

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear blue sky. In the foreground, there is a paved plaza with a geometric pattern of light and dark tiles. A dark blue semi-transparent rectangular box is overlaid on the left side of the image, containing white text.

Bermuda Investment Business Act 2003 and Related Legislation

Last Updated: January 2023

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Preface

As a service to our clients, we have prepared this compendium of the Bermuda Investment Business Act 2003 together with related statutory instruments, rules and statutory appointments, incorporating all amendments to date.

The most recent legislative update includes an amendment to the Fourth Schedule of the Bermuda Monetary Authority Act 1969 made by the Bermuda Monetary Authority Amendment (No. 3) Act 2022, operative 20 December 2022.

The previous update included amendments to the Investment Business Act 2003, consequential amendments to the Third and Fourth Schedules to the Bermuda Monetary Authority Act 1969, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act, 2008 and the revocation of the Investment Business (Exemptions) Order 2004, made by the Investment Business Amendment Act 2022, operative 27 July 2022.

Other recent legislative updates include amendments to the Investment Business Regulations 2004 made by the Investment Business Amendment Regulations 2022 and amendments to the Investment Business (Client Money) Regulations 2004 made by the Investment Business (Client Money) Amendment Regulations 2022, operative 27 July 2022.

In addition, the new Investment Business (Prudential Standards) (Standard Licences, Test Licences, and Class A Registered Persons) (Capital, Net Assets and Liquidity) Rules 2022, the Investment Business (Prudential Standards) (Statutory Returns) Rules 2022, the Investment Business (Non-Registrable Persons) (Designation) Order 2022 and the Investment Business (Class B Registered Persons) Order 2022, all operative 27 July 2022, have been included.

Please note the following transitional provisions included in the Investment Business Amendment Act 2022:

[Section 41 of the Investment Business Amendment Act 2022 (2022:13), effective by 27 July 2022,

Transitional Provisions

- (1) All existing investment providers shall be deemed by the Authority to hold a standard licence, and shall be further deemed to satisfy all criteria in connection with the holding of such licence, immediately upon the date of the coming into operation of this Act.*
- (2) There shall be no application required to be submitted to the Authority or new or additional fees payable by any investment provider under subsection (1), in connection with the change to its licence class.*
- (3) Every exempted person or any person conducting investment business that is not licensed prior to the date of the coming into operation of this Act, shall be required to make an application to the Authority to become licensed, or registered, as the case may be, within 12 months of the date of the coming into operation of this Act.*
- (4) Notwithstanding subsection (3), Non-registrable persons shall not be required to apply to be registered.*
- (5) An application under subsection (3) shall—*
 - (a) be made to the Authority in accordance with applicable provisions relating to the licensing and registration of persons under sections 13, 13A and 13B of the Act; and*
 - (b) clarify at the time of submission of the application, whether a standard or test licence is required.]*

Previous legislative updates included the repeal and replacement of the Fourth Schedule Fees to the Bermuda Monetary Authority Act 1969 for the Investment Business Act 2003 made by section 5 of the Bermuda Monetary Authority Amendment (No. 2) Act 2021, operative 1 January 2022. To see a complete list of legislative amendments, please see the Table of Statutes and Statutory Instruments.

This publication does not, however, contain the various forms and filings prescribed by the Act, nor have we included the Investment Business Appeals Tribunal Regulations 2004. These are available on request from the Company.

Conyers Dill & Pearman

Bermuda

Revised: January 2023

DISCLAIMER

This compendium is intended for informational purposes only. While every effort has been made to ensure the accuracy of the legislation and related material, and it is believed that the only errors are those contained in the official legislation itself (which errors have been faithfully reproduced), no responsibility is assumed for the content. Reference should be made to the official versions of the legislation for an authoritative statement of the law and any subsequent amendments. Nothing in this compendium is to be considered as creating an attorney-client relationship or indeed any contractual relationship or as rendering legal or professional advice for any specific matter. Readers are responsible for obtaining such advice from their own legal counsel. No client or reader should act or refrain from acting on the basis of any content within this document without first obtaining matter-specific legal and/or professional advice. Conyers accepts no responsibility for any loss or damage, howsoever incurred, which may result from accessing or reliance on this content.

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Investment Business (Exemptions) Order 2004 (BR 6/2004) [REVOKED by 2022:13]

Investment Business Amendment Act 2022 (2022:13)
 Investment Business (Exemptions) Order 2004 Revocation Notice 2022 (BR 83/2022)

Investment Business Regulations 2004 (BR 7/2004)

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Investment Business (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006 (BR 60/2006)

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Bermuda Monetary Authority Act 1969 (1969:57) (Select Provisions - Fees)

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 Investment Business Amendment Act 2022 (2022:13)
 Bermuda Monetary Authority Amendment (No. 3) Act 2022 (2022:37)

BERMUDA

INVESTMENT BUSINESS ACT 2003**2003:20**

[Date of Assent: 5 December 2003]

[Operative Date: 30 January 2004, except Section 27; 30 April 2004 and Part IV:15 September 2004]

WHEREAS it is expedient to make new provision for the regulation of investment business; to make provision for the regulation of investment exchanges and clearing houses; 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 Business Act 2003 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.

2. Interpretation

In this Act -

"Act" includes regulations and orders made thereunder;

"associate" has the meaning given in section 7(9);

"Authority" means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

"business" includes a trade or profession;

"Class A registered person" means a person registered under section 13A; ¹

"Class B registered person" means a person registered under section 13B; ²

"code of conduct" means a code of conduct issued by the Authority pursuant to section 10;

"company" means a person that is registered or incorporated in Bermuda or elsewhere as— ³

- (a) a company;
- (b) an incorporated segregated accounts company;
- (c) an incorporated segregated account;
- (d) an LLC; or
- (e) a partnership, which is a body corporate;"

"controller" has the meaning given in section 7(3);

"court" means the Supreme Court;

"decision notice" means a notice prepared in accordance with section 57;⁴

"director" has the meaning given in section 7(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;

"exempted person" [DELETED] ⁵

"financial year" in relation to an investment provider, means the period not exceeding fifty-three weeks at the end of which the balance of the accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, means a calendar year;

"firm" means a partnership, or an unincorporated association of persons;

"group" in relation to a person ("A"), means A and any person who is -

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a subsidiary undertaking of a parent undertaking of A;
- (d) a parent undertaking of a subsidiary undertaking of A; or
- (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;

"incorporated segregated account" has the meaning given in section 2 of the Incorporated Segregated Accounts Companies Act 2019; ⁶

"incorporated segregated accounts company" has the meaning given in section 2 of the Incorporated Segregated Accounts Companies Act 2019; ⁷

"investment" has the meaning given in section 3(1)(a);

"investment activity" has the meaning given in section 3(2);

"investment business" has the meaning given in section 3(1)(b);

"investment provider" means a person licensed under section 17, or under sections 17 and 19E as provided under Chapter 1A of Part III⁸ and includes any registered person under this Act⁹;

"licence" means a licence granted under section 17; and "licensed" shall be construed accordingly;

"limited liability company" or "LLC" means a company formed under the Limited Liability Company Act 2016; ¹⁰

"Minister" means the Minister of Finance or such other Minister as may be appointed to administer this Act¹¹;

"minimum criteria" means the minimum criteria for licensing and registration¹² specified in the Second Schedule;

"Non-registrable person" means a person falling within the class of persons designated by the Minister by order made under section 13D; ¹³

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

"parent undertaking" has the meaning given in section 5;

"participating interest" has the meaning given in section 6;

"partnership" includes a partnership constituted under the law of any place outside Bermuda but does not include a partnership which is constituted under the law of any place outside Bermuda and is a body corporate;

"recognised regulator" means a regulatory authority recognised by the Authority to be empowered by law to supervise entities conducting investment business in a country or territory outside of Bermuda, which imposes standards equivalent to those established by, or under this or any other Act on persons conducting investment business in Bermuda; ¹⁴

"registered person" means a Class A registered person or a Class B registered person; ¹⁵

"senior executive" has the meaning given in section 7(7);

"share" except as provided in section 6(6), means a share in the capital of a company and includes stock;

"shareholder controller" has the meaning given in section 7(5);

"standard licence" has the meaning given in section 16(1B)(a); ¹⁶

"subsidiary undertaking" has the meaning given in section 5;

"test licence" has the meaning given in section 16(1B)(b); ¹⁷

"undertaking" means a company, a firm or an individual;

"voting power", in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

"warning notice" means a notice prepared in accordance with section 56. ¹⁸

3. Investment and investment business

(1) In this Act -

- (a) "investment" means an asset, right or interest specified in Part 1 of the First Schedule;
- (b) "investment business" means engaging in one or more investment activities by way of business.

(2) An activity is an investment activity if -

- (a) it is an activity of a kind specified in Part 2 of the First Schedule or one which falls within a class of activity so specified; and
- (b) it is not excluded by Part 3 of the First Schedule.

(3) The Minister may, after consultation with the Authority, by order amend the First Schedule by adding new provisions, or by amending or deleting any of the investments specified in Part 1, or the investment activities specified in Part 2, or the excluded activities specified in Part 3, of the First Schedule.

(4) An order made under this section is subject to negative resolution procedure.

4. Carrying on investment business in or from Bermuda

(1) For the purposes of this Act, a person carries on investment business in or from Bermuda if such person-

- (a) is incorporated or formed in Bermuda and carries on investment business; or ¹⁹

- (ab) is incorporated or formed outside Bermuda and carries on investment business in or from Bermuda.²⁰
- (b) engages in an investment activity the doing of which constitutes the carrying on by such person of investment business in or from Bermuda under an order made under subsection (2).

(2) The Minister may, after consultation with the Authority, make an order specifying the circumstances in which a person who would otherwise not be regarded as carrying on investment business in or from Bermuda is to be regarded for the purpose of this section as carrying on investment business in or from Bermuda.

(3) An order under subsection (2) may be made so as to apply -

- (a) generally to all investment activities;
- (b) in relation to a specified category of investment activity; or
- (c) in relation to a particular investment activity.

(4) An order made under subsection (2) may be made subject to conditions.

(5) For the purpose of this section a person engages in an investment activity if he enters or offers to enter into an agreement the making or performance of which by either party constitutes an investment activity.

(6) [REPEALED]²¹

(7) [REPEALED]²²

(8) [REPEALED]²³

(9) An order made under this section is subject to negative resolution procedure.

5. Meaning of "parent and subsidiary undertakings"

(1) The expressions "parent undertaking" and "subsidiary undertaking" in this Act shall be construed as follows.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if -

- (a) it holds a majority of the voting rights in the undertaking;
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;
- (c) it has the right to exercise a dominant influence over the undertaking by virtue of provisions contained in the undertaking's memorandum of association, articles of association or bye-laws, or by virtue of a control contract; or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking -

- (a) if any of its subsidiary undertakings is a member of that undertaking; or
- b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

- (4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and -
- (a) it actually exercises a dominant influence over it; or
 - (b) it and the subsidiary undertaking are managed on a unified basis.
- (5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.
- (6) In subsections (2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (7) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.
- (8) In subsection (2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
- (9) An undertaking shall be treated as having the right to appoint to a directorship if -
- (a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or
 - (b) the directorship is held by the undertaking itself.
- (10) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (11) For the purposes of subsection (2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.
- (12) A "control contract" means a contract in writing conferring such a right which -
- (a) is of a kind authorised by the memorandum of association, articles of association or by-laws of the undertaking in relation to which the right is exercisable; and
 - (b) is permitted by the law under which that undertaking is established.
- (13) Subsections (10) and (11) shall not be read as affecting the construction of the expression "actually exercises a dominant influence" in subsection (4)(a).
- (14) Rights which are exercisable only in certain circumstances shall be taken into account only -
- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
 - (b) when the circumstances are within the control of the person having the rights.
- (15) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (16) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (17) Rights held by a person as nominee for another shall be treated as held by the other.

(18) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

(19) Rights attached to shares held by way of security shall be treated as held by the person providing the security -

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

(20) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(21) Nothing in subsection (16), (17), (18) or (19) shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(22) For the purposes of subsection (19) rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

(23) The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

(24) References in any provision of subsections (16) to (23) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of this section but not rights which by virtue of any such provision are to be treated as not held by him.

6. Meaning of "participating interest"

(1) In this Act, "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of twenty per cent or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes -

- (a) an interest which is convertible into an interest in shares; and
- (b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of subsection (1) an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of subsections (1) to (4) as they apply in relation to the expression "participating interest" in section 5(4) -

- (a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings; and
- (b) the references in subsection (1) to the purpose and activities of an undertaking include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

- (6) In section 5 and in this section, "shares" in relation to an undertaking -
- (a) with a share capital, means allotted shares;
 - (b) with capital but no share capital, means rights to share in the capital of the undertaking;
 - (c) without capital, means interests -
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

7. 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 any person who occupies the position of director, by whatever name called; and
 - (b) where it is used in subsections (7) and (8), includes a member of a firm.
- (3) "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.
 - (g) a manager of an LLC.²⁴
- (4) A person satisfies the requirements of paragraph (e) of subsection (3) in relation to an undertaking if, either alone or with any associate or associates -
- (a) he holds ten per cent 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 ten per cent 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.
 - (d) he is a member, assignee or other person granted an interest in an LLC.²⁵

(5) A person who is a controller of an undertaking by virtue of paragraph (e) of subsection (3) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act -

"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

"majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

(6) In subsection (5), "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.

(7) "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.

(8) 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.

(9) 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.

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

PART II - THE AUTHORITY

FUNCTIONS AND DUTIES OF THE AUTHORITY

8. Functions of the Authority

(1) The Authority shall have the powers conferred on it by this Act and the duty generally to supervise persons carrying on investment business including investment exchanges and clearing houses.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of investment business which appear to it to be relevant to the exercise of its powers and the discharge of its duties.

(3) 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 a report on its activities under this Act in that year.

9. Authority's statement of principles

(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 of a licence specified in section 21;
- (b) in exercising its power to grant, revoke or restrict a licence;²⁶
- (c) in exercising its power to obtain information, reports and to require production of documents; and²⁷
- (d) in exercising its powers under²⁸
 - (i) section 52A to impose a civil penalty;
 - (ii) section 53 to censure publicly;
 - (iii) section 55A to make a prohibition order; and
 - (iv) section 60 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).

10. Codes of conduct

(1) The Authority may issue codes of conduct or practice²⁹ for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on investment business.

(2) Before issuing a code of conduct or practice³⁰, 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 investment provider shall in the conduct or practice³¹ of its business have regard to any code of conduct or practice³² issued by the Authority.

(4) A failure on the part of a investment provider 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 5 of the minimum criteria.

10A. Prudential and other returns³³

(1) The Authority may make Rules prescribing prudential and technical standards in relation to—

- (a) cybersecurity;
- (b) financial statements;
- (c) net assets;

- (d) liquidity;
- (e) statutory returns;
- (f) additional capital;
- (g) client money,

which shall be complied with by investment providers as applicable.

- (2) The Authority may in such Rules prescribe standards that impose different requirements to be complied with by investment providers in different situations or in respect of different activities.
- (3) Audited financial statements and accounts shall be in a prescribed form and different forms of return may be prescribed for investment providers holding different classes of licence or registration.
- (4) Not later than four months after the close of its financial year every investment provider shall file with the Authority any information or documents required in relation to any applicable Rule or statutory return required to be prepared by it under this section.
- (5) Every investment provider shall keep a copy of the most recent return filed with the Authority at its principal place of business or at the office of its appointed senior representative as applicable, for a period of not less than five years beginning with its filing date under subsection (4).
- (6) Every investment provider that fails to file audited financial statements, accounts, any information or documents required in relation to a Rule or statutory return within the time specified in subsection (4) is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.
- (7) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.
- (8) The Schedules to the Rules made by the Authority under this section shall be published separately on the website of the Authority: www.bma.bm, and shall be available for inspection at the offices of the Authority.

