



BERMUDA

INVESTMENT FUNDS ACT 2006

2006 : 37

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MINIMUM CRITERIA FOR LICENSING

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

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

PART I
PRELIMINARY

Short title and commencement

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

Interpretation

Interpretation

2 (1) In this Act—

“auditor” means—

- (a) a person entitled to practise as a public accountant in Bermuda;
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and

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Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or

(c) a person recognized by the Authority as an auditor;

“Authority” means the Bermuda Monetary Authority;

“authorised” means authorised under this Act;

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

“closed-ended investment fund” has the meaning given in section 3(5);

“company fund” means a fund under which the property is held for the participants by—

(a) a company, within the meaning of section 2(1) of the Companies Act 1981, and includes a mutual fund company within the meaning of section 156A of that Act;

(b) an incorporated segregated accounts company, as defined by section 2 of the Incorporated Segregated Accounts Companies Act 2019;

(c) an incorporated segregated account, as defined by section 2 of the Incorporated Segregated Accounts Companies Act 2019;

“constitution” in relation to—

(a) a unit trust fund, means its trust deed or other instrument establishing the trust;

(b) a company fund, means its memorandum of association and bye-laws;

(c) a partnership fund, means its partnership agreement;

(d) a limited liability company fund or LLC fund, means its LLC agreement;

“controller” has the meaning given in section 2A;

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

“decision notice” means a notice prepared in accordance with section 67K;

“fund administrator” *[Repealed by 2019 : 32 s. 69]*

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

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- “fund offering document rules” means rules made by the Authority under section 38 relating to the issuance and content of an offering document;
- “fund prospectus” means particulars of a fund prepared in accordance with fund offering document rules, and “prospectus” has a corresponding meaning;
- “fund prospectus rules” means fund prospectus rules made under section 38;
- “fund rules” means rules made under section 37;
- “investment fund” has the meaning given in section 3; and “fund” has a corresponding meaning;
- “investment manager” means a person acting on behalf of a fund who manages its investments under the terms of a management agreement;
- “limited liability company fund” or “LLC fund” means a fund under which the property is held on behalf of the members of a limited liability company formed under the Limited Liability Company Act 2016;
- “manager” has the meaning assigned to it in section 2 of the Limited Liability Company Act 2016;
- “minimum criteria” means the minimum criteria for licensing set out in the Schedule;
- “Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;
- “mutual fund company” *[Deleted by 2019 : 46 s. 2]*
- “offering document” means a fund prospectus or other document setting out the terms and conditions upon which units or shares in an investment fund are offered, as may be applicable, prepared in accordance with fund offering document rules;
- “officer”, in relation to an undertaking, includes a director, secretary or senior executive of the undertaking by whatever name called, and any manager;
- “open-ended investment fund” has the meaning given in section 3(5);
- “operator”, in relation to—
- (a) a unit trust fund, means the trustee;
 - (b) a company fund, means the board of directors;
 - (c) a partnership fund, means the general partner; and
 - (d) an LLC fund, means the manager;
- “Overseas Fund” means an overseas investment fund that has been designated by the Authority as an Overseas Fund under section 5A(7), following its compliance with requirements under section 5A(2);

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“overseas investment fund” means an investment fund incorporated or established in a jurisdiction outside Bermuda;

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

“parent undertaking” has the meaning given in section 5 of the Investment Business Act 2003;

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

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

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

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

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

“Private fund” has the meaning given in section 6;

“Professional Class A fund” has the meaning given in section 6A;

“Professional Class B fund” has the meaning given in section 7;

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

“promotion” means the following activities initiated by or on behalf of an overseas investment fund—

- (a) advertising;
- (b) issuing an offering document, application form or proposal form and stating the method of issue;
- (c) circulating or making available promotional material, including describing the general nature of the material and the persons to whom, and the manner in which, it is to be circulated or made available.

“register” has the meaning given in section 20;

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- “registrar” means the person appointed to establish and maintain the register;
- “senior executive” means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
- (a) exercises managerial functions; or
 - (b) is responsible for maintaining accounts or other records of the undertaking.
- “service provider” means a fund’s auditor, custodian, fund administrator, investment manager corporate service provider or registrar, and includes any person to whom a service provider has delegated part or all of his functions;
- “shareholder controller” has the meaning given in section 2A(4);
- “Tribunal” means a Tribunal constituted in accordance with section 56;
- “trustee” in relation to a unit trust fund, means the person holding the trust property on trust for the participants;
- “units” means the rights or interests (however described) of the participants in a fund;
- “unit trust fund” means a fund under which the property is held on trust for the participants.
- “warning notice” means a notice prepared in accordance with section 67J.
- (2) *[Repealed by 2019 : 32 s. 69]*

