensing specified in Schedule 1;

“officer”, in relation to an undertaking, includes director, secretary or senior executive of the undertaking by whatever name called;

“other assets” means those assets of an investment fund or a fund manager acting on behalf of an investment fund, which are not financial instruments;

“senior executive” has the meaning given in section 3(6);

“share” has the meaning assigned to the term in section 2 of the Companies Act 1981;

“shareholder controller” has the meaning given in section 3(4);

“subsidiary” has the meaning assigned to the term in section 86 of the Companies Act 1981;

“undertaking” means—

- (a) a company;
- (b) a partnership; or
- (c) an individual;

“warning notice” means a notice prepared in accordance with section 45.

(2) In this Act, “fund administration provider business” means the business of providing one or more of the following services to an investment fund—

- (a) applying the subscription monies received by a fund in accordance with its constitution and its prospectus;
- (b) processing the issue, conversion and redemption of units of a fund;
- (c) applying the income of a fund in accordance with its constitution and its prospectus;
- (d) calculating the net asset value of the units, and their issue, conversion and redemption price;
- (e) maintaining the accounts of a fund;
- (f) distributing to the participants of a fund all dividends or other distributions which may from time to time be declared and paid by it on units in a fund;
- (g) any other services or activities that the Minister, acting on the advice of the Authority, may specify by notice published in the Gazette.

### **3. Meaning of "director", "controller", "senior executive" and "associate"**

(1) In this Act “director”, “controller”, “senior executive” and “associate” shall be construed in accordance with the provisions of this section. (2) “Director” in relation to an undertaking—

- (a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
  - (b) where it is used in subsections (6) and (7), includes a partner of a partnership.
- (3) “Controller” in relation to an undertaking, means—
- (a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
  - (b) in the case of an undertaking which is a partnership, a partner;
  - (c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;
  - (d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
  - (e) a person who satisfies the requirements of this paragraph;
  - (f) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.
- (4) For the purpose of subsection (3)(e), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates -
- (a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
  - (b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
  - (c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—
    - (i) a holding of shares in; or
    - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the undertaking, or as the case may be, the other company concerned.
- (5) In this Act “majority shareholder controller” means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.
- (6) “Senior executive”, in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—
- (a) exercises managerial functions; or
  - (b) is responsible for maintaining accounts or other records of the undertaking.
- (7) In this section “chief executive” in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.
- (8) In this Act “associate” in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means—
- (a) if that person is an individual—

- (i) the trustees of any settlement under which that person has a life interest in possession;
  - (ii) any company of which that person is a director;
  - (iii) any person who is an employee or partner of that person;
- (b) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(9) For the purpose of subsection (8), “settlement” includes any disposition or arrangement under which property is held in trust.

#### **4. Carrying on fund administration provider business in Bermuda**

(1) A person carries on fund administration provider business in or from within Bermuda where that person provides any of the services described in section 2(2) to an investment fund and—

- (a) occupies a place of business in Bermuda;
- (b) makes it known that he may be contacted at an address in Bermuda—
  - (i) through promotional or marketing materials or information;
  - (ii) by way of advertising;
  - (iii) by use of letterhead or website; or
  - (iv) through contractual or other legal arrangements;
- (c) otherwise is determined by the Authority to be holding himself out to the public as engaging in or carrying on fund administration provider business in Bermuda on a continuing basis; or
- (d) discharges in Bermuda the duties of a fund administrator, the discharge of which constitute the carrying on by such person of fund administration provider business in Bermuda under an order made under subsection (2).

(2) The Minister acting on the advice of the Authority may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

- (a) carrying on fund administration provider business in Bermuda;
- (b) not carrying on fund administration provider business in Bermuda.

#### **5. Annual reports**

The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate an annual report on its activities under this Act in that year.

**6. Authority's statement of principles and guidance provision**

- (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—
- (a) in interpreting the minimum criteria and the grounds for revocation specified in section 14;
  - (b) in exercising its power to grant, revoke or restrict a licence;
  - (c) in exercising its power to obtain information, reports and to require production of documents;
  - (d) in exercising its powers—
    - (i) under section 31 to impose a civil penalty;
    - (ii) under section 33 to censure publicly;
    - (iii) under section 35 to make a prohibition order; and
    - (iv) under section 34 to publish information about any matter to which a decision notice relates.
- (2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).
- (3) The Authority may from time to time give guidance on the application of this Act and regulations made under it.
- (4) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit.

**7. Codes of practice**

- (1) The Authority may issue codes of practice in connection with the manner by which licensed undertakings shall carry on fund administration provider business.
- (2) Without prejudice to the generality of subsection (1), the Authority may issue codes of practice for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on fund administration provider business.
- (3) Before issuing a code of practice, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.
- (4) Every licensed undertaking shall in the conduct of its business have regard to any code of practice issued by the Authority.
- (5) A failure on the part of a licensed undertaking to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 2 of Schedule 1 (Minimum Criteria for Licensing).

**PART 2 - LICENSING****8. Restriction on carrying on fund administration provider business without licence**

- (1) A person shall not carry on or purport to carry on fund administration provider business in or from within Bermuda unless that person is for the time being a licensed undertaking.
- (2) A person who contravenes this section is guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for one year or to both such fine and imprisonment;
  - (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.
- (3) “Person” for the purposes of subsection (1), includes a company registered or partnership formed, in Bermuda.

## **9. Fund Administration Provider Business Licence**

- (1) An application may be made to the Authority for a fund administration provider business licence.
- (2) An application shall be made in such manner as the Authority may direct and shall be accompanied by—
  - (a) a business plan setting out the nature and scale of the fund administration provider business activity which is to be carried on by the applicant;
  - (b) particulars of the applicant’s arrangements for the management of the business;
  - (c) policies and procedures to be adopted by the applicant to meet the obligations under this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
  - (d) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and
  - (e) an application fee of such amount as may be prescribed under the Bermuda Monetary Authority Act 1969.
- (3) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application, but in any such case no application fee shall be refunded to the applicant.

## **10. Grant and refusal of applications**

- (1) Subject to this section, the Authority may on an application duly made in accordance with section 9, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.
- (2) The Authority shall not grant an application unless it is satisfied that the minimum criteria under Schedule 1 are fulfilled with respect to the applicant.
- (3) It shall be a condition of every licence issued under this Act that a licensed undertaking shall not hold financial instruments or client monies.
- (4) A licence issued under this section may be subject to such limitations on the scope of the fund administration provider business activity or the manner of operating the fund administration provider business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.
- (5) The Authority may, on application made by a licensed undertaking, vary or remove any limitation imposed on the scope of its licence.
- (6) A licence issued to a partnership shall be issued in the partnership name, and shall not be affected by any change in the name of the partners.
- (7) The Minister acting on the advice of the Authority may by order amend Schedule 1 by adding new criteria or by amending or deleting the criteria for the time being specified in Schedule 1.