10B. Authority may exempt or modify prudential standards or requirements or take necessary actions³⁴

- (1) The Authority may, where it has made a determination or on the application of an investment provider, exempt it from the requirement to comply with any prudential or technical standard requirements or other requirement applicable to it under this Act or modify any such prudential standard or requirement.
- (2) In granting an exemption or modification under this section the Authority may impose such conditions on the exemption or modification as it considers appropriate.
- (3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the investment provider.
- (4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the investment provider of its proposal to revoke its approval and the reason for its proposal.
- (5) An investment provider served with a notice under subsection (4) may within a period of 28 days from the date of the notice make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.
- (6) Without prejudice to its powers under subsection (1), the Authority, where it has made a determination, may take any action necessary or desirable to protect the public, clients or potential clients of the investment provider where the Authority concludes that due to the nature, scale and complexity

and risk profile of the investment provider, such action is necessary and in the interest of the public or is required to be taken for the protection of clients or potential clients.

(7) Before taking any such action under subsection (6), the Authority shall serve notice on the investment provider giving its reasons therefore.

(8) An investment provider served with a notice under subsection (7) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action.

(9) The Authority shall notify an investment provider of any actions it has taken.

11. Minister to issue directions to Authority

The Minister may from time to time give to the Authority general policy directions, not inconsistent with the provisions of this Act, as to the performance of its functions under this Act and the Authority shall give effect to such directions.

PART III - REGULATION OF INVESTMENT PROVIDERS

CHAPTER 1: REQUIREMENTS FOR A LICENCE, REGISTRATION OR DESIGNATION AS NON-REGISTRABLE³⁵

[Section 41 of the Investment Business Amendment Act 2022 (2022:13), effective 27 July 2022, Transitional Provisions

(1) *All existing investment providers shall be deemed by the Authority to hold a standard licence, and shall be further deemed to satisfy all criteria in connection with the holding of such licence, immediately upon the date of the coming into operation of this Act.*

(2) *There shall be no application required to be submitted to the Authority or new or additional fees payable by any investment provider under subsection (1), in connection with the change to its licence class.*

(3) *Every exempted person or any person conducting investment business that is not licensed prior to the date of the coming into operation of this Act, shall be required to make an application to the Authority to become licensed, or registered, as the case may be, within 12 months of the date of the coming into operation of this Act.*

(4) *Notwithstanding subsection (3), Non-registrable persons shall not be required to apply to be registered.*

(5) *An application under subsection (3) shall—*

(a) be made to the Authority in accordance with applicable provisions relating to the licensing and registration of persons under sections 13, 13A and 13B of the Act; and

(b) clarify at the time of submission of the application, whether a standard or test licence is required.]

LICENSING

12. Restriction on carrying on investment business

(1) A person shall not carry on, or purport to carry on, investment business in or from Bermuda unless that person is for the time being—³⁶

(a) licensed;

- (b) registered; or
 - (c) designated as a Non-registrable person by the Minister by order made under section 13D.
- (2) A person who contravenes this section is guilty of an offence and liable -
- (a) on summary conviction, to a fine of \$100,000 or to imprisonment for a term of two years or to both;
 - (b) on conviction on indictment, to a fine of \$250,000 or to imprisonment for a term of five years or to both.
- (3) In proceedings brought against a person for an offence under subsection (1), it shall be a defence for such person to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

EXEMPTIONS

13. Minister may by order specify persons required to be Class B Registered persons or designate persons as Non-registrable persons³⁷

- (1) The Minister may, on the advice of the Authority, make an order specifying a person or class of persons who—
- (a) shall register as Class B Registered person; or
 - (b) may be designated for the purposes of the Act as a Non-registrable person.
- (2) An order made under subsection (1) may provide for a person specified thereunder to be subject to such conditions on the scope of the investment activity or the manner of operating the investment business as the Minister, after consultation with the Authority, may determine to be appropriate having regard to the nature, scale and complexity of the proposed business.
- (3) The Minister may, after consultation with the Authority, amend the order to—
- (a) add a person who is to be; or
 - (b) modify details of, or delete, a person who was,
- specified as a Class B Registered person or a Non-registrable person.
- (4) An order made under this section may include savings and transitional provisions.
- (5) An order made under this section is subject to the negative resolution procedure.
- (6) Where in pursuance of this section a Class B Registered person or a Non-registrable person is subject to a condition upon registration or designation, as the case may be, and the condition is contravened, such registration or designation shall not have effect, and accordingly proceedings may be brought for an offence under section 12.

13A. Class A Registered persons³⁸

- (1) Any Bermuda formed or incorporated person carrying on investment business—
- (a) that is licensed, authorised or registered by a recognised regulator; and
 - (b) which does not maintain a place of business in Bermuda,
- shall be required to make an application for registration to the Authority in accordance with subsection (2) as a Class A Registered person.

- (2) Subject to this section, an application for registration as a Class A Registered person may be in such form as may be prescribed and made to the Authority in such manner as the Authority may direct.
- (3) An application for registration under subsection (2) shall be accompanied by—
- (a) a business plan setting out the nature and scale of the investment business which is to be carried out by the applicant;
 - (b) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;
 - (c) such other information, documents and reports as the Authority may require for the purpose of considering the application.
- (4) For the purposes of this section, a person maintains a place of business in Bermuda—
- (a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies in Bermuda, for that purpose;
 - (b) in any other case, if it carries on investment business from premises it occupies in Bermuda, for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.
- (5) The Minister may, after consultation with the Authority, make an order amending the meaning of maintaining a place of business.
- (6) An order made under subsection (5) may include saving and transitional provisions.
- (7) An order made under this section is subject to the negative resolution procedure.

13B. Class B Registered persons³⁹

- (1) Any person falling within the class of persons specified by the Minister by order made under section 13(1), shall be required to make an application for registration to the Authority in accordance with subsection (2) as a Class B Registered person.
- (2) Subject to this section, an application for registration as a Class B Registered person may be in such form as may be prescribed and made to the Authority in such manner as the Authority may direct.
- (3) An application for registration under subsection (2) shall be accompanied by—
- (a) a business plan setting out the nature and scale of the investment business which is to be carried out by the applicant;
 - (b) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;
 - (c) such other information, documents and reports as the Authority may require for the purpose of considering the application.

13C. Principal place of business - Class B Registered persons⁴⁰

- (1) Every Class B Registered person shall maintain a place of business in Bermuda, which shall be its principal place of business.
- (2) For the purposes of this section, “maintain a place of business in Bermuda” shall mean—
- (a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies in Bermuda for that purpose;

- (b) in any other case, if it carries on investment business from premises it occupies in Bermuda, for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.
- (3) The Minister may, after consultation with the Authority, make an order amending the meaning of “maintain a place of business”.
- (4) An order made under subsection (3) may include saving and transitional provisions.
- (5) An order made under this section is subject to the negative resolution procedure.

13D. Non-registrable persons⁴¹

- (1) The Minister may by order designate any person as falling within the class of persons, for whom there is no requirement to be licensed or registered under this Act and such person shall be regarded by the Authority for the purposes of this Act as a Non-registrable person.
- (2) An order made under subsection (1) is subject to the negative resolution procedure.

14. Class B registered and Non-registrable persons may apply to be licensed⁴²

- (1) A person falling within a class of persons specified by an order made by the Minister under section 13, may make an application under section 16 for a licence.⁴³
- (2) Upon the issue of a licence to a Class B registered or Non-registrable person⁴⁴ person -
 - (a) such person shall cease to be a Class B registered or Non-registrable person⁴⁵ person; and
 - (b) the provisions of this Act shall apply to him as a licensed person.

15. Agreements of persons that are not licensed, registered or designated as Non-registrable⁴⁶

- (1) An agreement to which this section applies which is entered into by a person in the course of carrying on investment business in contravention of section 12 shall be enforceable by a party to the agreement against any other party to the agreement.
- (2) This section applies to any agreement the making or performance of which by the person seeking to enforce it constitutes an investment activity.

16. Application for licence

- (1) Subject to this section, an application for a standard or test⁴⁷ licence may be made to the Authority in such manner as the Authority may direct.
- (1A) An application shall state the class of investment business licence required.⁴⁸
- (1B) The classes of investment business licence referred to in subsection (1A) which may be applied for under this Act are a—
 - (a) standard licence, under which a person shall be licensed to engage in any or all investment activities; or
 - (b) test licence, under which a person shall be licensed to engage in any or all investment activities for a defined period determined by the Authority subject to such restrictions as the Authority may determine.
- (1C) The Authority, where it has made a determination or on the application of a person, may extend the defined period of a test licence for such additional period of time as it deems appropriate.
- (1D) An application in respect of any extension to the defined period of a test licence in accordance with subsection (1C) shall be in such form as the Authority may direct, accompanied by such information

as the Authority may require and the application fee of such amount prescribed by the Authority under the Bermuda Monetary Authority Act 1969.

(2) An applicant shall publish in the Gazette a notice of his intention to apply for a standard or test⁴⁹ licence.

(3) An application for a standard or test⁵⁰ licence—

(a) shall be accompanied with—

- (i) a copy of the notice published in the Gazette pursuant to subsection (2);
- (ii) a business plan setting out the nature and scale of the investment business which is to be carried on by the applicant;
- (iii) particulars of the applicant's arrangements for the management of that business;
- (iv) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;
- (v) such other information, documents and reports as the Authority may require for the purpose of considering the application; and

(b) shall be made in such form as may be prescribed.

(4) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application for a standard or test⁵¹, but in any such case no application fee shall be refunded to the applicant.

17. Grant and refusal of application for a licence

(1) Subject to this section, the Authority may on an application duly made in accordance with section 16, 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 are fulfilled with respect to the applicant.

(3) A licence issued under this section may be subject to such limitations on the scope of the investment activity or the manner of operating the investment business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.

(4) The Authority may, on application made by an investment provider, vary or remove any limitation imposed on the scope of its licence.

(5) If a firm is licensed -

- (a) it is licensed to carry on the investment business concerned in the name of the firm; and
- (b) its licensing is not affected by any change in its membership.

(6) [REPEALED]⁵²

(7) [REPEALED]⁵³

(8) The Minister acting on the advice of the Authority may by order amend the Second Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(9) An order made under subsection (8) shall be subject to negative resolution procedure.

17A. Principal place of business- Licensed persons⁵⁴

- (1) Every person licensed under section 17 shall maintain a place of business in Bermuda, which shall be its principal place of business.
- (2) For the purposes of this section, “maintain a place of business in Bermuda” means —
 - (a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies for that purpose;
 - (b) in any other case, if it carries on investment business from premises it occupies for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.
- (3) The Minister may, after consultation with the Authority, make an order amending the meaning of “maintain a place of business”.
- (4) An order made under subsection (3) may include saving and transitional provisions.
- (5) An order made under this section is subject to the negative resolution procedure.

17B. Grant and refusal of an application for registration⁵⁵

- (1) Subject to this section, the Authority may on an application duly made in accordance with section 13A or 13B and after being provided with all such information, documents and reports as it may reasonably require, grant or refuse the application for registration.
- (2) A registration issued under this section may be subject to such limitations on the scope of the investment activity or the manner of operating the investment business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.
- (3) The Authority may, on application made by a registered person vary or remove any limitation imposed on the scope of its registration.
- (4) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

17C. Senior representative⁵⁶

- (1) Every Class A registered person shall appoint a senior representative that satisfies the requirements of subsection (2).
- (2) The senior representative shall be a person approved by the Authority to act in such capacity on behalf of the Class A registered person.
- (3) The approved senior representative shall maintain an office in Bermuda.
- (4) At the time of registration, Class A registered persons shall provide written notice to the Authority of the—
 - (a) location of the senior representative’s office; and
 - (b) particulars of the senior representative.
- (5) If any information required by notification in accordance with subsection (4) is altered, Class A registered persons shall give particulars of the alteration in writing within 14 days of the date the alteration was made.
- (6) Without reason acceptable to the Authority—
 - (a) a Class A registered person shall not terminate the appointment of its senior representative; and

(b) a senior representative shall not cease to act as such, until he gives 30 days' notice in writing to the Authority of the intention to do so.

(7) If a senior representative wilfully fails to give notice required in accordance with subsection (6) to the Authority he commits an offence.

17D. Senior representative to report certain events⁵⁷

- (1) A senior representative shall forthwith notify the Authority, in such manner as it may direct—
 - (a) on his reaching a view that there is a likelihood of the registered person for which he acts becoming insolvent; or
 - (b) on it coming to his knowledge, or his having reason to believe, that an event, referred to in subsection (3), to which this section applies has occurred.
- (2) Within 14 days of such notification, the senior representative shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to him.
- (3) As respects any senior representative, this section applies to the following events, being events in which the investment provider for which he acts as senior representative is involved, that is to say—
 - (a) failure by a registered person to comply substantially with a condition imposed upon the investment provider by the Authority;
 - (b) failure by a registered person to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the investment provider by the Authority;
 - (c) involvement of a registered person in any criminal proceedings whether in Bermuda or outside Bermuda; (d) the registered person ceasing to be registered in or from within Bermuda.

18. Display of licences and registrations⁵⁸

- (1) A licence or registration⁵⁹ shall be in such form as the Authority may determine.
- (2) An investment provider shall at all times keep the licence or registration on display in Bermuda at its principal place of business, the offices of its appointed senior representative or at its registered office.⁶⁰
- (3) The Authority shall publish on its website—⁶¹
 - (a) a list of every investment provider; and
 - (b) such particulars of each licence and registration of every investment provider as the Authority shall determine.
- (4) [REPEALED]⁶²

19. Fees⁶³

- (1) An investment provider shall pay such fees as may be prescribed under the Bermuda Monetary Authority Act 1969—
 - (a) on the grant of a licence or registration⁶⁴;
 - (b) on or before 31 March in every year after the year in which the licence or registration⁶⁵ was granted, and different fees may be prescribed having regard to the scope and nature of the business permitted to be conducted under the licence or registration⁶⁶.

- (c) on an application for approval to exempt or modify prudential or technical standard requirements applicable to an investment provider in accordance with the provisions of section 10B; ⁶⁷
 - (d) on an application made by an investment provider to surrender a licence or registration in accordance with section 26(1), ⁶⁸
- (2) If an investment provider 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.
- (3) [REPEALED]⁶⁹

CHAPTER 1A - ALTERNATIVE INVESTMENT FUND MANAGERS⁷⁰

19A. Interpretation⁷¹

In this chapter—

- “AIF ” means an alternative investment fund within the meaning given in section 19B;
- “AIFM” means an alternative investment fund manager within the meaning given in section 19C, which is licensed under sections 17 and 19E;
- “AIFM rules” means AIFM rules made by the Authority under section 19H;
- “external AIFM” has the meaning given in section 19C(3)(a);
- “internal AIFM” has the meaning given in section 19C(3)(b);
- “managing an AIF” is to be interpreted in accordance with section 19C(2), and cognate expressions are to be interpreted accordingly.

19B. Meaning of “AIF”⁷²

- (1) “AIF” means a collective investment undertaking that raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.
- (2) An AIF may be open-ended or closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.

19C. Meanings of “AIFM”, “managing an AIF”, “external AIFM” and “internal AIFM”⁷³

- (1) “AIFM” means a person, the ordinary business of which is managing one or more AIFs.
- (2) “Managing an AIF” means performing at least risk management or portfolio management for the AIF.
- (3) The AIFM of an AIF may be either—
 - (a) another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF (“external AIFM”); or
 - (b) where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself (“internal AIFM”).

19D. Application of this Chapter⁷⁴

This Chapter applies to a person—

- (a) who carries on the investment activity of managing investments;
- (b) whose ordinary business is managing AIFs; and

- (c) who qualifies for registration under sections 13A or 13B⁷⁵.

LICENSING FOR AIFMS⁷⁶

19E. Application by AIFMs for licence⁷⁷

- (1) A person to whom section 19D applies may apply to the Authority under section 16 for an investment business licence to which this Chapter applies.
- (2) Without prejudice to sections 16 and 17, the Authority must not grant a licence to an applicant for a licence under subsection (1) unless it is satisfied that—
- (a) the applicant is a manager of AIFs;
 - (b) the applicant would be the only manager of each AIF it manages;
 - (c) the applicant has provided the Authority with such information as may be prescribed in the AIFM rules;
 - (d) the applicant meets the prerequisites for taking up activities as an AIFM as may be prescribed in the AIFM rules.