[Section 2 subsection (1) amended by 2010 : 61 s. 2 effective 22 December 2010; Section 2 subsection (1) "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; Section 2 subsection (1) "prime broker" inserted by 2013 : 28 s. 2 effective 3 October 2013; subsection (1) "constitution" and "operator" amended, "officer" repealed and substituted and "limited liability company fund" and "manager" inserted by 2016 : 40 s. 258 effective 1 October 2016; subsection (1) "decision notice" and "warning notice" inserted by 2016 : 32 s. 2 effective 28 October 2016; Section 2 subsection (1) definition "service provider" amended, and definitions "Private fund", "Professional Class A fund" and "Professional Class B fund" inserted by 2018 : 63 s. 17 effective 31 December 2018; Section 2 subsection (1) definitions "closed-ended investment fund", "company fund", "fund offering document rules", "offering document", "open-ended investment fund", "Overseas Fund", "overseas investment fund", "overseas regulatory authority", "promotion" and "Professional Closed Fund" inserted by 2019 : 46 s. 2 effective 1 January 2020; Section 2 subsection (1) definitions "constitution", "fund prospectus" and "operator" amended, and "mutual fund company" deleted by 2019 : 46 s. 2 effective 1 January 2020; Section 2 subsection (2) amended by 2019 : 46 s. 2 effective 1 January 2020; Section 2 subsection (1) definition "fund administrator" deleted by 2019 : 32 s. 69 effective 31 December 2019; Section 2 subsection (2) repealed by 2019 : 32 s. 69 effective 31 December 2019; Section 2 subsection (1) definition "fund administrator" inserted by 2019 : 46 s. 2 effective 1 January 2020; Section 2 subsection (1) definition "company fund" repealed and replaced by 2021 : 4 s. 2 effective 21 January 2021]

Meaning of “controller” and “associate”

- 2A (1) In this Act, “controller” shall be construed in accordance with this section.
- (2) "Controller" in relation to an undertaking, means—

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

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

- (a) he holds 10% or more of the shares in the undertaking which is a company or its parent undertaking;
- (b) he is entitled to exercise or control the exercise of 10% or more of the voting power in the undertaking or in the parent undertaking; or
- (c) he is able to exercise a significant influence over the management of the undertaking or the parent undertaking by virtue of the voting power in the undertaking or the parent undertaking.

(4) A person who is a controller of an undertaking by virtue of subsection (2)(e) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act—

- (a) "ten per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is not less than ten; and
- (b) "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

(5) In subsection (4), "the relevant paragraph" in relation to a shareholder controller means whichever one of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(6) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

- (a) if that person is an individual —
 - (i) the spouse, child, step-child or parent of that person;

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

(7) For the purpose of subsection (6), "settlement" includes any disposition or arrangement under which property is held in trust.

[Section 2A inserted by 2010 : 61 s. 3 effective 22 December 2010]

Authority's statement of principles

2B (1) The Authority shall, as soon as practicable after the coming into force of this section, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in exercising its powers to grant or revoke an authorisation under Part II;
- (b) in interpreting the minimum criteria;
- (c) in exercising its powers to—
 - (i) grant, revoke or restrict a licence under Part III;
 - (ii) obtain information and to require the production of documents;
 - (iii) issue directions under sections 30 and 51;
 - (iv) impose a civil penalty under section 67A;
 - (v) publish a statement in respect of an authorised fund pursuant to section 67C;
 - (vi) make a prohibition order under section 67E; and
 - (vii) publish information about any matter to which a decision notice relates under section 67M.

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

[Section 2B inserted by 2016 : 32 s. 3 effective 28 October 2016; Section 2B subsection (1)(c)(v) amended by 2019 : 32 s. 69 effective 31 December 2019]

PART II INVESTMENT FUNDS

Investment fund

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

(2) The arrangements must be such that—

(a) the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and

(b) *[Repealed by 2019 : 46 s. 3]*

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

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the fund.

(3A) The arrangements shall be an open-ended investment fund or a closed-ended investment fund.

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

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

(5) In this Act—

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

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

[Section 3 amended by 2019 : 46 s. 3 effective 1 January 2020]

Registered and authorised funds: segregated accounts

4 (1) This section applies to a registered or authorised investment fund which is permitted under the terms of its constitution to operate segregated accounts.

(2) In this section, “segregated account” means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a registered or authorised fund, relating to an identified or identifiable pool of assets and liabilities of such registered or authorised fund which are segregated or distinguished from other assets and liabilities of the registered or authorised fund.

(3) Subject to the Segregated Accounts Companies Act 2000, the constitution of a registered or authorised fund to which this section applies may make provision for any of the matters set out in subsections (4) to (7).

(4) The operator of a registered or authorised fund which operates segregated accounts shall hold the assets of each segregated account for the benefit of the participants of such segregated account exclusively.

(5) Any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account.

(6) Where a liability arises from a transaction or matter relating to, or is otherwise imposed or attributable to, a particular segregated account, that liability shall—

- (a) extend only to the assets linked to that segregated account; and
- (b) not extend to the assets linked to any other segregated account.

(7) Any assets of the registered or authorised fund not readily identifiable as belonging to any particular segregated account shall be allocated by the operator between all of the segregated accounts on the basis of the respective net asset values of each segregated account or, subject to the terms of the registered or authorised fund’s constitution, on such other basis as the operator may in its absolute discretion determine.