**11. Display of licence**

- (1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Bermuda.
- (2) The Authority shall keep in its records a copy of every licence issued under section 10, and each such licence shall be open to inspection by members of the public at all reasonable times.
- (3) A list of all undertakings, for the time being licensed under this Act, shall be provided by the Authority on its website: [www.bma.bm](http://www.bma.bm).

**12. Fees**

- (1) A licensed undertaking shall pay such fee as may be prescribed under the Bermuda Monetary Authority Act 1969—
  - (a) on the grant of a licence;
  - (b) on or before 31 March in every year after the year in which the licence was granted;
  - (c) to extend the filing date of annual financial statements required under section 21.
- (2) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding \$5,000.

**13. Restriction of licence**

- (1) Subject to section 17, the Authority may restrict a licence—
  - (a) if it is satisfied as to the matters specified in paragraph (a), (b), (d) or (e) of section 14, but it appears to the Authority that the circumstances are not such as to justify revocation;
  - (b) if it is satisfied that a person has become a controller of an undertaking in contravention of section 24 or has become or remains a controller after being given a notice of objection pursuant to section 25 or 26;
  - (c) in connection with the revocation of a licence—
    - (i) when giving the undertaking a warning notice that it proposes to revoke its licence; or
    - (ii) at any time after such warning notice has been given to the undertaking; or
  - (d) at any time after the undertaking has served a notice surrendering its licence with effect from a later date.
- (2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the undertaking's clients or potential clients, and may in particular—
  - (a) require the undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business activities in a particular way;
  - (b) impose limitations on the acceptance of fund administration provider business;
  - (c) prohibit the undertaking from soliciting fund administration provider business either generally or from persons who are not already its clients;
  - (d) prohibit the undertaking from accepting new fund administration provider business;
  - (e) prohibit the undertaking from entering into any other transactions or class of transactions;
  - (f) require the removal of any officer or controller;

- (g) specify requirements to be fulfilled otherwise than by action taken by the undertaking.
- (3) Any condition imposed under this section may be varied or withdrawn by the Authority.
- (4) The Authority may on the application of a licensed undertaking vary any condition imposed on its licence.
- (5) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction concluded before revocation.

#### **14. Revocation of licence**

Subject to section 17, the Authority may revoke the licence of an undertaking if the Authority is satisfied that—

- (a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the undertaking;
- (b) the undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;
- (c) a person has become a majority shareholder controller of the undertaking in contravention of section 24 or has become or remains such a controller after being given a notice of objection pursuant to section 25 or 26;
- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking; or
- (e) the interests of the clients or potential clients of the undertaking are in any way threatened.

#### **15. Winding up on petition from the Authority**

- (1) On a petition presented by the Authority by virtue of this section, the Court may wind up an undertaking which is a company in respect of which a licence is revoked, if the Court is of the opinion that it is just and equitable that the undertaking be wound up.
- (2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an undertaking under this section.

#### **16. Notice of restriction or revocation of licence**

- (1) Where the Authority proposes to—
  - (a) restrict a licence under section 13(1);
  - (b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or
  - (c) revoke a licence under section 14, the Authority shall give to the undertaking concerned a warning notice under section 45.
- (2) Where—
  - (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of Schedule 1 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
  - (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer, the Authority shall give that person a copy of the



warning notice but the Authority may omit from such copy any matter which does not relate to him.

(3) After giving a notice under subsection (1) and taking into account any representations made under section 45(2), the Authority shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the undertaking's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the undertaking's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4) Once the Authority has made a decision under subsection (3) it shall forthwith provide either a decision notice under section 46 or a notice of discontinuance under section 47, as the case may be.

(5) The Authority shall publish in the Gazette in such form as it thinks fit, notice of every revocation of a licence under the Act.

## **17. Restriction in cases of urgency**

(1) No warning notice need be given under section 16 in respect of the imposition or variation of a restriction on an undertaking's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case, the Authority may by written notice to the licensed undertaking impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 40.

(4) Section 13(2) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 13(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An undertaking to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of 14 days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5), the Authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of 28 days beginning with the day on which the notice was given under subsection (2) give the undertaking concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice with effect from the date on which it is given.



**18. Directions to protect interests of clients**

- (1) The Authority may give an undertaking directions under this section at any time after its licence is revoked or surrendered.
- (2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the undertaking's clients.
- (3) An undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
  - (a) on summary conviction to a fine of \$25,000;
  - (b) on conviction on indictment to a fine of \$75,000.

**19. Notification and confirmation of directions**

- (1) A direction under section 18 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the licensed undertaking concerned.
- (2) A direction under section 18(1), except one varying a previous direction with the agreement of the licensed undertaking concerned—
  - (a) shall state the reasons for which it is given and give particulars of the licensed undertaking's rights under subsection (3) and section 40; and
  - (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the licensed undertaking concerned.
- (3) A licensed undertaking to which a direction is given which requires confirmation under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

**20. Surrender of licence**

- (1) A licensed undertaking may surrender its licence by written notice to the Authority.
- (2) A surrender shall take effect on the date of the giving of approval by the Authority—
  - (a) once it is satisfied that all matters relating to the fund administration provider business of the licensed undertaking have been prudently administered; or
  - (b) where the fund administration provider business has been transferred to another fund administration provider.
- (3) The surrender of the licence shall be irrevocable unless the Authority by notice in writing allows it to be withdrawn.

**PART 3 - FINANCIAL STATEMENTS, ACCOUNTS AND AUDITOR****21. Duty to prepare annual financial statements and accounts**

- (1) Every licensed undertaking shall prepare annual financial statements in respect of all transactions and balances relating to its business.
- (2) A licensed undertaking which is a company shall prepare annual financial statements of its business, and shall cause copies of those statements to be laid before the company in general meeting.

