

Investment Business Regulations 1999 -REVOKED BY 2004

BR 67 / 1999

INVESTMENT BUSINESS ACT 1998

1998 : 34

INVESTMENT BUSINESS REGULATIONS 1999

In exercise of the powers conferred upon the Minister of Finance by section 30 of the Investment Business Act 1998, the following Regulations are here made:—

Citation and commencement

1 These Regulations may be cited as the Investment Business Regulations 1999 and shall come into operation on 1 January 2000.

Interpretation

2 In these Regulations, “the Act” means the Investment Business Act 1998.

Licence to carry on investment business

Form of application for licence

3 An application for a licence made under section 6 of the Act shall be in Form 1 in the Schedule.

Advertising application for a licence

4 (1) A person who has applied for a licence to carry on investment business in or from within Bermuda shall, at the time of making the application or as soon as practicable thereafter, advertise in an appointed newspaper (as defined in the Companies Act 1981) particulars of his application for a licence.

(2) An advertisement shall contain the following particulars—

(a) the applicant’s name;

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- (b) his address, or where the applicant is a body corporate—
 - (i) the address of its registered office, whether in Bermuda or outside Bermuda; and
 - (ii) the address of its principal office whether in Bermuda or outside Bermuda;
- (c) a statement that the applicant has applied to the Authority for a licence; and
- (d) the nature of the business to be carried on by the applicant.

Form of licence

5 A licence granted by the Authority under section 7 of the Act shall be in Form 2 in the Schedule.

Register of licences

Contents of register

6 The register of licences compiled and maintained by the Authority pursuant to section 9(4) of the Act shall contain the following particulars in respect of each licence—

- (a) the name of the investment provider;
- (b) his address, or where the investment provider is a body corporate—
 - (i) the address of its registered office whether in Bermuda or outside Bermuda; and
 - (ii) the address of its principal office whether in Bermuda or outside Bermuda;
- (c) the date of grant of licence;
- (d) the date of expiry of the licence;
- (e) where conditions are imposed on the licence, particulars of the conditions and date of imposition;
- (f) where conditions are varied, particulars of the variation and date of variation;
- (g) where a licence is suspended or cancelled, the date of suspension or, as the case may be, cancellation of the licence.

Applications for review of decision of Authority

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Time for making an application for review

7 An application to the Minister for a review of a decision of the Authority made under section 15(4) of the Act shall be made—

- (a) not later than twenty-eight days from the date on which the investment provider is notified of the decision of the Authority; or
- (b) where the investment provider asks for reasons under section 14(2) of the Act, not later than twenty-eight days from the date on which the investment provider is notified of the reasons for the decision,

whichever is the later.

Form and content of application for review

8 (1) An application for a review of the decision of the Authority shall be signed by or on behalf of the applicant and shall contain the following particulars—

- (a) the applicant's name and address;
 - (b) the name and address of any person appointed by the applicant to represent the applicant in connection with the review;
 - (c) a statement of the decision of the Authority in respect of which the review is sought.
- (2) The application for review shall be accompanied with—
- (a) a notice of the grounds of the review containing sufficient particulars to show why the applicant considers the decision in respect of which the applicant is seeking a review, was unlawful or was not justified by the evidence on which it was based;
 - (b) where an investment provider has asked for reasons, a copy of the written reasons of the Authority's decision given under section 14(2) of the Act;
 - (c) such other documents as the applicant considers relevant in support of the application.

Systems and Records

General duty to maintain systems and records

9 An investment provider, having regard to the size 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

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obligations imposed by the licence, the Act, these Regulations and any code of conduct issued by the Authority under section 22 of the Act.

Duty to provide confirmation note

10 (1) Except as provided in paragraph (2), an investment provider shall provide each client with a confirmation note containing the particulars specified in paragraph (3) not later than seven days from 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 confirmation note required by paragraph (1).

- (3) A confirmation 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.

Duty to provide portfolio statement

11 (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.

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(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 statement at least once in every period of six months.

Duty to keep accounting records

12 (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.

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- (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 the investment provider's principal office or registered office, 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—
- (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.

Information may be kept in electronic form

13 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.

Minimum capital requirements

14 (1) An investment provider shall not be regarded as having sufficient capital to carry on investment business as required by the licensing criteria if the investment provider does not satisfy the minimum capital requirement specified in paragraphs (2) and (3).

(2) An investment provider that carries on investment business—

- (a) as principal, shall maintain a minimum capital of \$250,000;
- (b) as agent, shall maintain a minimum capital of \$100,000;
- (c) otherwise than as principal or agent, shall maintain a minimum capital of \$12,000.

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(3) The Authority may in any particular case require an investment provider to maintain capital in excess of the minimum capital requirements specified in paragraph (2) if, having regard to the nature and scope of the investment provider's business, the Authority is satisfied that those minimum capital requirements are insufficient.

(4) Where the capital of an investment provider falls below the minimum amount specified in paragraph (2) or below the amount required by the Authority pursuant to paragraph (3), the investment provider shall inform the Authority of the event not later than the first business day after the day that the investment provider becomes aware of its occurrence.

Liquidity requirements

15 (1) An investment provider shall maintain such liquidity as the Authority may determine to be adequate, having regard to the relationship between the investment provider's liquid assets and the investment provider's actual and contingent liabilities, to the times at which those liabilities will or may fall due and the investment provider's assets mature, to the nature and scale of the investment provider's operations and to any other factors appearing to the Authority to be relevant.

(2) For the purposes of paragraph (1) 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 the investment provider which are capable of providing liquidity within a reasonable period.

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insurance by the Applicant or any predecessors in business, or any former officers or directors ever been refused?	
Name(s) and Address(es) of insurer(s)	

Declaration

This declaration must be completed by the Applicant in block capitals or typed.

I, (*full name and address*) confirm that I have read and understand the provisions of the Investment Business Act 1998 and I declare that the business in respect of which this application is made will be conducted in accordance with the provisions of the Act, the Regulations and any codes of conduct.

I declare that the particulars supplied in the application are true to the best of my knowledge and belief.

Signature of applicant:

Position in company:

Date:

WARNING A person who, in relation to any application for a licence, makes a statement or issues a document which he knows to be false or misleading in a material particular or recklessly makes a statement or issues a document which is false or misleading in a material particular shall be guilty of an offence and liable on summary conviction to a fine of \$25,000 and imprisonment for twelve months and on conviction on indictment to a fine of \$100,000 and imprisonment for five years: section 26 of the Investment Business Act 1998.

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FORM 2

FORM OF LICENCE

BERMUDA MONETARY AUTHORITY

INVESTMENT BUSINESS ACT 1998

INVESTMENT BUSINESS LICENCE

In exercise of the powers conferred upon it by section 7 of the Investment Business Act 1998, the Bermuda Monetary Authority hereby grants to—

(Name and address of licensee)

A licence to carry on investment business in or from within Bermuda.

This licence is subject to the following conditions—

1.
2.
3.
4.

This Licence shall be valid from the date of issue and shall, unless sooner cancelled, expire on

Issue this day of .

(Signature of issuing authority)

Made this 1st day of December 1999

Acting Minister Finance