19F. Licensed AIFMs to comply with requirement to manage⁷⁸

- (1) An external AIFM must ensure compliance by every AIF that it manages, or by another entity on the AIF's behalf, with the provisions of this Act or AIFM rules that are applicable to it.
- (2) If an external AIFM is unable to ensure compliance by an AIF it manages, or by another entity on the AIF's behalf, with a provision of this Act and AIFM rules to which the AIF is responsible, the AIFM must immediately inform the Authority about the non-compliance.
- (3) The Authority must require the AIFM to take steps to remedy the noncompliance as referred to in subsection (2) by an AIF it manages, or by another entity on the AIF's behalf.
- (4) If the non-compliance persists despite the steps mentioned in subsection (3) being taken, the Authority must—
- (a) require the AIFM to cease acting as manager of that AIF;
 - (b) require the AIFM to stop marketing the AIF; and
 - (c) immediately inform the competent authorities of the foreign countries or territories in which the AIF is marketed of its requirement.
- (5) The Authority may use its powers under sections 20 and 21 (power to restrict and revoke a licence) to enforce the requirements mentioned in subsections (2) and (3), but this subsection does not limit the powers of the Authority.

MATERIAL CHANGES⁷⁹

19G. Notice of material changes⁸⁰

- (1) An AIFM must give the Authority notice in such manner as may be required by AIFM rules of any material change to the conditions for initial licensing referred to in subsection (6).
- (2) Subsections (3) to (5) apply where an AIFM has notified the Authority under subsection (1) of any material change.

(3) If the Authority decides to exercise any power so as to prevent the implementation of, or impose restrictions in relation to, the proposed changes, it must inform the AIFM within 28 days of receiving the notice mentioned in subsection (1).

(4) The Authority may extend the period of 28 days referred to in subsection (3) by up to 30 days, if it considers this to be necessary because of the specific circumstances of the case, and after having notified the AIFM accordingly.

(5) If the Authority does not inform the AIFM of a decision under subsection (3) within the period of 28 days mentioned in subsection (3) or any extension thereof under subsection (4), the AIFM may implement the changes.

(6) In this section “conditions for initial licensing” means the requirements of section 16(3)(a)(ii),(iii) and (v), and the minimum criteria.

19H. General rule making power⁸¹

(1) The Authority may make such rules applying to AIFMs with respect to the carrying on by them of AIFM business, as appear to it to be necessary or expedient for the purpose of this Chapter.

(2) Without prejudice to the generality of subsection (1), such rules shall include provisions relating to—

- (a) the application information for authorisation;
- (b) requirements for initial capital and own funds;
- (c) requirements for the operating condition of an AIFM including risk management, remuneration, conflicts of interest, liquidity management and investments;
- (d) organisational requirements and systems of governance of an AIFM;
- (e) requirements for carrying out valuation of assets and calculation of net asset values of AIFs managed by an AIFM;
- (f) arrangements for depositaries and their liabilities;
- (g) the preparation and content of annual reports on the AIFs an AIFM manages;
- (h) requirements for AIFMs managing leveraged AIFs;
- (i) the disclosures to be made to investors on AIFs that an AIFM manages or markets;
- (j) the reporting obligations to the Authority and to other competent authorities;
- (k) prerequisites for taking up activities as an AIFM;
- (l) requirements for an AIFM where an AIF that it manages acquires control of companies; and
- (m) requirements for disclosure and reporting by an AIFM regarding acquisitions by AIFs.

(3) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(4) The Authority may, in the rules made under this Chapter, require monetary amounts to be stipulated in foreign currencies.

19I. Transitional⁸²

A person who, on or before the commencement of this Chapter, is licensed under section 17 of the Act by virtue of an application made under sections 14 and 16 of the Act, may apply to the Authority for a variation of their licence in accordance with section 17(4) of the Act.

CHAPTER 2: SUPERVISION OF INVESTMENT PROVIDERS

RESTRICTIONS, REVOCATIONS AND DIRECTIONS

20. Restriction of licence or registration⁸³

- (1) Subject to section 22, the Authority may restrict a licence or registration⁸⁴ -
- (a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 21 but it appears to it that the circumstances are not such as to justify revocation;
 - (b) if it is satisfied that a person has become a controller of an investment provider in contravention of section 28 or has become or remains a controller after being given a notice of objection pursuant to section 29 or 30; or
 - (c) in connection with the revocation of a licence or registration⁸⁵ -
 - (i) when giving the investment provider notice that it proposes to revoke its licence or registration⁸⁶; or
 - (ii) at any time after such notice has been given to the investment provider; or
 - (d) at any time after the investment provider has served a notice surrendering its licence or registration⁸⁷ with effect from a later date.
- (2) The Authority may restrict a licence or registration⁸⁸ by imposing such conditions as it thinks desirable for the protection of the investment provider's clients or potential clients, and may in particular -
- (a) require the investment provider to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
 - (b) impose limitations on the acceptance of investment business;
 - (c) prohibit the investment provider from soliciting investment business either generally or from persons who are not already its clients;
 - (d) prohibit the investment provider from accepting new investment business;
 - (e) prohibit the investment provider from entering into any other transactions or class of transactions;
 - (f) require the removal of any controller or officer;
 - (g) specify requirements to be fulfilled otherwise than by action taken by the investment provider.
- (3) Any condition imposed under this section may be varied or withdrawn by the Authority.
- (4) The Authority may on the application of an investment provider vary any condition imposed on its licence or registration⁸⁹.
- (5) [REPEALED]⁹⁰
- (6) The fact that a condition imposed under this section has not been complied with⁹¹ shall, where the restriction has been imposed pursuant to paragraph (a) or (b) of subsection (1), be a ground for the revocation of the licence or registration⁹² in question but shall not invalidate any transaction.

21. Revocation of licence or registration⁹³

Subject to section 22, the Authority may revoke the licence or registration⁹⁴ of an investment provider 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 investment provider;
- (b) the investment provider 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 or registration⁹⁵;
- (c) a person has become a majority shareholder controller of the investment provider in contravention of section 28 or has become or remains such a controller after being given a notice of objection pursuant to section 29 or 30;
- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the investment provider or, in connection with an application for a licence or registration⁹⁶, by or on behalf of a person who is or is to be an officer or controller of the investment provider; or
- (e) the interests of the clients or potential clients of the investment provider are in any way threatened.

22. Notice of restriction or revocation of licence or registration⁹⁷

(1) Where the Authority proposes to -

- (a) restrict a licence or registration⁹⁸ under section 20(1);
- (b) vary a restriction imposed on a licence or registration⁹⁹ otherwise than with the agreement of the investment provider concerned; or
- (c) revoke a licence or registration¹⁰⁰ under section 21;

the Authority shall give to the investment provider concerned a warning notice under section 56.¹⁰¹

(2) [REPEALED]¹⁰²

(3) [REPEALED]¹⁰³

(4) 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 the minimum criteria 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.¹⁰⁴

(4A) After giving a notice under subsection (1) and taking into account any representations made under section 56(2), the Authority shall decide¹⁰⁵—

- (a) whether to proceed with the action proposed in the notice;
- (b) whether to take no further action;
- (c) if the proposed action was to revoke the investment provider's licence or registration¹⁰⁶, to restrict its licence instead; or
- (d) if the proposed action was to restrict the investment provider's licence or registration¹⁰⁷ or to vary the restrictions on a licence or registration¹⁰⁸, to restrict it or to vary the restrictions in a different manner.

(4B) Once the Authority has made a decision under subsection (4A) above it shall forthwith give either a decision notice under section 57 or a notice of discontinuance under section 58, as the case may be.¹⁰⁹

(5) [REPEALED]¹¹⁰

(6) [REPEALED]¹¹¹

(7) [REPEALED]¹¹²

(8) [REPEALED]¹¹³

(9) [REPEALED]¹¹⁴

(10) [REPEALED]¹¹⁵

(11) [REPEALED]¹¹⁶

(12) [REPEALED]¹¹⁷

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

23. Restriction in cases of urgency

(1) No notice need be given under section 22 in respect of the imposition or variation of a restriction on an investment provider's licence or registration¹¹⁸ 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 investment provider 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 33.

(4) Section 22(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 22(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 investment provider 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 fourteen 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 twenty-eight days beginning with the day on which the notice was given under subsection (2) give the investment provider 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 and with effect from the date on which it is given.

24. Directions to protect interests of clients

- (1) The Authority may give an investment provider directions under this section at any time after its licence or registration¹¹⁹ 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 investment provider's clients.
- (3) No direction shall be given to an investment provider under this section after it has ceased to hold or control client assets; and any such direction which is in force with respect to an investment provider shall cease to have effect when the investment provider ceases to hold or control any such assets.
- (4) [REPEALED]¹²⁰

25. Notification and confirmation of directions

- (1) A direction under section 24 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 investment provider concerned.
- (2) A direction under section 24, except one varying a previous direction with the agreement of the investment provider concerned -
 - (a) shall state the reasons for which it is given and give particulars of the investment provider's rights under subsection (3) and section 33; and
 - (b) without prejudice to section 24(3), shall cease to have effect at the end of the period of twenty-eight 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 investment provider concerned.
- (3) An investment provider to which a direction is given which requires confirmation under subsection (2) may, within the period of fourteen 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.

26. Surrender of licence or registration¹²¹

- (1) An investment provider may make an application to the Authority to surrender its licence or registration.
- (2) An application shall be in such form as the Authority may determine and shall be accompanied by such documents and information as the Authority may require.
- (3) The surrender of a licence or registration shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

UNSOLICITED CALLS**27. Unsolicited calls**

- (1) Except so far as permitted by regulations made by the Minister, no person shall in the course of or in consequence of an unsolicited call made on an individual by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.
- (2) Subject to subsection (4) -

- (a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call in contravention of subsection (1) shall not be enforceable against the person on whom the call was made; and
 - (b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.
- (3) The compensation recoverable under subsection (2) shall be such as the parties may agree or as the court may, on the application of either party, determine.
- (4) The court may allow an agreement to which subsection (2) applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied -
- (a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;
 - (b) without prejudice to paragraph (a), that the person on whom the call was made entered into the agreement -
 - (i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and
 - (ii) was aware of the nature of the agreement and any risks involved in entering into it; or
 - (c) that the call was not made by -
 - (i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf; or
 - (ii) a person who has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i).
- (5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement.
- (7) In this section -
- "unsolicited call" means a personal visit or oral communication made without express invitation;
- "investment agreement" means an agreement within the meaning of section 15(2).

OBJECTIONS TO CONTROLLERS

28. Notification of new or increased control

- (1) No person shall become a ten per cent or majority shareholder controller of an investment provider unless -
- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the investment provider; and

- (b) either the Authority has, before the end of the period of ninety days 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 investment provider, or that period has elapsed without the Authority having served him under section 29 a written notice of objection to his becoming such a controller of the investment provider.

(2) Subsection (1) applies also in relation to a person becoming a member of an investment provider which is a firm.

(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 (2) 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).

29. 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 28 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 investment provider;
- (b) that the interests of clients or potential clients of the investment provider would not be in any other manner threatened by that person becoming a controller of that description of the investment provider; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the investment provider as a controller of the description in question the minimum criteria would continue to be fulfilled in the case of the investment provider 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 about 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 notice under subsection (2) may, within a period of twenty-eight 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 about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 33.

(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 28 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 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 28(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 fourteen days after the end of the period within which representations can be made under subsection (3).

30. Objection to existing controller

(1) Where it appears to the Authority that a person who is a controller of any description of an investment provider is not or is no longer a fit and proper person to be such a controller of the investment provider it may serve him with a written notice of objection to his being such a controller of the investment provider.

(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 notice under subsection (2) may, within a period of twenty-eight 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 33.

(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.

31. Contraventions by controller

(1) Subject to subsection (2), any person who contravenes section 28 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 29(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 fourteen days of becoming aware of the fact.

(3) Any person who -

- (a) before the end of the period mentioned in section 28 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 29(2);
- (b) contravenes section 28 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.

32. Restriction on and sale of shares

(1) The powers conferred by this section shall be exercisable where a person -

- (a) has contravened section 29 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 that section continues to be one after such a notice has been served on him; or
- (c) continues to be a controller of any description after being served under section 30 with 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 investment provider 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 29 or 30 -
- (a) until the end of the period within which an appeal can be brought against the notice of objection;
 - (b) if such 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 investment provider 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 investment provider; 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 investment provider.
- (8) A copy of the notice served on the person concerned under subsection (2) shall be served on the investment provider or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

CHAPTER 3: APPEAL TRIBUNALS

33. Rights of appeal

- (1) An investment provider 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 or registration¹²²;
 - (b) to refuse an application, made under section 17(4), to vary or remove a limitation imposed on its licence or registration¹²³ under section 17(3);
 - (c) to revoke its licence or registration¹²⁴; ¹²⁵
 - (d) to publish a statement in respect of it pursuant to section 53; or¹²⁶
 - (e) to impose a civil penalty under section 52A;¹²⁷

may appeal against the decision to a tribunal constituted in accordance with section 34.

- (1A) This Chapter does not apply to a person granted a test licence under section 17.¹²⁸

- (2) Where -

- (a) the ground or a ground for a decision within subsection (1)(a) or (c) is that mentioned in section 22(4)(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 investment provider;

the controller or officer to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid 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 notice of objection is served under section 29 or 30 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 controller in circumstances in which his doing so constitutes an offence under section 31(1), (2) or (3).

(3A) Any person in respect of whom a prohibition order has been made under section 55A may appeal to the tribunal against the decision.¹²⁹

(3B) 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.¹³⁰

(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.¹³¹

(5) The revocation of an investment provider's licence or registration¹³² 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.

34. 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 five persons with experience of investment business 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 or of any investment provider.

(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.¹³³

35. 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 33¹³⁴ 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 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 or registration¹³⁵ the tribunal may direct the Authority to restrict it 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.

36. 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 investment provider and by a person who is to be a controller or officer of an investment provider, 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) 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.

37. Further appeals on a point of law

- (1) An investment provider 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 re-hearing and determination by it.
- (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.

CHAPTER 4: ACCOUNTS AND AUDIT

38. Duty to prepare annual financial statements and accounts

- (1) Every investment provider shall prepare annual financial statements or accounts as required by this section in respect of all transactions and balances relating to his investment business.
- (2) An investment provider 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) An investment provider which is not a company shall prepare annual accounts in such form and containing such particulars as the Authority may prescribe.
- (4) An investment provider where so required by section 41(1) shall cause the financial statements or the accounts of its business to be audited annually, and shall at each of its offices in Bermuda keep a copy of its most recent audited financial statements or accounts together with the auditor's report thereon.
- (5) Not later than four months after the close of its financial year every investment provider shall provide the Authority with a copy of its financial statements or its accounts for that year, and, where such statements or accounts have been audited, a report thereon.
- (6) Notwithstanding subsection (1), the Authority may require an investment provider to prepare financial statements or accounts in such manner as it may direct.¹³⁶

38A. Duty to prepare annual returns¹³⁷

- (1) Every investment provider shall prepare annual returns in such form and containing such information as the Authority may determine.
- (2) Every investment provider shall keep a copy of an annual return prepared in accordance with subsection (1), at its registered office, or principal office, or office of its senior representative, for the period of five years commencing from the date of preparation.
- (3) Annual returns must be signed by any combination of two directors, senior executives or chief executive of the investment provider.

38B. Duty to prepare quarterly returns¹³⁸

- (1) Quarterly returns in such form and containing such information as determined by the Authority, shall be prepared by—
 - (a) every licensed investment provider issued a standard licence; and

- (b) Class A Registered persons required by the Authority to maintain a minimum net asset requirement, or additional capital of a fixed higher amount.
- (2) Quarterly returns prepared in accordance with subsection (1) —
 - (a) shall be submitted to the Authority within 21 days of the end of each quarter of a calendar year ("submission date"); and
 - (b) must be signed by any combination of two directors, senior executives or chief executive of the investment provider.
- (3) Every person under subsections (1)(a) and (b), shall maintain a copy of a quarterly return submitted to the Authority in accordance with subsection (2) (a), at its registered office, or principal office, or office of its senior representative for the period of five years commencing from the submission date.

39. Duty to maintain systems and records

- (1) An investment provider shall maintain such systems and records relating to its investment business as may be prescribed by regulations made by the Minister.
- (2) Regulations made under subsection (1) shall require an investment provider to maintain accounts for clients' assets separately from its own.