- (3) A licensed undertaking which is not a company shall prepare annual accounts in such form and containing such particulars as the Authority may direct.
- (4) A licensed undertaking shall keep a copy of the most recent audited financial statements or accounts at each of its offices in Bermuda together with the auditor's report thereon.
- (5) Not later than four months after the close of its financial year every licensed undertaking shall file a copy of its audited financial statements and the auditor's report or accounts for that year with the Authority.
- (6) A licensed undertaking may apply to the Authority to extend the filing date requirement under subsection (5), for a period which shall not exceed three months.

## **22. Appointment of auditors**

- (1) Every licensed undertaking that has been approved by the Authority to hold other assets of clients shall annually appoint an auditor approved by the Authority to audit its financial statements.
- (2) If a licensed undertaking fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by the licensed undertaking to such auditor.
- (3) A licensed undertaking shall forthwith give written notice to the Authority if it—
  - (a) proposes to remove an auditor before the expiration of his term of office; or
  - (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.
- (4) A licensed undertaking which fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.
- (5) Subject to subsection (6), the Authority may revoke an approval of an auditor, if it is satisfied that he is no longer a fit and proper person to hold the appointment.
- (6) The Authority shall not revoke its approval unless it has first notified the auditor and the licensed undertaking of its intention to do so.
- (7) No person having an interest in any licensed undertaking, otherwise than as a client, and no officer, servant or agent of any licensed undertaking shall be eligible for appointment as an approved auditor for that licensed undertaking; and any person appointed as such auditor to any licensed undertaking who subsequently acquires such interest or becomes an officer, servant or agent of that licensed undertaking shall cease to be an approved auditor.

## **23. Auditor to communicate certain matters to Authority**

- (1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.
- (2) The circumstances referred to in subsection (1) are—
  - (a) his resignation before the expiration of his term of office;
  - (b) his intention not to seek to be re-appointed;
  - (c) a decision to include a modification of his report on the licensed undertaking's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Authority's functions under this Act.

(4) An auditor who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.

## **PART 4 - OBJECTIONS TO SHAREHOLDER CONTROLLERS**

### **24. Notification of new or increased control**

(1) No person shall become a 10% or majority shareholder controller of a licensed undertaking which is a company unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the licensed undertaking; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the licensed undertaking, or that period has elapsed without the Authority having served him under section 25 a written notice of objection to his becoming such a controller of the licensed undertaking.

(2) Subsection (1) applies also in relation to a person becoming a partner in a licensed undertaking which is a partnership.

(3) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

### **25. Objection to new or increased control**

(1) The Authority may serve a notice of objection under this section on a person who has given notice under section 24 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed undertaking;
- (b) that the interests of clients and potential clients of the licensed undertaking would not be in any manner threatened by that person becoming a controller of that description of the licensed undertaking; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed undertaking as a controller of the description in question the criteria in Schedule 1 would continue to be fulfilled in the case of the licensed undertaking or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section, the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a preliminary notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 40.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 24 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with a notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 24(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until 14 days after the end of the period within which representations can be made under subsection (3).

## **26. Objection to existing controller**

(1) Where it appears to the Authority that a person who is a controller of any description of a licensed undertaking is not, or is no longer, a fit and proper person to be such a controller of the licensed undertaking, it may serve him with a written notice of objection to his being such a controller of the licensed undertaking.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a preliminary notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not, or is no longer, a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by section 40.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

## **27. Contraventions by controller**

- (1) Subject to subsection (2), any person who contravenes section 24 by—
- (a) failing to give the notice required by subsection (1)(a) of that section; or
  - (b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 25(2), shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within 14 days of becoming aware of the fact.
- (3) Any person who—
- (a) before the end of the period mentioned in section 24(1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 25(2);
  - (b) contravenes section 24 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
  - (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him, shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.
- (5) A person guilty of an offence under subsection (3) shall be liable—
- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

## **28. Restriction on sale of shares**

- (1) The powers conferred by this section shall be exercisable where a person—
- (a) has contravened section 24 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
  - (b) having become a controller of any description in contravention of section 24 continues to be one after a notice has been served on him; or
  - (c) continues to be a controller of any description after being served under section 25 with a notice of objection to his being a controller of that description.
- (2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
  - (b) no voting rights shall be exercisable in respect of the shares;
  - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
  - (d) except in liquidation, no payment shall be made of any sums due from the undertaking on the shares, whether in respect of capital or otherwise.
- (3) The Court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.
- (4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 25 or 26—
- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
  - (b) if an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) the Court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
- (a) to all the shares in the licensed undertaking of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the licensed undertaking; and
  - (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that licensed undertaking.
- (8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed undertaking or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

## **PART 5 - CHANGE OF CONTROLLER OR OFFICER**

### **29. Notification of change of controller or officer**

- (1) A licensed undertaking shall give written notice to the Authority of the fact of any person having become or ceasing to be a controller or officer of the licensed undertaking.
- (2) A notice required to be given under subsection (1) shall be given before the end of the period of 14 days beginning with the day on which the licensed undertaking becomes aware of the relevant facts.
- (3) A licensed undertaking which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).
- (4) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed under subsection (1) it shall be liable to a civil penalty not exceeding \$5,000.



## **PART 6 - STATEMENT OF COMPLIANCE**

### **30. Statement of compliance**

- (1) Every licensed undertaking shall, within four months from the end of its financial year, file with the Authority a statement of compliance, signed by two directors of the undertaking, one of whom must be the chief executive or equivalent officer, made up to the end of its financial year, certifying that the undertaking has complied with—
- (a) the minimum criteria for licensing requirements under Schedule 1; and
  - (b) all codes of practice issued by the Authority under section 7.
- (2) A licensed undertaking shall also confirm in the statement of compliance where it has failed to comply with any requirement under subsection (1)(a) and (b) and shall set out the particulars of the breach.
- (3) A licensed undertaking that fails to deliver a statement as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default.

## **PART 7 - DISCIPLINARY MEASURES**

### **31. Power to impose civil penalties for breach of requirements**

- (1) Except as provided in section 12, 29, or 30, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a civil penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure.
- (2) For the purposes of subsection (1) “appropriate” means effective, proportionate and dissuasive.
- (3) The Authority shall not impose a civil penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

### **32. Civil penalties procedures**

- (1) If the Authority proposes to impose a civil penalty, it must give the licensed undertaking concerned a warning notice as provided under section 45.
- (2) If the Authority decides to impose a civil penalty, it must give the licensed undertaking concerned a decision notice as provided under section 46.

### **33. Public censure**

- (1) If the Authority considers that a licensed undertaking has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.
- (2) After a statement under this section is published, the Authority shall send a copy of it to the licensed undertaking.

### **34. Public censure procedure**

- (1) If the Authority proposes to publish a statement in respect of a licensed undertaking under section 33, it must give the institution a warning notice.
- (2) If the Authority decides to publish a statement under section 33, (whether or not in the terms proposed) it must give the licensed undertaking concerned a decision notice.

**35. Prohibition orders**

- (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act (“a regulated person”).
- (2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.
- (3) A prohibition order may relate to—
- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
  - (b) regulated persons generally, or any person within a specified class of regulated persons.
- (4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria, as the Authority may establish in a statement of principles.
- (5) A licensed undertaking must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.
- (6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the order.
- (7) The Authority shall publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.
- (8) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—
- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;
  - (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both such fine and imprisonment.
- (9) In this section—
- “regulated activity” means any activity that is carried on by way of a business requiring licensing or other authority under any provision of this Act, regulations, rules or orders made thereunder;
  - “regulated person” has the meaning given in subsection (1);
  - “specified” means specified in the prohibition order.

**36. Prohibition orders: procedures**

- (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.
- (2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

**37. Applications relating to prohibition orders: procedures**

- (1) A person to whom a prohibition order is applicable by virtue of section 36(2) may apply to the Authority for the variation or revocation of the prohibition order.



(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

### **38. Determination of applications for variation, etc.**

(1) The Authority may grant an application made under section 37(1) if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or
- (c) possesses a level of competence, required in relation to persons performing functions of the kind to which the application relates.

### **39. Injunctions**

(1) If, on the application of the Authority, the Court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) “Relevant requirement” in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

## **PART 8 - RIGHTS OF APPEAL**

### **40. Rights of appeal**

(1) A licensed undertaking which is aggrieved by a decision of the Authority—

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;

- (b) to revoke its licence;
- (c) to refuse an application for a licence made under section 10(1);
- (d) to impose a civil penalty under section 31; or
- (e) to publish a statement in respect of it pursuant to section 33, may appeal against the decision to the tribunal constituted in accordance with section 40 (the tribunal).

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 13(2)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an undertaking,

the controller or officer to whom the ground relates or whose removal is required may appeal to the tribunal against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom a notice of objection is served under section 25 or 26 may appeal to the tribunal against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or became or continued to be a controller in circumstances in which his doing so constitutes an offence under section 27(1), (2) or (3).

(4) Any individual in respect of whom a prohibition order has been made under section 35, may appeal to the tribunal.

(5) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.

(6) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

(7) The revocation of a licensed undertaking's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

#### **41. Constitution of tribunals**

(1) A tribunal shall be constituted in accordance with this section, where an appeal is brought under section 40, to determine the appeal.

(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister under subsection (6), who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have experience of fund administration provider business.

(5) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(6) The Minister shall appoint a panel of not less than nine persons with experience of fund administration provider business to serve as members of appeal tribunals.

(7) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority or of any licensed undertaking.

#### **42. Determination of appeals**

(1) On an appeal made under section 40, the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

- (a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

#### **43. Costs, procedure and evidence**

(1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by a licensed undertaking and by a person who is to be a controller or officer of a licensed undertaking, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;

(h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and

(i) as to any other matter connected with such appeals.

(3) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(4) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

(a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;

(b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

#### **44. Further appeals on a point of law**

(1) A licensed undertaking or other person who has appealed to a tribunal may appeal to the Court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for rehearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that Court.

### **PART 9 - NOTICES AND INFORMATION**

#### **45. Warning notices**

(1) A warning notice must—

(a) state the action which the Authority proposes to take;

(b) be in writing; and

(c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice about a proposal to publish a statement under section 34 must set out the terms of the statement.

(5) A warning notice given under section 36 must set out the terms of the prohibition.

#### **46. Decision notices**

(1) A decision notice must—

(a) be in writing;

(b) give reasons for the Authority's decision to take the action to which the notice relates;

- (c) give its decision; and
  - (d) give an indication of the right to appeal the decision to the tribunal under section 40.
- (2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 45 was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 47.
- (3) A decision notice about the imposition of a civil penalty under section 32 must state the date of payment.
- (4) A decision notice about public censure under section 34 must—
- (a) set out the terms of the statement;
  - (b) give details of the manner in which, and the date on which, the statement will be published.
- (5) A decision notice about a prohibition order made under section 35(2) must—
- (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the individual named in the order.
- (6) A decision notice shall state the day on which it is to take effect.
- (7) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (8) The Authority may give a further decision notice as a result of subsection (7) only if the person to whom the original notice was given consents.
- (9) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice under subsection (7).

#### **47. Notices of discontinuance**

- (1) Subject to section 46(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.
- (2) A notice of discontinuance must identify the action which is being discontinued.

#### **48. Publication**

- (1) Subject to sections 16, 33 and 35, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.
- (2) The Authority must not publish a decision notice under subsection (1)—
- (a) before notifying the person concerned; and
  - (b) pending an appeal under section 40.

#### **49. Power to obtain information and reports**

- (1) The Authority may by notice in writing served on a licensed undertaking—
- (a) require the undertaking to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the

Authority may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;

- (b) require the undertaking to provide the Authority with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under paragraph (a).

(2) The person appointed by a licensed undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking, of the functions of the Authority under this Act.

#### **50. General power to require production of documents**

(1) The Authority may—

- (a) by notice in writing served on a licensed undertaking require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the Authority, producing such evidence of his authority, to require it to provide to him such information, or to produce to him such documents, as he may specify, being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a licensed undertaking, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a licensed undertaking or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the licensed undertaking in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients or potential clients of a licensed undertaking which is a company to do so, it may also exercise the powers conferred by section 49 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that undertaking;
- (b) a subsidiary company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to

exercise, or control the exercise of, more than 50% of the voting power at a general meeting.

(5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of a licensed undertaking require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

#### **51. Right of entry to obtain information and documents**

(1) Any officer, servant or agent of the Authority may, on producing evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 49(1) and 50(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 50(3).