40. Clients' money

- (1) The Minister may, after consultation with the Authority, make regulations with respect to money (in this section referred to as 'clients' money') which investment providers hold in such circumstances as are specified in the regulations.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may -
 - (a) provide that clients' money held by an investment provider is held on trust;
 - (b) require clients' money to be paid into an account the title of which contains the word 'client' and which is with an institution of a kind specified in the regulations;
 - (c) make provision with respect to the opening and keeping of clients' accounts, including provision as to the circumstances in which money other than clients' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;
 - (d) require the keeping of accounts and records in respect of clients' money;
 - (e) require any such accounts to be examined by an approved auditor and require such auditor to report to the Authority whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations;
 - (f) authorise the retention, to such extent and in such cases as may be specified in the regulations, of so much of clients' money as represents interest.
- (3) An institution with which an account is kept in pursuance of regulations made under this section does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution permits the payment -
 - (a) in the knowledge that it is wrongful to do so; or
 - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (4) For the purposes of this section— ¹³⁹

“institution” means a company carrying on deposit-taking business within the meaning of the Banks and Deposit Companies Act 1999 approved by the Authority for the purposes of this section;

“investment provider” means all investment providers other than a Class B registered person.

41. Appointment of auditors

(1) Every investment provider which under the terms of its licence or registration¹⁴⁰ is authorised to hold clients' money shall appoint annually an approved auditor to audit the financial statements or as the case may be accounts, of the investment provider.

(1A) Financial statements of investment providers shall be audited by an approved auditor in accordance with generally accepted auditing standards for Canada, the United Kingdom, the United States of America, International Financial Reporting Standards or such standards as the Authority may recognise; and the approved auditor shall be required to provide an auditor's report in respect thereof.
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(1B) Every investment provider shall submit a copy of its auditor's management letter and management's response letter, to the Authority upon request made by the Authority.

(1C) Every investment provider is required to notify the Authority in writing of a qualification made by its approved auditor in relation to his audit report within five days of receipt of such qualification.

(2) If an investment provider fails to appoint an approved auditor as required by sub-section (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 that investment provider to such auditor.

(3) An investment provider 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) An investment provider 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) For the purposes of this section—¹⁴²

“approved auditor” means an auditor who is a person entitled to practice as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Act;

“investment provider” means all investment providers other than a Class B registered person.

(6) No person having an interest in any investment provider otherwise than as a client, and no officer, servant or agent of any investment provider shall be eligible for appointment as an approved auditor for that investment provider; and any person appointed as such auditor to any investment provider who subsequently acquires such interest or becomes an officer, servant or agent of that investment provider shall cease to be an approved auditor.

42. Auditor to communicate certain matters to Authority

(1) An auditor of an investment provider 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 investment provider's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.
- (d) [DELETED]¹⁴³

(2A) An auditor of an investment provider 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 investment provider of which he is an auditor, of the Authority's functions under this Act.
^{144 145}

(2B) Without prejudice to the generality of section 86(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act. ^{146 147}

(3) An auditor who fails to comply with subsection (1)¹⁴⁸ shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.

CHAPTER 5: INFORMATION GATHERING AND INVESTIGATION

INFORMATION GATHERING

43. Notification of change of controller or officer

- (1) An investment provider shall give written notice to the Authority of the fact that any person has become or ceased to be a controller or officer of the investment provider.
- (2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the investment provider becomes aware of the relevant facts.
- (3) An investment provider which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).¹⁴⁹
- (4) For each week or part of a week that an investment provider fails to comply with a requirement imposed on it under subsection (1) it shall be liable to a civil penalty not exceeding \$5,000.¹⁵⁰

44. Certificates of compliance

- (1) Every investment provider shall, within four months from the end of its financial year, deliver to the Authority a certificate signed by an officer of the investment provider, certifying that the investment provider has, with respect to the preceding financial year -
 - (a) complied with the minimum criteria;
 - (b) failed to comply with the minimum criteria;
 - (c) where the licence or registration¹⁵¹ is issued subject to limitations imposed pursuant to section 17(3), observed such limitations.
- (2) Where an investment provider delivers to the Authority a certificate in the terms of subsection (1)(b), it shall, at the time of such delivery, give the Authority particulars of such failure in writing.
- (3) An investment provider that fails to deliver a certificate 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 investment provider is in default.¹⁵²

45. Power to obtain information and reports

- (1) The Authority may by notice in writing served on an investment provider -
- (a) require the investment provider 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 and any code of conduct or practice, and for safeguarding the interests of clients and potential clients of the investment provider¹⁵³;
 - (b) require the investment provider to provide the Authority with a report, in such form as may be specified in the notice, by the investment provider's auditor, or by an accountant, or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the investment provider to provide information under paragraph (a).
- (2) The person appointed by an investment provider to make the 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 investment provider, of the Authority's functions under this Act.¹⁵⁴
- (3) Without prejudice to the generality of section 86(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.¹⁵⁵

46. Power to require production of documents

- (1) The Authority may -
- (a) by notice in writing served on an investment provider 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 on producing such evidence of his authority, to require an investment provider 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 an investment provider, 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 an investment provider 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 investment provider 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 investment provider 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 an investment provider ("A") to do so, it may also exercise the powers conferred by section 45 and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been -

- (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 investment provider 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.

47. Right of entry to obtain information and 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 45(1) and 46(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 46(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 45(1) and 46(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.

48. Communication with Authority

(1) No duty to which -

- (a) an auditor of an investment provider;
- (b) an auditor, accountant or other person appointed to make a report under section 45(1)(b);

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 investment provider 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 provider or any connected person.

(3) In relation to a person appointed to make a report under section 45(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which -

- (a) relates to the business or affairs of the investment provider in relation to which his report is made or any connected person of that investment provider;
 - (b) if by virtue of section 46(4) the report relates to a connected person of an investment provider, to the business or affairs of that person.
- (4) In this section "connected person", in relation to an investment provider ("A"), means any such person as is mentioned in sections 46(4)(a) to (c).

INVESTIGATIONS

49. 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 an investment provider 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 investment provider's business or any particular aspect of it; or
- (b) the ownership or control of the investment provider;

and the Authority shall give written notice of any such appointment to the investment provider concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out¹⁵⁶, 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.

(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 investment provider which is under investigation by virtue of subsection (1) or a person who is under investigation under subsection (2) or any person appointed to make a report in respect of that investment provider under section 45(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 investigation¹⁵⁷ 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 such answer questions relevant to the investigation as such persons may require; and¹⁵⁸
- (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 investment provider 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.

(6A) Unless the Authority otherwise directs, the investment provider under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.¹⁵⁹

(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 investment provider which is under investigation or a person who 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.

(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.

49A. Investigation of suspected contraventions¹⁶⁰

(1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 12;
- (b) a Non-registrable person has contravened any condition imposed by the Authority on it in relation to the manner in which it may carry on investment business or conduct any investment activity;¹⁶¹
- (c) an investment provider may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act, Regulations, Rules or Orders made thereunder; or
- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 55A(10).

(2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed or registered¹⁶² investment provider but only in relation to—

- (a) business carried on at any time when the investment provider was licensed or registered¹⁶³ under this Act; or
- (b) the ownership or control of an investment provider at any time when it was licensed or registered¹⁶⁴ under this Act.

50. Power to require production of documents¹⁶⁵

(1) The Authority may by notice in writing require the person who is the subject of an investigation under section 49A (the “person under investigation”) or any person connected with the person under investigations¹⁶⁶—

- (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, officer, employee, agent, banker, auditor, accountant or barrister and attorney of a person under investigation¹⁶⁷—

- (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.

(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)¹⁶⁸ 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 been¹⁶⁹—

- (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.

51. 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 49A¹⁷⁰ and -

- (a) that a person has failed to comply with a notice served on him under section 50¹⁷¹;
 - (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 referred to in subsection (1)(a)¹⁷² 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 50.
- (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 49A.¹⁷³
- (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.

52. 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 12 or of a condition imposed by the Minister under the order made under section 13D¹⁷⁴; or
 - (b) under section 49;

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.

CHAPTER 6: DISCIPLINARY MEASURES

52A. Power to impose civil penalties for breach of requirements¹⁷⁵

- (1) Except as provided in sections 19, 43 and 44, every person who fails to comply with any requirement or contravenes any prohibition by or under this Act shall be liable to a 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 penalty under subsection (1) 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.

52B. Civil penalties procedures¹⁷⁶

- (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.

53. Public censure

- (1) If the Authority considers that an investment provider 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 investment provider.

54. Proposal to censure publicly

- (1) If the Authority proposes to publish a statement in respect of an investment provider under section 53, it shall give the investment provider a warning notice.
- (2) A warning notice about a proposal to publish a statement shall set out the terms of the statement.

55. Terms of statement

- (1) If the Authority decides to publish a statement under section 53 (whether or not in the terms proposed), it shall without delay give the investment provider concerned a decision notice.
- (2) The decision notice shall set out the terms of the statement.
- (3) If the Authority decides to publish a statement in respect of an investment provider under section 53, the investment provider may appeal the matter to the tribunal under section 33.

55A. Prohibition orders¹⁷⁷

- (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 or registered¹⁷⁸ 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 other 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 investment provider must ensure that no function of his, 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 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 regulated activity carried on by a person who is a Non-registrable ¹⁷⁹person 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—
- “exempt person”[DELETED] ¹⁸⁰;
 - “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.

55B. Prohibition orders: procedures¹⁸¹

- (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.

55C. Applications relating to prohibition orders: procedures¹⁸²

- (1) This section applies to an application for the variation or revocation 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.

55D. Determination of applications for variation etc.¹⁸³

- (1) The Authority may grant an application made under section 55C 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.

NOTICES¹⁸⁴

56. Warning notices¹⁸⁵

- (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 22 proposing action within subsection (1)(a) or (1)(b) of that section must specify the proposed restriction or, as the case maybe, the proposed variation.
- (5) A warning notice about public censure given under section 53 must set out the terms of the statement.
- (6) A warning notice given under section 55B must set out the terms of the prohibition.

57. Decision notices¹⁸⁶

- (1) A decision notice must—
 - (a) be in writing;
 - (b) give the Authority's reasons for the 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 appeal tribunal under section 30.
- (2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 56 was given; and if no 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 58.
- (3) A decision notice about imposing a condition under section 20 must set out the terms of the condition.
- (4) A decision notice about the imposition of a civil penalty under section 52A must state the date of payment.
- (5) A decision notice about public censure under section 53 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.

- (6) A decision notice about a prohibition order made under section 55A (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.
- (7) A decision notice shall state the day on which it is to take effect.
- (8) 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.
- (9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.
- (10) 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 given under subsection (8).

58. Notices of discontinuance¹⁸⁷

- 1) Subject to section 57(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.

59. [REPEALED]¹⁸⁸

60. Publication¹⁸⁹

- (1) Subject to sections 22, 53 and 55A, 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 33.

CHAPTER 7: PROTECTIVE MEASURES

WINDING UP AND DISSOLUTION

61. Winding up or dissolution on petition from the Authority

- (1) The Authority may present a petition to the court for the winding up of a company or the dissolution of a firm which -
- (a) has been a licensed or registered¹⁹⁰ person; or
 - (b) is carrying on, or has carried on, investment business in contravention of the provisions of this Act.
- (2) On such a petition, the court may wind up the company or dissolve the firm if it is of the opinion that it is just and equitable that the company be wound up or the firm dissolved.
- (3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company under this section.

INJUNCTIONS AND RESTITUTIONS

62. 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;

it may make an order restraining him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he 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.

63. Restitution orders

- (1) The court may, on the application of the Authority, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and -

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

- (2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard -

- (a) in a case within subsection (1)(a), to the profits appearing to the court to have accrued;
- (b) in a case within subsection (1)(b), to the extent of the loss or other adverse effect;
- (c) in a case within both subsections, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

- (3) Any amount paid to the Authority in pursuance of an order under subsection (2) shall be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

- (4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes -
- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (1)(a);
 - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (1)(b) and, if so, the extent of that loss or adverse effect; and
 - (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.
- (7) "Qualifying person" means a person appearing to the court to be someone -
- (a) to whom the profits mentioned in subsection (1)(a) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).
- (8) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

ADMINISTRATORS

64. Appointment of administrator by court

- (1) The court may, on the application of the Authority, make an order appointing a person with appropriate experience to manage and administer the business of an investment provider if it is satisfied that as a consequence of the matters specified in subsection (2) every person who is a controller of the investment provider is not a fit and proper person to hold the particular position which he holds.
- (2) Those matters are -
- (a) the Authority has restricted the investment provider's licence or registration¹⁹¹ so as to require the removal of one or more controllers or the appointment of one or more controllers; and
 - (b) the investment provider has failed to comply with such requirement.
- (3) An administrator appointed under subsection (1) in managing and administering the business of the investment provider, shall take such action as will protect the interests of the clients of the investment provider, but shall not take on any new business.
- (4) The court may from time to time give such directions to the administrator as it considers appropriate to the performance of his functions under this section.
- (5) With effect from the date of appointment of the administrator, every person -
- (a) who is a controller of the investment provider shall cease to hold office; and
 - (b) the administrator so appointed shall take over and be solely responsible for the management and administration of the investment provider's business.
- (6) An administrator appointed under subsection (1) shall receive such remuneration as the court may determine, which shall be charged to, and payable by, the investment provider.

PART IV - REGULATION OF INVESTMENT EXCHANGES AND CLEARING HOUSES

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

65. Interpretation

(1) In this Part -

"application" means an application for a recognition order made under section 68 or 69;

"applicant" means a body corporate or a firm which has applied for a recognition order;

"recognised body" means a recognised investment exchange or a recognised clearing house;

"recognised clearing house" means a clearing house in relation to which a recognition order is in force;

"recognised investment exchange" means an investment exchange in relation to which a recognition order is in force;

"recognition order" means an order made under section 71;

"recognition requirements" has the meaning given in section 67;

"revocation order" has the meaning given in section 76.

(2) References in this Part to rules of an investment exchange or a clearing house are to rules made, or conditions imposed, by the investment exchange or the clearing house with respect to -

(a) recognition requirements;

(b) admission of persons to, or their exclusion from the use of, its facilities; or

(c) matters relating to its constitution.

(3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to -

(a) all or any class of its members or users; or

(b) persons seeking to become members of the investment exchange or to use its facilities;

with respect to any of the matters mentioned in subsections (2)(a) to (c).

(4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to -

(a) all or any class of its members; or

(b) persons using or seeking to use its services;

with respect to the provision by it or its members of clearing services.

66. Exemption for recognised investment exchanges and clearing houses.

(1) A recognised investment exchange is exempt from the requirement to hold a licence or registration¹⁹² under this Act in respect of any investment activity -

(a) which is carried on as a part of the exchange's business as an investment exchange; or

(b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.

(2) A recognised clearing house is exempt from the requirement to hold a licence or registration¹⁹³ under this Act in respect of any investment activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

67. Qualifications for recognition

(1) The Minister, acting on the advice of the Authority, may make regulations setting out the requirements -

- (a) which shall be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which the Authority may make a recognition order under this Part; and
- (b) which, if a recognition order is made, it shall continue to satisfy if it is to remain a recognised body.

(2) Requirements resulting from this section are referred to in this Part as "recognition requirements".

(3) Regulations made under this section are subject to negative resolution procedure.

68. Application by an investment exchange

(1) Any body corporate or a firm may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.

(2) The application shall be made in such manner as the Authority may direct and shall be accompanied with -

- (a) a copy of the applicant's constitution;
- (b) a copy of the applicant's rules;
- (c) a copy of any guidance issued by the applicant;
- (d) the required particulars; and
- (e) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are -

- (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;
- (b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

69. Application by a clearing house

(1) Any body corporate or a firm may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.