(2) Any officer, servant or agent of the Authority may, on producing evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 49(1) and 50(1) for the purpose of obtaining there such information or documents as are specified in the authority; but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

### **PART 10 - INVESTIGATIONS**

#### **52. Investigations on behalf of the Authority**

(1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or
- (b) the ownership or control of the undertaking, and the Authority shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the undertaking under investigation;
- (b) a subsidiary company or related company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to



exercise, or control the exercise of more than 50% of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of a licensed undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 49(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the persons so appointed all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by a licensed undertaking which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Unless the Authority otherwise directs, the licensed undertaking under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a licensed undertaking which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5), shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings. (10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

### **53. Investigations of suspected contraventions**

(1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 8;



- (b) an undertaking may have contravened a requirement imposed by or under this Act, regulations, rules or orders made thereunder;
  - (c) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 35.
- (2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed undertaking but only in relation to—
- (a) business carried on at any time when the undertaking was licensed under this Act; or
  - (b) the ownership or control of an undertaking at any time when it was licensed under this Act.

#### **54. Power to require production of documents during investigation**

- (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 53 (“the person under investigation”) or any person connected with the person under investigation—
- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
  - (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
  - (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the enquiry as the Authority may require.
- (2) The Authority may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking which is under investigation by virtue of subsection (1)—
- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
  - (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
  - (c) to take such actions as the Authority may direct in connection with the investigation.
- (3) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.
- (4) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (3).
- (5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (4) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

(8) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (a) a member of a group to which the person under investigation belongs;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.

## **55. Powers of entry**

(1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 53 and—

- (a) a person has failed to comply with a notice served on him under section 54;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 54; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 54 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 53.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a), proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 53.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

#### **56. Obstruction of investigations**

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out—
  - (a) into a suspected contravention of section 8; or
  - (b) under section 53,

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation, unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

- (2) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
  - (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

### **PART 11 - SAFEGUARDING OF OTHER ASSETS**

#### **57. Safeguarding of other assets**

- (1) An undertaking may apply to the Authority to obtain approval to offer the service of holding other assets.
- (2) An application made under this section shall be in such form, contain such information and be accompanied by such documents as the Authority may require.

### **PART 12 - RESTRICTION ON DISCLOSURE OF INFORMATION**

#### **58. Restricted information**

- (1) Except as provided by sections 59, 60 and 61 no person who—
  - (a) under or for the purposes of this Act receives information relating to the business or other affairs of any person; or
  - (b) obtains information directly or indirectly from a person who has received it as provided under paragraph (a),

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

- (2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) Any person who discloses information in contravention of this section commits an offence and is liable—
  - (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;

- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.

#### **59. Disclosure for facilitating the discharge of functions of the Authority**

(1) Section 58 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

- (a) its functions under this Act; or
- (b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 58 does not preclude the disclosure of information by the Authority to the auditor or accountant of a licensed undertaking, or the person appointed to make a report under section 49(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that section or would otherwise be in the interests of the clients or potential clients.

#### **60. Disclosure for facilitating the discharge of functions by other authorities**

(1) Section 58 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 58 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 58 and 59 and this section.

(4) Section 58 does not preclude the disclosure of information—

- (a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 49(1)(b);
- (b) with a view to the undertaking of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
- (c) in connection with any other proceedings arising out of this Act.

(5) Section 58 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 52, 54 or 55 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purposes mentioned in this section.

#### **61. Information supplied to the Authority by relevant overseas authority**

(1) Section 58 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 58 or—

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or

- (b) with a view to the undertaking of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.
- (3) In this section—
  - “relevant functions” in relation to the Authority means its functions under this Act;
  - “relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

### **PART 13 - MISCELLANEOUS AND SUPPLEMENTAL**

#### **62. False documents or information**

- (1) Any person who, for any purposes of this Act—
  - (a) issues a document, or supplies information, which is false or misleading in a material respect; or
  - (b) signs a document which is false or misleading in a material respect; or
  - (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove—
  - (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
  - (b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

#### **63. Offences by licensed undertaking**

- (1) Where an offence under this Act committed by a licensed undertaking is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the licensed undertaking, or any person who was purporting to act in any such capacity, he, as well as the licensed undertaking, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.
- (2) Where the affairs of a licensed undertaking are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the licensed undertaking.

#### **64. Restriction on use of words "Fund Administration Provider Business"**

- (1) No person other than a licensed undertaking, may use a name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is licensed to carry on fund administration provider business under this Act.
- (2) A person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

**65. Notices**

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.
- (2) Any such document may be given to or served on the person in question—
  - (a) by delivering it to him;
  - (b) by leaving it at his principal place of business; or
  - (c) by sending it to him at that address by facsimile or other similar means which produces a document containing the text of the communication.
- (3) Any such document may in the case of a company be given to or served—
  - (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
  - (b) by sending it by registered post addressed to the company's principal place of business.

**66. Service of notice on Authority**

- (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.
- (2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produces a document containing the text of the communication.

**67. Civil debt and civil penalties**

- (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 31 in relation to the same matters.
- (2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

**68. Regulations**

- (1) The Minister, acting on the advice of the Authority, may make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations may in particular provide with respect to any of the following matters—
  - (a) any matter relating to the conduct of a fund administration provider business;
  - (b) the requirement for any additional service or services to be deemed a fund administration provider business activity;
  - (c) the preparation, adoption and implementation of processes or procedures relating to a fund administration provider business;
  - (d) the safeguarding of other assets.
- (3) Regulations made under this Act may make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.
- (4) Regulations, orders and notices made under this Act are subject to the negative resolution procedure.

**69. Consequential amendments**

Schedule 2 has effect with respect to the consequential amendments to the following Acts—

- (a) Bermuda Monetary Authority Act 1969;
- (b) Investment Funds Act 2006;
- (c) Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

#### **70. Transitional**

(1) This section applies to an undertaking which on the commencement of this Act is a licensed undertaking carrying on fund administration provider business by virtue of a licence issued by the Authority under an enactment repealed under Schedule 2.

(2) On the commencement of this Act the Authority shall issue to an undertaking to which this section applies, a fund administration provider business licence, and

thereupon the provisions of this Act shall apply to the licensed undertaking as if such licence were issued pursuant to an application made under section 10.

(3) An undertaking shall not be liable to pay the fee prescribed by virtue of section 12(1)(a) on the issue of its licence under subsection (2), but shall be liable to pay the fee prescribed thereby on or before 31 March and annually thereafter, and the provisions of section 12(2) shall apply in relation to failure to pay such fee.

#### **71. Commencement**

This Act shall come into operation on 31 December 2019.



**SCHEDULE 1 - MINIMUM CRITERIA FOR LICENSING**

(Section 10(2))

**1. Controllers and officers to be fit and proper persons**

- (1) Every person who is, or is to be, a controller or officer of the licensed undertaking is a fit and proper person to hold the particular position which he holds or is to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the licensed undertaking are, or are likely to be, in any way threatened by his holding that position.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—
- (a) committed an offence involving fraud or other dishonesty or violence;
  - (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
  - (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
  - (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

**2. Business to be conducted in prudent manner**

- (1) The licensed undertaking shall conduct, or, in the case of an undertaking which is not yet carrying on fund administration provider business, will conduct its business in a prudent manner.
- (2) In determining whether a licensed undertaking is conducting its business in a prudent manner, the Authority shall take into account any failure by the undertaking to comply with the provisions of—
- (a) this Act;
  - (b) any applicable law, including the provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
  - (c) any codes issued by the Authority pursuant to this Act;
  - (d) international sanctions in effect in Bermuda.
- (3) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of \$50,000 or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed undertaking.



(4) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records and has developed policies and procedures pertaining to its obligations under this Act or any other Act.

(5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensed undertaking to be prudently managed and the licensed undertaking to comply with the duties imposed on it by or under this Act or other provisions of law

(6) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of its operations.

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

### **3. Integrity and skill**

The business of the licensed undertaking is or, in the case of an undertaking which is not yet carrying on fund administration provider business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

### **4. Corporate governance**

(1) The licensed undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

(2) Without prejudice to subparagraph (1) the business of the licensed undertaking shall be effectively directed—

- (a) by at least two persons; and
- (b) be under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

### **5. Consolidated Supervision**

The position of the licensed undertaking within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

## **SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS**

(Section 69)

### **1. Amends Fourth Schedule of Bermuda Monetary Authority Act 1969**

The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule—

- (a) in Parts B and C under the heading “Investment Funds Act 2006” by repealing paragraphs (12) and (13);
- (b) by inserting under Parts B and C the following new item in its alphabetical order—
  - “ Fund Administration Provider Business Act 2019
    - (1) Application fee under section 12(1)(a) \$8,940
    - (2) Annual licensing fee under section 12(1)(b) \$9,840 ”.

### **2. Amends Investment Funds Act 2006**

The Investment Funds Act 2006 is amended—

- (a) in section 2—
  - (i) in subsection (1), by deleting the definition of “fund administrator”;
  - (ii) by repealing subsection (2);
- (b) in section 2B(1)(c)(v), by deleting the words “or fund administrator”;
- (c) by repealing PART III in its entirety;
- (d) in section 55—
  - (i) by repealing subsections (3) and (4);
  - (ii) in subsection (6) by deleting the words “or a fund administrator’s licence”;
- (e) in section 58(2)(c), by deleting the words “or by a licensed fund administrator and by a person who is to be a controller or officer of a licensed fund administrator”;
- (f) in section 59(1), by deleting the words “, licensed fund administrator”;
- (g) in section 60—
  - (i) by deleting the words “or” at the end of paragraph (b) and inserting the “or” at the end of paragraph (a);
  - (ii) by repealing paragraph (c)
- (h) in section 61—
  - (i) in subsections (1), (2) and (5), by deleting the words “or as the case maybe, a licensed fund administrator”;
  - (ii) subsection (3), by deleting the words “or a licensed fund administrator”;
  - (iii) in subsection (3)(a), by deleting the words “, licensed fund administrator”;
  - (iv) in subsection (4), by deleting the words “or, as the case maybe, the clients or potential clients of a licensed fund administrator”;
- (i) in section 64—
  - (i) in subsection (1), by deleting the words “or as the case may be, clients of a licensed fund administrator”;
  - (ii) in subsection (1)(b), by deleting the words “or, as the case may be, of the licensed fund administrator”;
  - (iii) in subsections (4) and (7)(c), by deleting the words “or licensed fund administrator”;
  - (iv) in subsection (5) by deleting the words “or a licensed fund administrator”;
- (j) by repealing the Schedule.

### **3. Amends section 2 of Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008**

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is amended in section 2(1), in the definition of “regulatory Acts”, by inserting the following new paragraph after paragraph (i)—

- “(j) Fund Administration Provider Business Act 2019;”.

[Assent Date: 05 August 2019]

[Operative Date: 31 December 2019]

## BERMUDA

# BERMUDA MONETARY AUTHORITY ACT 1969 (FOURTH SCHEDULE FEES – INVESTMENT FUNDS ACT 2006 AND FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019)

1969: NO 57

## FOURTH SCHEDULE – INVESTMENT FUNDS ACT 2006 AND FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019 (FEES)<sup>466 467 468 469 470 471</sup>

*[PART A – 2019 fees available upon request]*

PART B - 2020		
FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019 <sup>472 473</sup>		
1	Application fee under section 12(1)(a)	\$9,570
2	Annual licensing fee under section 12(1)(b)	\$10,530
Annual fees in respect of the above are due on or before 31 March 2020. <sup>476</sup>		

PART B - 2020		
INVESTMENT FUNDS ACT 2006 <sup>477</sup>		
1	Application fee: Authorisation (all funds)	\$960
2	Reclassification fee (all funds)	\$960
3	Annual fee: Standard fund	\$1,720
4	Annual fee: Administered fund	\$1,090
5	Annual fee: Institutional fund	\$1,090
6	Initial filing fee pursuant to section 17(1)(ba) in relation to a Professional Class A fund	\$1,740

PART B - 2020		
INVESTMENT FUNDS ACT 2006 <sup>477</sup>		
7	Initial filing fee pursuant to section 17(1)(b)(a) in relation to a Professional Class B fund	\$1,160
7A	Initial filing fee pursuant to section 17(1)(ba) in relation to a Professional Closed Fund	\$1,740
7B	Initial filing fee pursuant to section 17(1)(ba) in relation to a Private Fund	\$1,250
7C	Initial filing pursuant to section 17(1)(ba) in relation to an Overseas Fund	\$900
8	Annual fee pursuant to section 17(1)(c) in relation to Professional Class A fund	\$1,740
9	Annual fee pursuant to section 17(1)(c) in relation to Professional Class B fund	\$1,160
9A	Annual filing fee pursuant to section 17(1)(c) in relation to a Professional Closed Fund	\$1,740
9B	Annual filing fee pursuant to section 17(1)(ba) in relation to a Private Fund	\$1,250
9C	Annual filing fee pursuant to section 17(1)( c) in relation to an Overseas Fund	\$1,200
10	Transaction fee: all section 25 changes and notifications and section 6 notifications] <sup>478 479 480</sup>	\$290
11	Transaction fee: application for modification or exemption under sections 10D, 14(4), 14(5), and 40(1) <sup>481 482 483</sup>	\$300
12	Transaction fee: application for fund property to not be entrusted to custodian section 15 <sup>484</sup>	\$300
13	Late filing fee in respect of a statement submitted pursuant to sections 6(3D), 6B(2), 8C (2) and 26(1)(b) more than six months after a fund's financial year-end <sup>485</sup>	\$50
Annual fees in respect of paragraphs 3, 4, 5, 7, 8, 9, 9A, 9B and 9C are due on or before 31 March 2020. <sup>486</sup>		