(2) The application shall be made in such manner as the Authority may direct and shall be accompanied with -

- (a) a copy of the applicant's constitution;
- (b) a copy of the applicant's rules;
- (c) a copy of any guidance issued by the applicant;
- (d) the required particulars; and

- (e) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are -
 - (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
 - (b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

70. Applications: supplementary

- (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (2) Information which the Authority requires in connection with an application shall be provided in such form, or verified in such manner, as the Authority may direct.
- (3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

71. Recognition orders

- (1) Subject to subsection (6), if it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be -
 - (a) a recognised investment exchange, if the application is made under section 68;
 - (b) a recognised clearing house, if it is made under section 69.
- (3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.
- (4) A recognition order shall specify a date on which it is to take effect.
- (5) Section 77 has effect in relation to a decision to refuse to make a recognition order -
 - (a) as it has effect in relation to a decision to revoke such an order; and
 - (b) as if references to a recognised body were references to the applicant.
- (6) The Authority shall not make a recognition order under this section in respect of an investment exchange or a clearing house until it has been advised by the Minister that the making of the order is in accordance with the economic and financial policy of the Government.

72. Liability in relation to recognised body's regulatory functions

- (1) A recognised body and its officers and staff shall not be liable in damages for anything done or omitted in the discharge of the recognised body's regulatory functions unless it is shown that the act or omission was in bad faith.
- (2) In this section "regulatory functions" means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

73. Notification requirements

- (1) The Authority may make rules requiring a recognised body to give it -
 - (a) notice of such events relating to the body as may be specified; and

(b) such information in respect of those events as may be specified.

(2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.

(3) An obligation imposed by the rules extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Act.

(4) The rules may require information to be given in a specified form and to be verified in a specified manner.

(5) If a recognised body -

(a) alters or revokes any of its rules or guidance; or

(b) makes new rules or issues new guidance;

it shall give written notice to the Authority without delay.

(6) If a recognised investment exchange makes a change -

(a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange; or

(b) in the criteria which it applies when determining to whom it will provide clearing services;

it shall give written notice to the Authority without delay.

(7) If a recognised clearing house makes a change -

(a) in the recognised investment exchanges for whom it provides clearing services; or

(b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services;

it shall give written notice to the Authority without delay.

(8) In this section "specified" means specified in rules made by the Authority.

74. Modification or waiver of rules

(1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 73 -

(a) shall not to apply to the body; or

(b) shall apply to the body with such modifications as may be specified in the direction.

(2) An application shall be made in such manner as the Authority may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The Authority shall not give a direction unless it is satisfied that -

(a) compliance by the recognised body 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.

(5) A direction may be given subject to conditions.

(6) The Authority may -

- (a) revoke a direction; or
- (b) vary it on the application, or with the consent, of the recognised body to which it relates.

75. Authority's power to give directions

- (1) This section applies if it appears to the Authority that a recognised body -
 - (a) has failed, or is likely to fail, to satisfy the recognition requirements; or
 - (b) has failed to comply with any other obligation imposed on it by or under this Act.
- (2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with -
 - (a) the recognition requirements; or
 - (b) any obligation of the kind in question.
- (3) A direction under this section shall be enforceable, on the application of the Authority, by an injunction.
- (4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority shall not prevent it from being subsequently altered or revoked by the recognised body.

76. Revoking recognition

- (1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.
- (2) If it appears to the Authority that a recognised body -
 - (a) is failing, or has failed, to satisfy the recognition requirements; or
 - (b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act;

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

- (3) An order under this section ("a revocation order") shall specify the date on which it is to take effect.
- (4) In the case of a revocation order made under subsection (2), the specified date shall not be earlier than the end of the period of three months beginning with the day on which the order is made.
- (5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

77. Directions and revocation: procedure

- (1) Before giving a direction under section 75, or making a revocation order under section 76(2), the Authority shall -
 - (a) give written notice of its intention to do so to the recognised body concerned;
 - (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
 - (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.
- (2) A notice under subsection (1) shall -
 - (a) state why the Authority intends to give the direction or make the order; and

- (b) draw attention to the right to make representations conferred by subsection (3).
- (3) Before the end of the period for making representations -
 - (a) the recognised body;
 - (b) any member of that body; and
 - (c) any other person who is likely to be affected by the proposed direction or revocation order;
 may make representations to the Authority.
- (4) The period for making representations is -
 - (a) two months beginning -
 - (i) with the date on which the notice is served on the recognised body; or
 - (ii) if later, with the date on which the notice is published; or
 - (b) such longer period as the Authority may allow in the particular case.
- (5) In deciding whether to -
 - (a) give a direction; or
 - (b) make a revocation order;
 the Authority shall have regard to any representations made in accordance with subsection (3).
- (6) When the Authority has decided whether to give a direction under section 75 or to make the proposed revocation order, it shall -
 - (a) give the recognised body written notice of its decision; and
 - (b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.
- (7) If the Authority considers it essential to do so, it may give a direction under section 75-
 - (a) without following the procedure set out in this section; or
 - (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

PART V - RESTRICTION ON DISCLOSURE OF INFORMATION

78. Restricted information

- (1) Except as provided by sections 79, 80 and 81 -
 - (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.

79. Disclosure for facilitating the discharge of functions of the Authority

(1) Section 78 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; and
- (b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 78 does not preclude the disclosure of information by the Authority to the auditor or accountant of an investment provider, or the person appointed to make a report under section 45(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 subsection or would otherwise be in the interests of the clients or potential clients.

80. Disclosure for facilitating the discharge of functions by other authorities

(1) Section 78 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 78 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 78, 79 and this section.

(4) Section 78 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 45 (1)(b);
- (b) with a view to the institution 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 78 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 49, 50 or 51 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.

(5A) Section 78 does not preclude the disclosure of information to the ¹⁹⁴Chartered Professional Accountants of Bermuda for the purpose of instituting disciplinary proceedings for a breach of any duty imposed on its members under this Act. ¹⁹⁵

(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.

81. Information supplied to the Authority by relevant overseas authority

(1) Section 78 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 78 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 VI - MISCELLANEOUS AND SUPPLEMENTAL

82. 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 \$25,000 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 his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

83. Offences by companies

(1) Where an offence under this Act committed by a company 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 any person who was purporting to act in any such capacity, he, as well as the company, 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 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.

83A. Civil debt and civil penalties¹⁹⁶

(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 52B in relation to the same matter.

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

84. 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, electronic mail or other similar means which produce 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, senior representative's office where applicable¹⁹⁷ or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business, senior representative's office where applicable¹⁹⁸ or registered office in Bermuda.

85. 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, electronic mail or other similar means which produce a document containing the text of the communication.

86. Regulations

(1) The Minister may, after consultation with the Authority, make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Regulations made under this Act shall be subject to the negative resolution procedure.

87. Repeal, savings and transitional

(1) The Investment Business Act 1998 is repealed ("the repealed Act").

(2) On the commencement of this Act the Authority shall issue to every undertaking licensed under the repealed Act a licence under this Act; and such licence shall contain such restrictions on the scope of the investment activity or the manner of operating the investment business (but not on the duration of the licence), as would correspond to the restrictions, if any, contained in the licence issued under the repealed Act.

(3) Upon the issue of a licence pursuant to subsection (2) the provisions of this Act shall apply to the investment provider as if such licence were issued pursuant to an application made under section 16.

(4) A person who, immediately before the commencement of this Act, was carrying on investment business in or from Bermuda but was exempted by virtue of paragraph 2 of the Schedule to the repealed Act, may continue to carry on investment business without a licence under this Act for a period beginning with the date of commencement of this Act and ending three months thereafter.

(5) Notwithstanding the provisions of Part IV, on the commencement of that Part the Authority shall make a recognition order declaring the Bermuda Stock Exchange Company, a body corporate established by the Bermuda Stock Exchange Act 1992, to be a recognised investment exchange.

(6) On the making of the recognition order, the provisions of Part IV shall apply to the Bermuda Stock Exchange Company as if such order were made pursuant to an application made under section 68.

88. Consequential amendments

(1) [OMITTED]

FIRST SCHEDULE - (SECTION 3(1))

INVESTMENTS AND INVESTMENT ACTIVITIES

PART 1 – INVESTMENTS

1. SHARES, ETC.

Shares and stock in the share capital of a company.

2. DEBENTURES, ETC.

Debentures, including debenture stock, loan stock, bonds, certificates of deposit and any other securities issued by a body corporate, government, public authority or other body whether or not constituting a charge on the assets of such body.

3. INSTRUMENTS GIVING ENTITLEMENT TO INVESTMENTS

Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1 or 2, except that an investment falling within this paragraph shall not be regarded as falling within paragraph 6, 7 or 9.

4. INVESTMENT FUNDS¹⁹⁹

Any right to participate in an investment fund as defined in section 2 of the Investment Funds Act 2006.

5. CERTIFICATES REPRESENTING INVESTMENTS

Certificates or other instruments which confer contractual or property rights -

- (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
- (b) the transfer of which may be effected without requiring the consent of that person.

6. OPTIONS

Options to acquire or dispose of -

- (a) any investment falling within any other paragraph of this Part;
- (b) any currency;
- (c) palladium, platinum, gold or silver;
- (d) an option to acquire or dispose of any investment.

7. FUTURES

(1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, except that this paragraph does not apply if the contract is made for commercial and not investment purposes.

(2) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange recognised by the Authority, or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(3) A contract not falling within subparagraph (2) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 30 days.

8. INTERESTS IN A PARTNERSHIP

Instruments which confer an interest in a partnership.

9. CONTRACTS FOR DIFFERENCES

(1) Rights under -

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in-
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract;

other than a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

(2) This paragraph does not apply to designated investment contracts within the meaning of section 57A(1) of the Insurance Act 1978.

10. LONG TERM BUSINESS

(1) Rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the Insurance Act 1978.

(2) This paragraph does not apply to rights under a contract of insurance if -

- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
- (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract, or before that person attains a specified age, not exceeding 70 years;
- (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; or
- (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with the preceding paragraph.

(3) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract may constitute both long-term business and general business as defined in section 1 of the

Insurance Act 1978, references in this paragraph to rights and benefits are references only to such rights and benefits as are attributable to the provisions of the contract relating to long-term business.

- (4) This paragraph does not apply to rights under a reinsurance contract.
- (5) Rights falling within this paragraph shall not be regarded as falling within paragraph 9.

11. RIGHTS AND INTERESTS IN INVESTMENTS

Rights to and interests in any investment falling within any of the preceding paragraphs of this Part.

PART 2 - INVESTMENT ACTIVITIES

1. DEALING IN INVESTMENTS

- (1) Buying, selling, subscribing for, or underwriting, investments, or offering or agreeing to do so, either as principal or agent.
- (2) A person does not carry on an activity of the kind specified in subparagraph (1) by accepting or transferring an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.
- (3) The reference in subparagraph (2) to a person accepting or transferring an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.
- (4) Subparagraph (1) does not apply to -
 - (a) any dealings by a company in its own shares or share warrants or in its own debentures or debenture warrants;
 - (b) any dealings by a unit trust in its own units; and
 - (c) any dealings by a partnership in its own partnership interests.
- (5) This paragraph applies to a transaction which is to be entered into by a person as principal or agent only if -
 - (a) he continuously holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
 - (b) he continuously holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transactions relate; or
 - (c) he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that matter.
- (6) In subparagraph (5) "members of the public" in relation to the person soliciting them (the "relevant person"), means any other person except -
 - (a) licensed, registered or Non-registrable persons²⁰⁰;
 - (b) members of the same group as the relevant person;
 - (c) persons who are or propose to become, participators with the relevant person in a joint enterprise.

(7) Subparagraph (5) applies only if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 10 of Part 1 or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1.

2. ARRANGING DEALS IN INVESTMENTS

(1) Making or offering, or agreeing to make -

- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, being arrangements which bring about or would bring about the transaction in question;
- (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

(2) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(3) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, or with a view to a person transferring, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(4) Arrangements do not fall within subparagraph (1)(b) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(5) This paragraph does not apply to arrangements for the introduction of persons to another person if -

- (a) the person to whom the introduction is made is a licensed or Non-registrable²⁰¹ person or is a person whose ordinary business involves him in engaging in an investment activity and who is not unlawfully carrying on investment business in Bermuda; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either -
 - (i) in relation to investments generally; or
 - (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(6) The references in subparagraph (3) to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or surety.

3. MANAGING INVESTMENTS

Managing or offering, or agreeing to manage, assets belonging to another person where those assets consist of or include investments.

4. INVESTMENT ADVICE

Giving or offering, or agreeing to give, to persons in their capacity as clients or potential clients, advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

5. SAFEGUARDING AND ADMINISTERING INVESTMENTS

(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where-

- (a) those assets consist of or include investments falling within any of paragraphs 1 to 8 of Part 1; or
 - (b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.
- (2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within subparagraphs (1) (a) and (b).
- (3) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements -
- (a) under which another person (the "primary custodian"), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself; and
 - (b) which are operated by the primary custodian in the course of carrying on in Bermuda investment business falling within this paragraph.
- (4) None of the following activities constitutes the administration of assets-
- (a) providing information as to the number of units or the value of any assets safeguarded;
 - (b) converting currency;
 - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.
- (5) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered-
- (a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or
 - (b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.
- (6) This paragraph does not apply to arrangements for the introduction of persons to another person if -
- (a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and
 - (b) the introduction is made with a view to the provision in Bermuda of a service falling within this paragraph or the making of arrangements operated in Bermuda for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.
- (7) For the purposes of subparagraph (6) the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.
- (8) For the purpose subparagraphs (3) and (6), a person is permitted to provide a service falling within this paragraph if -

- (a) he is a licensed person who may provide that service; or
- (b) he is a Non-registrable²⁰² person as respects any investment business which consists of or includes that service.

6. PROMOTION OF INVESTMENTS TO THE PUBLIC²⁰³

- (1) Promotion to members of the public includes—
 - (a) advertising or agreeing to advertise, material or information which promotes an investment to members of the public;
 - (b) issuing or agreeing to issue a prospectus, application form or proposal form in relation to an investment, to members of the public;
 - (c) distributing, circulating or agreeing to distribute, circulate or make available, material relating to an investment, to members of the public;
- (2) This paragraph applies to a person as principal or agent only if he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions.
- (3) For the purposes of this paragraph, “members of the public” has the meaning given in paragraph 1(6).

PART 3 - EXCLUDED ACTIVITIES

1. GROUPS, FIRMS AND JOINT ENTERPRISES

- (1) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as principal with another person if -
 - (a) they are members of the same group or firm; or
 - (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purpose of, or in connection with, that enterprise.
- (2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as agent for another person in the circumstances mentioned in subparagraphs (1)(a) and (b) if where the investment falls within any of paragraphs 1 to 10 of Part 1, or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1, the agent does not-
 - (a) hold himself out (otherwise than to other members of the same group or firm or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (b) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Part 1 applies;
 and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
- (3) Paragraph 2 of Part 2 does not apply to arrangements which a person makes or offers or agrees to make if-
 - (a) that person is a member of a group or firm and the arrangements are with a view to another member in the same group or firm entering into a transaction of the kind mentioned in that paragraph; or

- (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.
- (4) Paragraph 3 of Part 2 does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if -
 - (a) they are members in the same group or firm; or
 - (b) they are, or propose to become, a participator in a joint enterprise and the investments are or are to be managed for the purposes of or in connection with, that enterprise.
- (5) Paragraph 4 of Part 2 does not apply to advice given by a person to another person if-
 - (a) they are members of the same group or firm; or
 - (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of or in connection with, that enterprise.
- (6) Paragraph 5 of Part 2 does not apply to a service which a person provides or offers or agrees to provide or to arrangements which a person makes or offers or agrees to make for the provision of a service if-
 - (a) that person is a member of the group or firm and the service is or is to be provided to a another member in the same group or firm and relates or will relate to assets which belong to that other member; or
 - (b) that person is or proposes to become a participator in a joint enterprise and the assets to which the service relates or will relate are or are to be held on behalf of another person who is or proposes to become a participator in the enterprise and are or are to be held for the purposes of or in connection with that enterprise.
- (7) The definition in paragraph 1(6) of Part 2 shall apply also for the purposes of subparagraph (2).

2. SALE OF GOODS AND SUPPLY OF SERVICES

- (1) This paragraph concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a customer.
- (2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the supplier as principal if it is to be entered into by him with the customer for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.
- (3) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply, and where the investment falls within any of paragraphs 1 to 3 of Part 1 or so far as relevant to any of those paragraphs, paragraph 11 of Part 1, the supplier does not -
 - (a) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (b) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Part 2 applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner.