PART C - 2021		
FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019 <sup>487</sup>		
1	Application fee: Fund administrator licence section 45 (1) (a)	\$10,340 <sup>489</sup>
2	Annual fee: Fund administrator section 45 (1)(a)	\$11,370 <sup>490</sup>
<i>Annual fees in respect of the above are due on or before 31 March 2021.</i> <sup>491</sup>		

PART C - 2021		
INVESTMENT FUNDS ACT 2006 <sup>492 493</sup>		
1	Application fee: Authorisation (all funds)	\$1,040
2	Reclassification fee (all funds)	\$1,040
3	Annual fee: Standard fund	\$1,860
4	Annual fee: Administered fund	\$1,170
5	Annual fee: Institutional fund	\$1,170
6	Initial filing fee pursuant to section 17(1)(ba) in relation to a Professional Class A fund	\$1,870
7	Initial filing fee pursuant to section 17(1)(b)(a) in relation to a Professional Class B fund	\$1,250
7A	Initial filing fee pursuant to section 17(1)(ba) in relation to a Professional Closed Fund	\$1,870
7B	Initial filing fee pursuant to section 17(1)(ba) in relation to a Private Fund	\$1,325
7C	Initial filing fee pursuant to section 17(1)(ba) in relation to an Overseas Fund	\$950
8	Annual fee pursuant to section 17(1)(c) in relation to Professional Class A fund	\$1,870
9	Annual fee pursuant to section 17(1)(c) in relation to Professional Class B fund	\$1,250

PART C - 2021		
INVESTMENT FUNDS ACT 2006 <sup>492 493</sup>		
9A	Annual filing fee pursuant to section 17(1)(c) in relation to a Professional Closed Fund	\$1,870
9B	Annual filing fee pursuant to section 17(1)(ba) in relation to a Private Fund	\$1,325
9C	Annual filing fee pursuant to section 17(1)( c) in relation to an Overseas Fund	\$1,270
10	Transaction fee: all section 25 changes and notifications and section 6 notifications <sup>494 495 496</sup>	\$310
11	Transaction fee: application for modification or exemption under sections 10D, 14(4), 14(5), and 40(1) <sup>497 498 499</sup>	\$300
12	Transaction fee: application for fund property to not be entrusted to custodian section 15 <sup>500</sup>	\$300
13	Late filing fee in respect of a statement submitted pursuant to sections 6(3D), 6B(2), 8C (2) and 26(1)(b) more than six months after a fund's financial year-end <sup>501</sup>	\$50
	<i>Annual fees in respect of paragraphs 3, 4, 5, 7, 8, 9, 9A, 9B and 9C are due on or before 31 March 2021. <sup>502</sup></i>	

## BERMUDA

# COMPANIES ACT 1981 (PART II FIFTH SCHEDULE – EXEMPTED COMPANIES FEES)

1981: NO. 59

## PART II - FIFTH SCHEDULE - EXEMPTED COMPANY FEES)

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1	A	EXEMPTED COMPANIES (Section 131)	
	Conditions		Fee
(a)	Where the assessable capital of the exempted company—		
	(i) is \$0-\$12,000		\$2,095
	(ii) is \$12,001-\$120,000		\$4,275
	(iii) is \$120,001-\$1,200,000		\$6,590
	(iv) is \$1,200,001-\$12,000,000		\$8,780
	(v) is \$12,000,001-\$100,000,000		\$10,980
	(vi) is \$100,000,001-\$500,000,000		\$19,605
	(vii) is \$500,000,001 or more		\$32,676
(b)	Where the exempted company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 131(1) was made		\$3,050
(bb)	(i) Where the exempted company is a small foreign sales corporation which does not lease aircraft		\$615
	(ii) Where the exempted company is a regular foreign sales corporation which does not lease aircraft		\$1,240
	(iii) Where the exempted company is a foreign sales corporation, whether small or regular, which leases aircraft		\$2,079
(c)	(i) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is \$15,000 or less		\$2,095



	(ii) Where the exempted company is one limited by guarantee (but is not a mutual company)	\$2,095
	(iii) Where the exempted company is the parent company of a wholly owned exempted company that carries on insurance business as defined in the Insurance Act 1978	\$2,095
	(iv) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is \$150,000 or less	\$4,335
	(v) Where the exempted company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	\$20,300
<b>B PERMIT COMPANIES (Section 135)</b>		
<b>Conditions</b>		<b>Fee</b>
(a)	Where the permit company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	\$20,300
(b)	Where the principal business of the permit company is finance business or insurance business or, in the case of a permit company which is open-ended, mutual fund business	\$4,335
(c)	Where the permit company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 135 (as read with section 131) was made	\$3,050
(d)	In a case not falling with paragraphs (a) to (c)	
	(i) where the permit company has a physical presence in Bermuda; or	\$2,095
	(ii) where the permit company does not have a physical presence in Bermuda, but where its principal business falls within one of the specified categories	\$2,095
(e)	In any other case	\$25,000
	For the above purposes, the following expressions have the following meanings— “finance business” means the business of raising money from the public by the issue of bonds or other securities; “foreign sales corporation” means a company which—	

	<p>(a) has been registered under this Act as an exempted company; and</p> <p>(b) has been designated as a foreign sales corporation under the Internal Revenue Code, of the United States of America, and has submitted to the Registrar a certified copy of the document which—</p> <p>(i) evidences such designation; and</p> <p>(ii) specifies whether the company is a small or regular foreign sales corporation;</p> <p>“insurance business” means the business of effecting or carrying out contracts of insurance or reinsurance as principal, but excluding insurance management or insurance brokerage business;</p> <p>“mutual fund business” means the business of raising money from the public for investment in real property, shares, stocks or personal property;</p> <p>“open-ended company” means a company which has power under the terms of its incorporation to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder;</p> <p>“physical presence” means that the permit company operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner;</p> <p>“regular foreign sales corporation” means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated.</p> <p>“small foreign sales corporation” means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated;</p> <p>“specified category ”means—</p> <p>(a) the ownership, commercial management or operation of ships or aircraft;</p> <p>(b) pharmaceutical operations;</p> <p>(c) research and development in bio-science or bio-medicine; or</p> <p>(d) a charitable purpose, within the meaning of the Charities Act 2014, which would enable the permit company to be registered as a charity under that Act if it were established as such in Bermuda;</p> <p>“unit trust fund” means a fund under which the property is held on trust for the participants.</p>	
2	Where a company liable to pay the higher fee in any year does not carry on the business attracting the higher fee, it shall only pay the lower. Where a	

	company liable to pay the higher fee at any time during a year carries on the business attracting the higher fee, it shall pay that fee for that year.	
<b>C</b>	<b>SEGREGATED ACCOUNTS COMPANIES</b>	
	In addition to the annual fee or tax otherwise payable under this Schedule a segregated accounts company registered under section 6 of the Segregated Accounts Companies Act 2000 shall pay an annual fee of \$295 in respect of each segregated account operated by the company, subject to a maximum annual fee of \$1,180 in the aggregate.	
<b>D</b>	<b>INCORPORATED SEGREGATED ACCOUNTS COMPANIES<sup>518</sup></b>	
	In addition to the annual fee otherwise payable under this Schedule an incorporated segregated accounts company registered under the Incorporated Segregated Accounts Companies Act 2019 shall pay an annual fee of \$295 in respect of each incorporated segregated account operated by the company, subject to a maximum annual fee of \$1,180 in the aggregate.	

## Endnotes

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- 1 Investment Funds Amendment Act 2019
  - 2 Investment Funds Amendment Act 2021
  - 3 Investment Funds Amendment Act 2019
  - 4 Investment Funds Amendment Act 2019
  - 5 Limited Liability Company Act 2016
  - 6 Investment Funds Amendment Act 2010
  - 7 Investment Funds Amendment Act 2016
  - 8 Investment Funds Amendment Act 2019
  - 9 Fund Administration Provider Business Act 2019
  - 10 Investment Funds Amendment Act 2019
  - 11 Investment Funds Amendment Act 2019
  - 12 Limited Liability Company Act 2016
  - 13 Limited Liability Company Act 2016
  - 14 Ministers (Change of Responsibilities and Style) Order 2011
  - 15 Investment Funds Amendment Act 2019
  - 16 Investment Funds Amendment Act 2019
  - 17 Limited Liability Company Act 2016
  - 18 Investment Funds Amendment Act 2010
  - 19 Investment Funds Amendment Act 2019
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  - 21 Limited Liability Company Act 2016
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  - 35 Investment Funds Amendment Act 2010
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  - 38 Investment Funds Amendment Act 2016
  - 39 Fund Administrator Business Provider Act 2019
  - 40 Investment Funds Amendment Act 2010
  - 41 Investment Funds Amendment Act 2016
  - 42 Fund Administration Provider Business Act 2019
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206 Limited Liability Company Act 2016  
207 Bermuda Monetary Authority Amendment (No. 3) Act 2018  
208 Investment Funds Amendment Act 2019  
209 Economic Substance Act 2018  
210 Investment Funds Amendment Act 2019  
211 Economic Substance Act 2018  
212 Section 17(1)(aa) inserted by the Bermuda Monetary Authority Amendment Act 2010  
213 Investment Funds Amendment Act 2013  
214 Investment Funds Amendment Act 2019  
215 Economic Substance Act 2018  
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218 Investment Funds Amendment Act 2013  
219 Bermuda Monetary Authority Amendment (No. 3) Act 2018  
220 Investment Funds Amendment Act 2021  
221 Investment Funds Amendment Act 2019  
222 Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010  
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375 Appeal Tribunals (Miscellaneous) Act 2017  
376 Bermuda Monetary Authority (Determination of Appeals) Act 2016  
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435 Investment Funds Amendment Act 2016  
436 Economic Substance Act 2018  
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451 Economic Substance Act 2018  
452 Limited Liability Company Act 2016  
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456 Limited Liability Company Act 2016  
457 Investment Funds Amendment Act 2016  
458 Criminal Jurisdiction and Procedure Act 2015  
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460 Investment Funds Amendment Act 2019  
461 Investment Funds Amendment Act 2016  
462 Investment Funds Amendment Order 2014  
463 Investment Funds Amendment Act 2016  
464 Fund Administration Provider Business Act 2019  
465 Investment Funds Amendment Act 2021  
466 Bermuda Monetary Authority Amendment Act 2019  
467 Bermuda Monetary Authority Amendment (No. 3) Act 2018  
468 Economic Substance Act 2018 (2018:63)  
469 Bermuda Monetary Authority Amendment Act 2014  
470 Amended by the Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010  
471 Investment Funds Amendment Act 2013  
472 Fund Administration Provider Business Act 2019  
473 Bermuda Monetary Authority Amendment Act 2020  
474 Bermuda Monetary Authority Amendment Act 2020  
475 Bermuda Monetary Authority Amendment Act 2020  
476 Bermuda Monetary Authority Amendment Act 2020  
477 Bermuda Monetary Authority Amendment Act 2019  
478 Fund Administration Provider Business Act 2019  
479 Bermuda Monetary Authority Amendment Act 2019  
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481 Fund Administration Provider Business Act 2019  
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487 Fund Administration Provider Business Act 2019  
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493 Bermuda Monetary Authority Amendment Act 2020  
494 Fund Administration Provider Business Act 2019

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497 Fund Administration Provider Business Act 2019  
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502 Bermuda Monetary Authority Amendment Act 2020  
503 Companies Amendment Act 2008  
504 Companies and Partnership (Fees) Act 2018  
505 Companies Amendment Act 1992  
506 Companies Amendment Act 2007  
507 Companies Act 1981 (Fifth Schedule) Amendment Order 2000  
508 Companies Amendment Act 1981 (Fifth Schedule) Amendment Order 1994  
509 Companies Amendment Act 1998  
510 Companies Amendment Act 2008  
511 Companies Amendment Act 1994  
512 Companies Amendment (No. 2) Act 1990  
513 Companies Amendment Act (Fifth Schedule) Amendment Order 1997  
514 Companies Amendment (No. 2) Act 2017  
515 Companies Amendment Act 2017  
516 Companies and Partnership (Fees) Act 2018  
517 Incorporated Segregated Accounts Companies Act 2019  
518 Incorporated Segregated Accounts Companies Act 2019