In this subparagraph "members of the public" has the same meaning as in paragraph 1(6) of Part 2;

(4) Paragraph 2 of Part 2 does not apply to arrangements which the supplier makes with a view to the customer entering into a transaction for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(5) Paragraph 3 of Part 2 does not apply to the supplier by reason of his managing the investments of the customer if they are or are to be managed for the purposes of or in connection with, the sale of goods or supply of services or a related sale or supply.

(6) Paragraph 4 of Part 2 does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(7) Where the supplier is a member of a group, subparagraphs (2) to (6) shall apply to any other member of the group as they apply to the supplier; and where the customer is a member of a group, references in those subparagraphs to the customer include references to any other member of the group.

(8) In this paragraph -

"supplier" means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified in Part 2 and, where the supplier is a member of a group, also means any other members of that group;

"customer" means a person other than an individual, to whom a supplier sells goods or supplies services, and where the customer is a member of a group, also means any other member of that group;

"related sale or supply" means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the sale of goods or supply of services by a supplier to a customer.

3. EMPLOYEE SHARE SCHEMES

(1) A person ("C"), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by paragraph 1 of Part 2 by entering as principal or agent into a transaction the purpose of which is to enable or facilitate -

- (a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in subparagraph (2); or
- (b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in subparagraph (1) are -

- (a) the bona fide employees or former employees of C or of another member of the same group as C;
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) There is excluded from paragraph 2 of Part 2 arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in subparagraph (1).

(4) There is excluded from paragraph 5 of Part 2 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in subparagraph (1).

- (6) In this paragraph -
- (a) "shares" and "debentures" include -
 - (i) any investment of the kind specified by paragraph 1 or 2 of Part I;
 - (ii) any investment of the kind specified by paragraph 3 or 5 of Part I so far as relevant to paragraphs 1 and 2 of Part 1; and
 - (iii) any investment of the kind specified by paragraph 11 of Part 1 so far as relevant to investments of the kind mentioned in (i) or (ii) above;
 - (b) "relevant trustee" means a person who, in pursuance of the arrangements made for the purpose mentioned in subparagraph (1), holds, as trustee, shares in or debentures issued by C.

4. SALE OF BODY CORPORATE

(1) Paragraphs 1 and 2 of Part 2 do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a body corporate other than a mutual fund company, and paragraph 4 of Part 2 does not apply to advice given in connection with the acquisition or disposal of such shares if either -

- (a) the conditions set out in subparagraph (2) are met; or
- (b) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in subparagraph (1)(a) are that -

- (a) the shares consist of or include shares carrying 50 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body corporate;
- (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a firm, a single individual or a group of connected individuals.

(3) In this paragraph-

"group of connected individuals", in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a director or senior executive of the body corporate and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is or is to be a director or senior executive of the body corporate.

"close relative" means a person's spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

5. TRUSTEES AND PERSONAL REPRESENTATIVES

(1) Paragraph 1 of Part 2 does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if-

- (a) the investment is, or as the case may be, is to be held by him as trustee or personal representative; and
- (b) he does not hold himself out as providing a service of buying and selling investments;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(2) Paragraph 2 of Part 2 does not apply to anything done by a person as trustee or personal representative with a view to -

- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 1 of Part 2; or
- (b) a beneficiary under the trust, will or intestacy engaging in any such activity;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(3) Paragraph 3 of Part 2 does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(4) Paragraph 4 of Part 2 does not apply to advice is given by a person as trustee or personal representative to -

- (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
- (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate;

unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(5) Paragraph 5 of Part 2 does not apply to anything done by a person as a trustee or personal representative unless-

- (a) he holds himself out as providing a service falling within paragraph 5 of Part 2; or
- (b) he is remunerated for providing such a service in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

6. ADVICE GIVEN OR ARRANGEMENTS MADE IN COURSE OF LEGAL PROFESSION

(1) Paragraph 2 of Part 2 does not apply to arrangements-

- (a) which are made in the course of the carrying on of the profession of a barrister and attorney; and
- (b) the making of which may reasonably be regarded as a necessary part of other services provided in the course of carrying on that profession.

(2) Paragraph 4 of Part 2 does not apply to advice -

- (a) which is given in the course of the carrying on of the profession of a barrister and attorney; and
- (b) the giving of which may reasonably be regarded as a necessary part of other services given in the course of carrying on that profession.

(3) Paragraph 5 of Part 2 does not apply to the provision of a service or to arrangements made for the provision of a service where -

- (a) the service is provided or the arrangements are made in the course of the carrying on of the profession of a barrister and attorney; and

- (b) the provision of the service or the making of the arrangements may reasonably be regarded as a necessary part of other services provided in the course of carrying on that profession.

(4) Advice shall not be regarded as falling within sub-paragraph (1)(b), the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) and the provision of a service or the arranging for the provision of a service shall not be regarded as falling within sub-paragraph (3)(b) if the giving of the advice, the making of the arrangements or the provision, or the arranging for the provision, of the service is remunerated separately from the other advice or services.

7. ADVICE GIVEN IN NEWSPAPERS AND BROADCASTING SERVICES

Paragraph 4 of Part 2 does not apply to advice given-

- (a) in a newspaper, journal, magazine or other periodical publication; or
- (b) in any programme included, or made for inclusion, in any television broadcasting service or sound broadcasting service;

if the principal purpose of the publication taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

PART 4 - INTERPRETATION

1. For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or agents for it to be entered into by another person as principal or agent.

2. In this Schedule, a joint enterprise" means an enterprise into which two or more persons ("the participators") enter for commercial purposes related to a business or businesses (other than investment business) carried on by them; and where a participator is a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

SECOND SCHEDULE (SECTION 17) - MINIMUM CRITERIA FOR LICENSING AND REGISTRATION²⁰⁴

CONTROLLERS AND OFFICERS TO BE FIT AND PROPER PERSONS

1. (1) Every person who is, or is to be, a controller or officer of the investment provider 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 fulfill those responsibilities and to whether the interests of clients or potential clients of the investment provider 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.

CORPORATE GOVERNANCE²⁰⁵

- 1A. (1) The investment provider shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the investment provider.
- (2) Without prejudice to subparagraph (1) the business of the investment provider shall—
- (a) be effectively directed—
 - (i) in the case of an investment provider which is a company or a firm, by at least two individuals; or
 - (ii) in any other case, by one person if so approved by the Authority having regard to the circumstances of the investment provider and the nature and scale of its operations; 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 investment provider.

BUSINESS TO BE DIRECTED BY AT LEAST TWO INDIVIDUALS

- 2. [DELETED]²⁰⁶
- 3. [DELETED]²⁰⁷

COMPOSITION OF BOARD OF DIRECTORS

- 4. [DELETED]²⁰⁸

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER

- 5 (1) The investment provider conducts, or, in the case of an investment provider which is not yet carrying on investment business, will conduct its business in a prudent manner.
- (2) In determining whether an investment provider is conducting its business in a prudent manner, the Authority shall take into account any failure by the investment provider to comply with the provisions of²⁰⁹—

- (a) this Act;
- (b) any other law, 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 Antiterrorist Financing) Regulations 2008;
- (c) codes of conduct issued by the Authority pursuant to section 10 of this Act; and

(d) international sanctions in force in Bermuda.

(3) An investment provider 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 such amount as the Authority may prescribe or as it may require in any particular case.

(4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Authority to be relevant.

(5) For the purposes of subparagraph (4) the Authority may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the investment provider and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) An investment provider shall not be regarded as conducting its business in a prudent manner unless it makes 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.

(7) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the investment provider to be prudently managed and the investment provider to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate the Authority shall have regard to the functions and responsibilities in respect of them of any such directors of the investment provider as are mentioned in paragraph 4.

(8) An investment provider 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 the investment provider's operations.

(9) Subparagraphs (2) to (8) are without prejudice to the generality of subparagraph (1).

CONSOLIDATED SUPERVISION

6. The position of the investment provider 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.

INTEGRITY AND SKILL

7. The business of the investment provider is or, in the case of an investment provider which is not yet carrying on investment business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

BERMUDA

**INVESTMENT BUSINESS (EXEMPTIONS) ORDER 2004
[REVOKED]²¹⁰**

**REVOKED BY THE SCHEDULE TO THE INVESTMENT BUSINESS AMENDMENT ACT 2022
(2022:13)**

BERMUDA

INVESTMENT BUSINESS REGULATIONS 2004**BR 7 / 2004**

In exercise of the powers conferred upon the Minister of Finance by sections 16, 18, 39 and 86 of the Investment Business Act 2003, the following Regulations are hereby made :-

1. Citation

These Regulations may be cited as the Investment Business Regulations 2004.

2. Interpretation²¹¹

In these Regulations—

“the Act” means the Investment Business Act 2003;

“investment provider” has the meaning given in section 2 of the Act.

FORM OF LICENCE**3. Form of licence**

An application for a licence made under section 16 of the Act shall be in the form set out in the Schedule.

REGISTER OF LICENCES**4. [REVOKED]**²¹²**SYSTEMS AND RECORDS****5. General duty to maintain systems and records**

(1) An investment provider, having regard to the nature, scale²¹³ and complexity of the investment provider's business, shall maintain adequate systems of control of the business and records and maintain adequate accounting and other records as will enable the investment provider to discharge the obligations imposed by or under the Act or other provision of law.

(2) An investment provider must maintain accounts for all clients' assets separately from its own, in such a way as to enable such assets, individually and in aggregate to be identified and reconciled at any time.

6. Duty to provide contract note²¹⁴

(1) Except as provided in paragraph (2), an investment provider shall provide each client with a contract²¹⁵ note containing the particulars specified in paragraph (3) not later than one day following²¹⁶ the date of each transaction effected and carried out by the investment provider.

(2) Where the particulars required by paragraph (3) are in the possession of a third party who is connected with the transaction, an investment provider shall, not later than seven days from the date of receiving such particulars from the third party, provide the client with the contract²¹⁷ note required by paragraph (1).

(3) A contract²¹⁸ note shall contain the following particulars—

- (a) the name and address of the investment provider, and the capacity in which the investment provider is acting;
- (b) the client's designation and account number;
- (c) the date of the transaction;
- (d) the quantity and description of the securities that are the subject of the transaction;
- (e) the nature of the transaction and the unit price (forward or historic) of the securities;
- (f) the fees, commissions and expenses, if any, charged to the client (directly or indirectly) in connection with the transaction;
- (g) if a purchase, the total cost;
- (h) if a sale, the total proceeds;
- (i) the settlement date;
- (j) if the transaction involves a currency conversion, the relevant rate of exchange.

7. Duty to provide portfolio statement

- (1) An investment provider shall provide each client with a portfolio statement containing particulars of-
- (a) all transactions effected and carried out on behalf of the client during the period covered by the statement; and
 - (b) all assets held for the account of the client by the investment provider as at the date of the statement.
- (2) An investment provider shall provide the first portfolio statement within a period of six months beginning with the date of the opening of the client's account, and thereafter shall provide a quarterly statement unless otherwise requested by, and agreed to in writing, with the client²¹⁹.

8. Duty to keep accounting records

- (1) An investment provider shall keep and maintain up-to-date accounting records in the English language which shall -
- (a) in respect of the investment provider's business, disclose particulars of-
 - (i) assets held for the investment provider's own account;
 - (ii) liabilities incurred for the investment provider's own account; and
 - (iii) entries of income and expenditure made and an explanation of their nature; and
 - (b) in respect of the affairs of the clients of an investment provider, disclose particulars of-
 - (i) all assets held, managed or controlled by the investment provider for the account of clients, both individually respecting each client and collectively respecting all clients;
 - (ii) all liabilities incurred by the investment provider on behalf of clients, both individually respecting each client and collectively respecting all clients;
 - (iii) all transactions effected and carried out on behalf of clients, both individually respecting each client and collectively respecting all clients;
 - (iv) every document evidencing title to a client's asset held by the investment provider;

- (v) where such document is held by a third party, particulars of such document and the name and address of that person; and
- (vi) entries of the date on which every document evidencing title to a client's asset came into or left the possession or control of the investment provider.

(2) For the purpose of paragraph (1), an investment provider may accept and rely on records kept by a third party where such records are capable of being reconciled with records kept by the investment provider.

(3) An investment provider shall permit any client of the investment provider during business hours to inspect, either personally or by his agent, any entry in a record kept by the investment provider of matters relating exclusively to the client as soon as practicable and, in any event, not later than fourteen days from the date on which the investment provider receives a request from the client to carry out the inspection.

(4) An investment provider shall keep either at its principal office or registered office (or in the case of a Class A Registered Person, at the office of its senior representative),²²⁰ or in such a manner that it can be produced to the Authority within such period as the Authority may specify, the following records for the following periods in respect of all investment business conducted by or through the investment provider-

- (a) entry records which shall include account opening records, verification documentation and written introductions, for a period of at least five years from the date of the closing of the account;
- (b) account ledger records, for a period of five years from the date of the relevant transaction or series of transactions; and
- (c) supporting records, which shall include all records in support of ledger entries, credit and debit slips and cheques, for a period of five years from the date of the relevant transaction or series of transactions.

9. Information may be kept in electronic form

The information required to be kept by an investment provider under the Act or these Regulations may be recorded and kept by an investment provider in electronic form or such other form as the investment provider thinks fit, provided that it is possible to inspect the information and to produce a copy of it in legible form.

10. BR67/1999 revoked

The Investment Business Regulations 1999 are revoked.

SCHEDULE²²¹

(regulation 8)

APPLICATION FORMS - LICENSING AND REGISTRATION

This Schedule is published separately on the Authority's website, www.bma.bm.

BERMUDA

INVESTMENT BUSINESS (CLIENT MONEY) REGULATIONS 2004

BR 73 / 2004

PART 1 - INTRODUCTION

1. Citation and commencement

These Regulations may be cited as the Investment Business (Client Money) Regulations 2004 and shall come into operation on 1st March 2005.

2. Interpretation

In these Regulations –

“Act” means the Investment Business Act 2003;

“approved bank”, in relation to a client bank account, means —

- (a) where the account is opened in Bermuda, an institution licensed under the Banks and Deposit Companies Act 1999;
- (b) where the account is opened elsewhere -
 - (i) a bank within the same group as an institution in paragraph (a), licensed to conduct banking business in that country or territory; or
 - (ii) a bank licensed to conduct banking business in that country or territory which, in the opinion of the Authority, is subject to supervision equivalent to the supervision of banks licensed in Bermuda;

“approved investor” means an individual who is both a “sophisticated private investor”, and either a “high net worth private investor” or a “high income private investor”; ²²²

“business day” [REVOKED]²²³;

“client bank account” means an account at an approved bank which —

- (a) is a current or deposit account;
- (b) is in the name of an investment provider; and
- (c) includes the words 'client' or an appropriate description to distinguish the account as an account containing client money, from an account containing money belonging to the investment provider;

“client money” has the meaning given in regulation 5;

“collective investment schemes” [REVOKED] ²²⁴;

“current year” means the year in which he purchases an investment;

“default” means the commencement of liquidation or any insolvency proceedings in any jurisdiction;

“high income private investor” has the meaning given in section 9(3) of the Investment Funds Act 2006; ²²⁵

"high net worth private investor" has the meaning given in section 9(3) of the Investment Funds Act 2006;²²⁶

"intermediary" means a person -

- (a) to whom any client money held by the investment provider has been passed; or
- (b) from whom any money is owed to the investment provider which, once received by him, will be client money;

in respect of the carrying out of transactions on behalf of clients of the investment provider;

"investment agreement" means any agreement the making or performing of which by either party constitutes an investment activity;

"investment fund" has the meaning given in section 3 of the Investment Funds Act 2006;²²⁷

"investment provider" has the meaning given in section 40(4) of the Act;²²⁸

"investment services" [REVOKED]²²⁹

"market intermediary" means a person who engages or holds himself out as engaging in the business of dealing in investments as principal or agent on an investment exchange;

"money" includes cheques and other payable orders in any currency;

"pooling event" has the meaning given in regulation 13;

"sophisticated private investor" has the meaning given in section 9(3) of the Investment Funds Act 2006.²³⁰

3. Application

These Regulations apply to all investment providers, other than an investment provider which is also an institution licensed under the Banks and Deposit Companies Act 1999, insofar as it holds money on behalf of its clients in an account with itself.

4. General overview

- (1) These Regulations apply to money held by an investment provider-
 - (a) which is client money; and
 - (b) until the fiduciary duty imposed by these Regulations on the investment provider²³¹ is discharged.
- (2) Where these Regulations apply, an investment provider
 - (a) must keep client money separate from its own money in accordance with regulation 7(2); and
 - (b) must hold client money as a fiduciary for the client in accordance with the purpose trust established by Part III; and
 - (c) must account for the money properly in accordance with regulations 17 and 18;
 - (d) must implement client money controls, based on the nature, scale and complexity of its business.²³²
- (3) A review of client money controls implemented by an investment provider pursuant to paragraph (2)(d), shall be conducted annually by a qualified person, who shall prepare a report on his findings.²³³
- (4) A copy of a report prepared by a qualified person pursuant to paragraph (3), shall be maintained by an investment provider at its registered office, or its principal place of business, or at the office of its

senior representative, for not less than five years and shall be made available to the Authority upon request.

- (5) For the purposes of this regulation, a “qualified person” means—
- (a) an investment provider’s internal auditor;
 - (b) an investment provider’s approved auditor; or
 - (c) such person approved by the Authority in writing to perform the functions of a qualified person under paragraph (3).

PART II - GENERAL

5. Meaning of “client money”

(1) Subject to this regulation, client money is money in any currency which, in the course of carrying on investment business, an investment provider receives, or²³⁴ holds (whether in Bermuda or elsewhere) in respect of an investment agreement entered into, or to be entered into with or for a client.

- (2) Money is not client money if -
- (a) it is immediately due and payable to the investment provider for its own account -
 - (i) in respect of fees and commissions in a manner which satisfies paragraph (3); or
 - (ii) otherwise, though not, in such a case, if the obligation of the investment provider in respect of which the money is so payable to the investment provider has not yet been performed; and
 - (b) it is not held in (or it is properly withdrawn from) a client bank account.
- (3) Money is not regarded for the purposes of paragraph (2) as due and payable in respect of fees and commissions claimed to be payable to the investment provider unless -
- (a) the fees or commissions have been accurately calculated and are in accordance with a formula or on a basis agreed to in writing by the client;
 - (b) 14²³⁵ days have elapsed since a statement showing the amount of those fees or commissions has been delivered to the client, and the client has not questioned the sum specified; or
 - (c) the amount of the fees or commission has been agreed in writing with the client, or has been finally determined by a court or arbitration.

(4) Money is not client money if the investment provider holds it on behalf of a client and the investment provider and the client have agreed that the money (or money of that type) is to be held by the investment provider for the intrinsic value of the metal which constitutes the money.

6. Money of sophisticated persons

- (1) Subject to this regulation, money is not client money if -
- (a) an investment provider holds it on behalf of or receives it from a sophisticated person; and
 - (b) the investment provider has given a clear warning to a sophisticated person that -
 - (i) his money will not be subject to the protections conferred by these Regulations;
 - (ii) as a consequence his money will not be segregated from the money of the investment provider, and may be used by the investment provider in the course of its business; and

- (iii) the sophisticated person has given his written consent to the treatment of his money by the investment provider outside the Regulations; and
- (iv) the Authority has consented to the money being so treated.

(2) The Authority shall give its consent if, and shall withhold its consent unless, it is satisfied that the investment provider has such systems and controls in place as would ensure that monies held or received on behalf of sophisticated persons by the investment provider are identifiable at all times.

(3) Where a sophisticated person whose money has been treated under paragraph (1) as money which is not client money instructs the investment provider to treat that money and any money which it may hold for him, as client money, the investment provider must, within 10²³⁶ days of receipt of that person's instruction -

- (a) treat all money held for that person as client money in accordance with these Regulations, and confirm to him that his money is being held as client money; or
- (b) return the money which it holds for that person to him and ensure that no further investment business is carried on with or for that person which may give rise to the investment provider holding client money on his behalf.

(4) "sophisticated person" means a person falling within any of the following classes of persons -

- (a) [REVOKED]²³⁷
- (b) [REVOKED]²³⁸
- (c) [REVOKED]²³⁹
- (d) [REVOKED]²⁴⁰
- (da) an approved investor;²⁴¹
- (db) an investment fund;²⁴²
- (e) 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;
- (f) 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;
- (g) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this paragraph, except subparagraph (db);²⁴³
- (h) partnerships, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (db);²⁴⁴
- (i) trusts, all of whose beneficiaries fall within one or more of the subparagraphs of this paragraph, except subparagraph (db);²⁴⁵
- (j) limited liability companies, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (db).²⁴⁶

7. Segregation of client money

(1) An investment provider shall pay all client money which it holds or receives into a client bank account.

(2) Client money and money belonging to the investment provider must be kept separate from one another.

8. Client bank accounts

(1) Where an investment provider holds client money on behalf of a client, it must ensure that the money is held in a client bank account with an approved bank and that the title of the account sufficiently distinguishes the account from any account containing money that belongs to the investment provider.

(2) Where an investment provider opens a client bank account, the investment provider must give or have given notice to the approved bank requiring the bank to acknowledge to it in writing -

- (a) that all money standing to the credit of the account is held by the investment provider as trustee;
- (b) the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the investment provider.

9. Payments into client bank accounts

(1) Where an investment provider holds client money it must either -

- (a) pay it as soon as possible (and in any event, not later than the next ²⁴⁷day after so beginning) into a client bank account; or
- (b) pay it out or pay it over in a manner which secures under regulation 10 that it is no longer client money (for example by endorsing a cheque).

(2) Where client money is received by the investment provider in the form of an automated transfer, the investment provider must ensure that -

- (a) where possible, the money is transferred into a client bank account; and
- (b) in the event that the money is transferred into the investment provider's own account, the money is paid into a client bank account no later than the next ²⁴⁸day after the transfer.

(3) Where an investment provider receives a 'mixed remittance' (that is an aggregate sum of money which is in part client money and in part other money) it must pay the full sum into the relevant client bank account, but must then ensure that, except to the extent that it represents fees and commissions due to the investment provider, the other money is paid out of the account within one ²⁴⁹day of the day on which the investment provider would normally expect the remittance to be cleared.

10. Discharge of fiduciary duty

Money ceases to be client money if it is paid -

- (a) to the client;
- (b) to a third party on the instruction of the client;
- (c) into a bank account in the name of the client (not being an account which is also in the name of the investment provider); or
- (d) to the investment provider itself, where it may properly be so paid under these Regulations.

PART III - DEFAULT OBLIGATIONS

11. Purpose of this Part

(1) This Part applies to all client money held by an investment provider so as to create -

- (a) a fiduciary relationship between the investment provider and the client, under which the client money is in the legal ownership of the investment provider but in the beneficial ownership of the client; and
- (b) a system of pooling of the beneficial interests of different clients once there has been a "pooling event".

(2) Regulation 12 applies whether or not there has been a "pooling event", and regulations 13 and 14 apply after there has been such a pooling event.

12. Client purpose trust

(1) Whenever the circumstances are that client money is held by an investment provider in the course of investment business carried on in Bermuda, the client money is held in accordance with these Regulations by the investment provider on trust —

- (a) upon the terms and for the purposes set out in these Regulations;
- (b) subject to subparagraph (a), for the respective clients for whom that client money is held, according to their respective shares in it; and
- (c) after all valid claims under subparagraph (b) have been met, for the investment provider itself.

(2) The duties of an investment provider holding client money under these Regulations pursuant to paragraph (1) shall take the place of the corresponding duties which would be owed by it as a trustee under the general law.

13. Pooling events

(1) The power of an investment provider, in accordance with Part II, to pay money into and out of the accounts in which client money is held is interrupted by the occurrence of a pooling event specified in paragraph (2).

(2) The pooling events are -

- (a) the default of the investment provider;
- (b) the default of an intermediary;
- (c) the coming into force of a direction by the Authority in respect of all client money held by the investment provider; or
- (d) the default of any approved bank with which any client money held by the investment provider is deposited, in which case regulation 15 applies,

(3) Notwithstanding paragraph (2), a pooling event will not occur, and regulation 15 will not apply, if, on the default of an approved bank or intermediary, the investment provider repays to its clients or pays into a client bank account an amount equal to the amount of client money held on their behalf with that bank or passed to that intermediary.

(4) An investment provider shall inform the Authority and all affected clients of any pooling event, as soon as practicable after its occurrence.

14. Pooling

(1) Save as described in this regulation, where a pooling event occurs, money held in all the investment provider's client bank accounts is pooled, and must be made available to meet the claims of clients in respect of whom client money is or should be held in those accounts on a pari passu basis.

(2) Where, at the time when a pooling event occurs, client money from a client bank account is in the hands of an intermediary, it shall, on its return to the client bank account, be pooled in accordance with paragraph (1).

(3) Where client money referred to in paragraph (2) cannot be returned within one month after the pooling event, the investment provider may make distributions from the account in advance of that date if he makes provision for the possibility of such money not being returned.

(4) If any surplus remains in the pool created by the operation of paragraph (1) after all the valid claims of clients to money in that pool have been met, that surplus shall be distributed to the investment provider.

(5) Where an investment provider receives money from a client after a pooling event which, but for that event, would fall to be paid into a client bank account, that money -

- (a) shall be placed in a new client bank account duly opened after the pooling event; and
- (b) shall not be pooled with the money held in the investment provider's client bank accounts at the time of the pooling event.

15. Pooling on default of approved bank or intermediary

(1) Where client money is held by an approved bank or an intermediary which defaults or which, following a pooling event by an investment provider, fails to recognize that the money is client money held in accordance with these Regulations -

- (a) the money shall -
 - (i) be pooled separately;
 - (ii) be made available to satisfy the separate claims of the separate clients *pari passu*; and
 - (iii) after the claims described in subparagraph (a)(ii) have been satisfied, be paid into the pool created under Regulation 14 (1); and
- (b) the pool created under that Regulation shall be applied -
 - (i) to meet any claims of separate clients that are not separate claims and the claims of other clients (all ranking equally); and
 - (ii) after the claims described in subparagraph (b)(i) have been satisfied, to meet any unsatisfied separate claims of separate clients.

(2) In this Regulation -

“separate claim” means the claim of a separate client to the value of the money that was or should have been held with the approved bank or intermediary; and

“separate client” means a client whose money was, or should have been, held with the approved bank or intermediary.

PART IV - INTEREST AND RECORD KEEPING

16. Interest on client money

An investment provider must clarify in writing with a client whether or not interest is payable to the client in respect of client money, and if so, on what terms.

17. Accounting for and use of client money

(1) An investment provider must account properly and promptly for client money and, in particular, must ensure that -

- (a) save as permitted by these Regulations, client money and other money do not become mixed;
- (b) individual transactions can be accurately identified and traced;
- (c) the credit standing to the account of each client is calculated each ²⁵⁰day; and
- (d) money belonging to one client is not used for another client.

(2) Wherever the daily calculation referred to in paragraph (1)(c) reveals an overdraft or that one client's money has been used for another -

- (a) the investment provider must pay in a sum of money equivalent to the deficit; and
- (b) money paid in by the investment provider under sub-paragraph (a) shall be treated as client money and must not be withdrawn by the investment provider until the client responsible for the deficit has paid in a sum of money equivalent to the deficit.

18. Reconciliation of accounts

(1) An investment provider shall, not less frequently than once a month -

- (a) reconcile the balance on each client bank account, as recorded by the investment provider, with the balance on that account as set out in the statement issued by the approved bank covering the period in respect of which the reconciliation is made; and
- (b) reconcile the total of the balances on each client account with the total of the corresponding balances in respect of each of its clients, (both totals as recorded by the investment provider).

(2) The reconciliation referred to in paragraph (1) must be performed within 10 ²⁵¹days of the date to which the reconciliation relates, and any differences must be corrected forthwith unless they arise as a result of differences in timing between the accounting and settlement systems of the investment provider and the approved bank.

19. Record keeping

An investment provider must retain accounting records in relation to each client bank account for at least 5 years from the date of the transaction to which it relates.

Made this 25th day of November, 2004

Minister of Finance

BERMUDA

INVESTMENT BUSINESS (REPORTING ACCOUNTANTS) (FACTS AND MATTERS OF MATERIAL SIGNIFICANCE) REGULATIONS 2006

BR 60/2006

The Minister of Finance, in exercise of the powers conferred by section 86(1) of the Investment Business Act 2003, and after consultation with the Authority, makes the following regulations:

1. Citation and commencement

These Regulations may be cited as the Investment Business (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006 and shall come into operation on the 15th day of July, 2006.

2. Interpretation

In these Regulations -

“Act” means the Investment Business Act 2003;

“reporting accountant” means an auditor or an accountant who, under section 42(2A) and 45(2) of the Act, is under a duty to give notice to the Authority of specified facts or matters.

3. Facts and matters of material significance

(1) For the purposes of sections 42(2A) and 45(2) of the Act, where a reporting accountant -

- (a) identifies a material misstatement in the financial statements resulting from fraud, error or illegal acts or the consequences of them;
- (b) concludes that there is substantial doubt as to the ability of the investment provider to continue as a going concern for a period of one year from the balance sheet date;
- (c) identifies adjustments to the financial statements which individually or in aggregate indicate to him that the previous year's audited annual financial statements or the current year's unaudited interim financial statements, prepared according to generally accepted accounting principles issued to the shareholders were materially misstated;
- (d) identifies a material weakness in internal control;
- (e) has unresolved disagreements with management pertaining to the application of generally accepted accounting principles that could reasonably be expected to lead in the future to material misstatements of the annual or interim financial statements, prepared according to generally accepted accounting principles to be issued to the shareholders in the ensuing financial year;
- (f) identifies any evidence of deliberate attempts by a chief executive or other senior executive to mislead the Authority through the provision of materially false or misleading information; or
- (g) identifies evidence of fraud or attempted fraud by a chief executive or other senior executive, or has concerns of such a serious nature as to damage materially his confidence in the integrity of the senior management of the institution,

then those facts and matters are of a material significance for the discharge, in relation to the investment provider, of the Authority's functions under the Act.

(2) For the purposes of paragraph (1)(d), “material weakness in internal control” means a deficiency in which the design or operation of one or more of the internal control components of the institution does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and fail to be detected within a timely period by employees in the normal course of performing their assigned functions.

Made this 21st day of June, 2006.

Minister of Finance

BERMUDA**INVESTMENT BUSINESS (PRUDENTIAL STANDARDS)
(STATUTORY RETURNS) RULES 2022****BR 76/2022**

The Bermuda Monetary Authority, in exercise of the power conferred by section 10A of the Investment Business Act 2003, makes the following Rules:

1. Citation

These Rules may be cited as the Investment Business (Prudential Standards) (Statutory Returns) Rules 2022.

2. Interpretation

In these Rules—

“the Act” means the Investment Business Act 2003;

“the Authority” means the Bermuda Monetary Authority;

“contracts for differences” has the meaning given in paragraph 9 of the First Schedule to the Act;

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

“retail client” means any individual client of an investment provider that is not a sophisticated private investor as defined in section 9(3) of the Investment Funds Act 2006.

3. Annual returns: investment providers

(1) An investment provider shall file with the Authority an annual return prepared pursuant to section 38A of the Act and this rule.

(2) The annual return shall comprise—

(a) information in respect of the matters set out in Schedule I (“Annual Regulatory Information Return”), as such matters stand on the day the annual return is filed; and

(b) any additional information requested by the Authority in writing.

(3) The annual return shall be accompanied with a declaration signed by two Directors, one of whom shall be the chief executive, stating that to the best of their knowledge and belief the information in the return is fair and accurate.

4. Quarterly returns: investment providers

(1) An investment provider to whom section 38B(1)(a) or (b) applies shall file with the Authority a quarterly return prepared pursuant to section 38B of the Act and this rule.

(2) A quarterly return shall comprise—

(a) information in respect of the matters set out in Schedule II (“Quarterly Regulatory Information Return”), as such matters stand on the day the quarterly return is filed; and

(b) any additional information requested by the Authority in writing.

(3) A quarterly return shall be accompanied with a declaration signed by two Directors, one of whom shall be the chief executive, stating that to the best of their knowledge and belief the information in the return is fair and accurate.

5. Quarterly returns: investment providers carrying on investment business involving contracts for differences with retail clients

An investment provider to whom rule 4 applies that is also carrying on investment business involving contracts for differences with retail clients, shall also file with the Authority on a quarterly basis—

- (a) the information required under Schedule III (“Supplementary Quarterly Reporting Form: Contracts for Differences with Retail Clients”) as of the date the quarterly return is filed;
- (b) any additional information requested by the Authority in writing.

6. Supplementary matters

(1) An annual return prepared under rule 3 or a quarterly return prepared under rule 4 or 5 shall be filed in the electronic format required by the Authority.

(2) If directed to do so by the Authority, an investment provider shall file with the Authority a hard copy of the annual or quarterly return, filed in the electronic format pursuant to paragraph (1), on or before the date specified in the direction.

7. Commencement

These Rules come into operation on 27 July 2022.

SCHEDULES

(rules 3(2)(a), 4(2)(a), and 5)

MATTERS TO BE INCLUDED IN ANNUAL AND QUARTERLY RETURNS

The Schedules to these Rules (listed below) are published separately on the Authority’s website, www.bma.bm, in accordance with section 10A(8) of the Investment Business Act 2003—

Schedule I Annual Regulatory Information Return

Schedule II Quarterly Regulatory Information Return

Schedule III Supplementary Quarterly Reporting Form: Contracts for Differences with Retail Clients

Made this 12th day of July 2022

Chairman

Bermuda Monetary Authority

BERMUDA

INVESTMENT BUSINESS (PRUDENTIAL STANDARDS) (STANDARD LICENCES, TEST LICENCES, AND CLASS A REGISTERED PERSONS) (CAPITAL, NET ASSETS AND LIQUIDITY) RULES 2022

BR 77/2022

The Bermuda Monetary Authority makes the following Rules, in exercise of the power conferred under the Investment Business Act 2003 by section 10A(1) and paragraphs 5(3) and 5(4) of the Second Schedule to that Act.

1. Citation

These Rules may be cited as the Investment Business (Prudential Standards) (Standard Licences, Test Licences, and Class A Registered Persons) (Capital, Net Assets and Liquidity) Rules 2022.

2. Interpretation

In these Rules, “the Act” means the Investment Business Act 2003.

3. Minimum net assets to be maintained

(1) This rule, and rules 4, 5, 6 and 7, applies to an investment provider who has been granted a standard licence or a test licence.

(2) For the purposes of paragraph 5(3) of the Second Schedule to the Act, an investment provider shall be regarded as conducting its business in a prudent manner if it maintains or, as the case may be, will maintain minimum net assets of—

- (a) \$100,000 in the case of an investment provider who is an agent;
- (b) \$250,000 in the case of an investment provider who is a principal;
- (c) \$12,000 in the case of an investment provider who is neither an agent nor a principal.

4. Requirement to maintain increased minimum net assets

Where the Authority makes a determination that the minimum net asset requirement specified under rule 3 is not appropriate in the case of a particular investment provider, the Authority shall make adjustments, in accordance with rule 5, as it considers appropriate that exceed the minimum net assets specified under rule 3.

5. Procedure for determining if minimum net asset requirement is not appropriate

(1) In determining whether the minimum net asset requirement specified under rule 3 is not appropriate in the case of a particular investment provider, the Authority may take into consideration whether the investment provider—

- (a) has assumed material principal positions through, among other things, the trading or holding of significant portfolios of securities or derivatives;
- (b) conducts material non-investment business; and
- (c) intends to offer margin or other lending facilities.

(2) Where the Authority makes a determination under paragraph (1) in respect of a particular investment provider, it may—

- (a) substitute the minimum net asset requirement specified under rule 3 for a fixed higher minimum net asset threshold; or
- (b) apply a fluctuating market risk-based minimum capital requirement in accordance with rule 6(1).

6. Requirement to maintain fluctuating market risk-based minimum capital

(1) Where the Authority has made a determination under rule 5(2)(b) that a fluctuating market risk-based minimum capital is appropriate in respect of a particular investment provider, then the minimum net assets required to be maintained by the investment provider shall be—

- (a) 8% of RWA; and
- (b) not less than \$250,000, and the investment provider shall be required to maintain at least 6% of such RWA as tier 1 capital, and the remaining 2% of RWA may be met by tier 2 capital.

(2) For the purposes of this rule—

- (a) “RWA” means risk weighted assets;
- (b) “tier 1 capital” means common stock and disclosed reserves;
- (c) “tier 2 capital” means undisclosed reserves, asset revaluation reserves, hybrid (debt and equity) capital instruments and subordinated debt.

7. Minimum liquid asset requirement

(1) For the purposes of paragraph 5(4) of the Second Schedule to the Act, an investment provider shall maintain a minimum of liquid assets in accordance with paragraph (2).

(2) Where—

- (a) an investment provider acts as a principal or an agent, liquid assets required to be maintained shall be the equivalent of three months of the investment provider’s annual expenditure;
- (b) an investment provider does not act as a principal or an agent, liquid assets required to be maintained shall be the equivalent of not less than one month of the investment provider’s annual expenditure.

(3) For the purposes of this rule, an investment provider’s “annual expenditure” shall be—

- (a) based on the most recent annual or annualised financial statement or accounts filed by the investment provider with the Authority under section 38 of the Act; and
- (b) calculated where the investment provider made—
 - (i) a profit in the previous year, as total revenue less profit before appropriations; or
 - (ii) a loss in the previous year, as total revenue plus loss before appropriations.

(4) For the purposes of this rule, “liquid assets” shall include but not be limited to—

- (a) cash and cash equivalents (i.e. cash, term deposits and marketable securities);
- (b) prepayments, where the period of prepayment is less than three months;
- (c) amounts accrued or receivable with respect to interest on marketable investments;

- (d) unsecured receivables, where these are outstanding for less than 30 days;
- (e) receivables, arising from the sale of investments outstanding for less than 30 days from the contractual settlement date;
- (f) other receivables, arising from investment business outstanding for less than two months.

8. Capital and liquidity requirements: Class A registered persons

(1) A Class A registered person who is subject to capital and liquidity requirements imposed by a recognised regulator, shall maintain capital and liquidity of such amounts and in such form and in accordance with any conditions, restrictions or limitations as may be required by the recognised regulator.

(2) A Class A registered person who is not subject to capital or liquidity requirements by a recognised regulator shall, for the purposes of paragraphs 5(3) and 5(4) of the Second Schedule to the Act, satisfy such capital and liquidity requirements as the Authority may determine.

9. Notifying the Authority

An investment provider who has been granted a standard licence or a test licence, and a Class A registered person shall notify the Authority forthwith where—

- (a) it has breached any capital or liquidity requirement applicable to it;
- (b) it has reason to believe that it will breach any capital or liquidity requirement applicable to it;
- (c) the liabilities of one or more of its subsidiaries exceed that subsidiary's assets; or
- (d) the liabilities of the investment provider's parent company or the Class A registered person's parent company exceed its assets.

10. Commencement

These Rules shall come into operation on 27 July 2022.

Made this 12th day of July 2022

Chairman

Bermuda Monetary Authority

BERMUDA**INVESTMENT BUSINESS (CLASS B REGISTERED PERSONS) ORDER 2022****BR 87 / 2022**

The Minister of Finance, in exercise of the power conferred by section 13(1)(a) of the Investment Business Act 2003 and on the advice of the Bermuda Monetary Authority, makes the following Order:

1. Citation

This Order may be cited as the Investment Business (Class B Registered Persons) Order 2022.

2. Interpretation

In this Order—

“the Act” means the Investment Business Act 2003;

“high income private investor” has the meaning given in section 9(3) of the Investment Funds Act 2006;

“high net worth private investor” has the meaning given in section 9(3) of the Investment Funds Act 2006;

“investment fund” has the meaning given in section 3 of the Investment Funds Act 2006;

“market intermediary” means a person who engages, or holds himself out on an investment exchange as engaging, in the business of dealing in investments as a principal or an agent;

“sophisticated private investor” has the meaning given in section 9(3) of the Investment Funds Act 2006.

3. Class B Registered Persons

The following are Class B Registered Persons for the purposes of the Act—

- (a) a person, other than a market intermediary, who carries on investment business exclusively with one or more of the following—
 - (i) a high income private investor;
 - (ii) a high net worth private investor;
 - (iii) a sophisticated private investor;
 - (iv) an investment fund;
 - (v) a body corporate, having total assets of not less than \$5,000,000, 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;
 - (vi) an unincorporated association, partnership or trust, having total assets of not less than \$5,000,000, where such assets are held solely by the 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;
 - (vii) a body corporate, all of whose shareholders fall within one or more of the subparagraphs of this paragraph, except subparagraph (iv);

- (viii) a partnership, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (iv);
- (ix) a trust, all of whose beneficiaries fall within one or more of the subparagraphs of this paragraph, except subparagraph (iv);
- (x) a limited liability company, all of whose members fall within one or more of the subparagraphs of this paragraph;
- (b) a person who carries on investment business with not more than twenty persons at any time, and who does not carry on investment business with, or solicit investment business from, the public.

4. Commencement

This Order comes into operation on 27 July 2022.

Made this 21st day of July 2022

Acting Minister of Finance

BERMUDA

**INVESTMENT BUSINESS (NON-REGISTRABLE PERSONS)
(DESIGNATION) ORDER 2022**

BR 86 / 2022

The Minister of Finance, in exercise of the power conferred by section 13(1)(b) of the Investment Business Act 2003 and on the advice of the Bermuda Monetary Authority, makes the following Order:

1. Citation

This Order may be cited as the Investment Business (Non-Registrable Persons) (Designation) Order 2022.

2. Interpretation

In this Order—

“the Act” means the Investment Business Act 2003;

“investment fund” has the meaning given in section 3 of the Investment Funds Act 2006.

3. Non-registrable persons

The following are designated as Non-registrable persons for the purposes of the Act—

- (a) an investment fund;
- (b) a person who is licensed under the Digital Asset Business Act 2018 to carry on digital asset business, who carries on investment business ancillary to the digital asset business for which the person is licensed under that Act;
- (c) a person who is registered under the Insurance Act 1978 to carry on insurance business, who carries on investment business in connection with the insurance business for which the person is registered under that Act;
- (d) a person who is registered under the Insurance Act 1978 as an insurance manager, broker, agent, salesman, or member of an association of underwriters recognized by the Authority, who carries on investment business in connection with the insurance business for which the person is registered under that Act;
- (e) a person who is registered under the Insurance Act 1978 as an insurance marketplace provider who arranges deals in investments in connection with the business for which the person is registered under that Act;
- (f) the Government of Bermuda;
- (g) the Bermuda Monetary Authority;
- (h) a public authority established under an Act in Bermuda.

4. Commencement

This Order comes into operation on 27 July 2022.

Made this 21st day of July 2022

Acting Minister of Finance

BERMUDA MONETARY AUTHORITY ACT 1969

FOURTH SCHEDULE (FEES)^{252 253 254 255 256 257}

INVESTMENT BUSINESS ACT 2003 – FEES

Investment Business Act 2003				
1	Applying:			
	(a)	to be granted an extension to the filing deadline under section 10A(4) for:		
		(i)	first month past filing deadline	\$750
		(ii)	second month past filing deadline	\$750
		(iii)	third month past filing deadline	\$750
	(b)	for an exemption or modification from a standard or requirement under section 10B(1)		\$710
	(c)	for variation or deletion of conditions under section 17(4)		\$1,420
	(d)	for variation or deletion of conditions under section 17B(3)		\$1,420
2	Applying:			
	(a)	for a registration pursuant to section 13A		\$2,840
	(b)	for a registration pursuant to section 13B		\$2,840
	(c)	for a licence pursuant to section 16(1)		\$2,840
3	Annual fee pursuant to section 19(1)(b):			
	(a)	where the investment provider licensed pursuant to section 17(1) carries on:		
		(i)	an investment activity of a kind specified in paragraph 2 of Part 2 of the First Schedule to the Act in connection with shares or units in an investment fund	\$2,710
		(ii)	an investment activity of a kind specified in paragraph 4 of Part 2 of the First Schedule to the Act or	\$2,710
		(iii)	an investment activity not falling within (i) and (ii) above	\$2,710
	(b)	where the investment provider licensed pursuant to section 17(1) carries on an investment activity of a kind specified in paragraphs 1, 2 and 3 of Part 2 of the First Schedule to the Act but is not licensed to hold client assets		\$6,780
	(c)	where the investment provider licensed pursuant to section 17(1) carries on an investment activity of a kind specified in Part 2 of the First Schedule to the Act and is licensed to hold client assets		\$13,560
	(d)	where the investment provider is a Class A Registered Person specified in accordance with section 13A of the Act		\$850
	(e)	where the investment provider is a Class B Registered Person specified in accordance with section 13B of the Act		\$850

4	Annual licence fee payable pursuant to section 19(1)(b) where an investment provider falls within paragraph (3)(a), (b) or (c) and is part of a group which is subject to consolidated supervision by the Authority as home regulator under the Investment Business Act 2003, and that group:		
	(a)	has controlled net assets not exceeding \$500 million	\$78,330
	(b)	has consolidated net assets exceeding \$500 million	\$313,240
Annual fees in respect of (2) and (3) above are due on or before 31st March in every year.			

ENDNOTES

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- ¹ Investment Business Amendment Act 2022
 - ² Investment Business Amendment Act 2022
 - ³ Investment Business Amendment Act 2022
 - ⁴ Investment Business Amendment Act 2012
 - ⁵ Investment Business Amendment Act 2022
 - ⁶ Investment Business Amendment Act 2022
 - ⁷ Investment Business Amendment Act 2022
 - ⁸ Investment Business Amendment Act 2015
 - ⁹ Investment Business Amendment Act 2022
 - ¹⁰ Investment Business Amendment Act 2022
 - ¹¹ Ministers (Change of Responsibilities and Style) Order 2011
 - ¹² Investment Business Amendment Act 2022
 - ¹³ Investment Business Amendment Act 2022
 - ¹⁴ Investment Business Amendment Act 2022
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- 61 Investment Business Amendment Act 2022
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63 Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
64 Investment Business Amendment Act 2022
65 Investment Business Amendment Act 2022
66 Investment Business Amendment Act 2022
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131 Investment Business Amendment Act 2012
132 Investment Business Amendment Act 2022
133 Appeal Tribunals (Miscellaneous) Act 2017, s. 7
134 Bermuda Monetary Authority (Determination of Appeals) Act 2016
135 Investment Business Amendment Act 2022
136 Investment Business Amendment Act 2022
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141 Investment Business Amendment Act 2022
142 Investment Business Amendment Act 2022
143 Investment Business Amendment Act 2005, s. 2(a)
144 Investment Business Amendment Act 2005, s. 2(b)
145 Investment Business Amendment Act 2005, s. 2(b)
146 Investment Business Amendment Act 2005, s. 2(b)
147 Investment Business Amendment Act 2005, s. 2(b)
148 Investment Business Amendment Act 2005, s. 2(c)
149 Investment Business Amendment Act 2012
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151 Investment Business Amendment Act 2022
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153 Investment Business Amendment Act 2022
154 Investment Business Amendment Act 2005, s. 3(a)
155 Investment Business Amendment Act 2005, s. 3(b)
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193 Investment Business Amendment Act 2022
194 Institute of Chartered Accountants of Bermuda Amendment Act 2014
195 Investment Business Amendment Act 2005, s. 4
196 Investment Business Amendment Act 2012
197 Investment Business Amendment Act 2022
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²⁵⁰ Investment Business (Client Money) Amendment Regulations 2022
²⁵¹ Investment Business (Client Money) Amendment Regulations 2022
²⁵² Bermuda Monetary Authority Amendment (No. 2) Act 2021
²⁵³ Bermuda Monetary Authority Amendment (No. 3) Act 2018
²⁵⁴ Bermuda Monetary Authority Amendment Act 2014
²⁵⁵ Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
²⁵⁶ Investment Business Amendment Act 2022
²⁵⁷ Bermuda Monetary Authority Amendment (No. 3) Act 2022