[Section 4 repealed and replaced by 2019 : 46 s. 4 effective 1 January 2020]

Fit and Proper

4A (1) For the purposes of this Part, paragraph 1(2) and (3) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator, officers or service providers are fit and proper persons to act as such in relation to any fund.

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(2) Paragraph 2(1) and (2) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator will conduct or is conducting business as the case may be, in a prudent manner.

[Section 4A inserted by 2019 : 46 s. 5 effective 1 January 2020]

Codes of Conduct

4B (1) The Authority may issue codes of conduct for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by operators of, or service providers to, an investment fund.

(2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(3) Every registered, authorised or designated investment fund shall in the conduct of its business have regard to any code of conduct issued by the Authority.

(4) A failure on the part of an investment fund to comply with the provisions of such code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by section 5(2A).

[Section 4B inserted by 2019 : 46 s. 5 effective 1 January 2020]

Prohibition on unauthorised, unregistered and undesignated funds

Prohibition of unauthorised, unregistered and undesignated funds

5 (1) This section applies to investment funds and overseas investment funds.

(2) Subject to sections 6, 6A and 7, no person shall operate a fund to which this section applies or purport to operate such a fund, in or from Bermuda, unless—

- (a) the fund has been authorised or registered under section 13 or section 6, 6B, 8A or 8C; or
- (b) the fund is registered under sections 6, 6A, 7 or 8B;
- (c) the fund is designated under section 5A.

(2A) Every fund operator, or person or body of persons, by whatever name called, authorised by an overseas regulatory authority to perform functions relating to any activity carried on by an operator, shall operate a fund in a prudent manner in accordance with the minimum criteria for licensing.

(3) It shall be an offence for a person to operate a fund in contravention of subsection (2).

(4) A person guilty of an offence under subsection (3) is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for 2 years or to both, and

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- (b) on conviction on indictment to a fine of \$200,000 or imprisonment for 5 years or to both.

(5) In proceedings for an offence under this section, it is a defence for the accused to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

[Section 5 subsection (2) amended by 2013 : 28 s. 3 effective 3 October 2013; subsection (1) amended by 2016 : 40 s. 258 effective 1 October 2016; Section 5 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 5 amended by 2019 : 46 s. 6 effective 1 January 2020]

Designation

Overseas Fund: designation

5A (1) Subject to this Act and notwithstanding any other Act, no overseas investment fund shall be managed or carry on promotion in or from within Bermuda, unless it is designated as an Overseas Fund by the Authority under subsection (2).

(2) An investment fund qualifies for designation by the Authority as an Overseas Fund if it—

- (a) is an overseas investment fund;
- (b) complies with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established; and
- (c) complies with—
 - (i) all requirements of this section; and
 - (ii) any conditions imposed on it by the Authority.

(3) The Authority may impose such conditions on an Overseas Fund as it determines necessary.

(4) The Authority may delete, vary or modify a condition imposed on an Overseas Fund under subsection (3).

(5) An operator of an overseas investment fund shall notify the Authority in writing prior to the overseas investment fund being managed or promoted in or from within Bermuda, and such notification shall be in such form as may be determined by the Authority and shall contain such information as the Authority may require.

(6) At the time of notification under subsection (5), the operator shall also submit the following to the Authority—

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

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

[Section 5A inserted by 2019 : 46 s. 7 effective 1 January 2020]

Overseas Fund: annual declaration

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

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

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

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

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

(5) For the purposes of this section—

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

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

[Section 5B inserted by 2019 : 46 s. 7 effective 1 January 2020; Section 5B subsection (1) amended by 2021 : 4 s. 3 effective 21 January 2021]

Overseas Fund: cancellation of designation other than by way of consent

5C The Authority may cancel the designation of an Overseas Fund, if it appears to the Authority that—

- (a) one or more requirements for designating the Overseas Fund are no longer satisfied;
- (b) the operator of the Overseas Fund—

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- (i) has contravened or is likely to contravene a requirement imposed on the operator or under this Act; or
- (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular.

[Section 5C inserted by 2019 : 46 s. 7 effective 1 January 2020]

Overseas Fund: procedure on cancellation of designation

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

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

[Section 5D inserted by 2019 : 46 s. 7 effective 1 January 2020]

Overseas Fund: request for cancellation of registration

5E (1) A designation may be cancelled by the Authority at the request in writing of the operator of the Overseas Fund.

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

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

[Section 5E inserted by 2019 : 46 s. 7 effective 1 January 2020]

Registration

Private funds

6 (1) *[Repealed by 2018 : 63 s. 17]*

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

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

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

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

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(2C) The operator of an open-ended investment fund shall appoint a fund administrator.

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

(3) *[Repealed by 2018 : 63 s. 17]*

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

(3B) When submitting an application under this section, the operator must also provide to the Authority—

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

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

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

(3E) The operator of a private fund must at the time of filing the certificate, also file with the Authority—

- (a) information on the net asset value of the fund and its underlying assets;
- (b) a copy of the fund's management accounts or audited financial statements;
- (c) information on any material changes that took place during the course of the year (reporting or accounting period).

(4) *[Repealed by 2018 : 63 s. 17]*

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

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

(7) *[Repealed by 2019 : 46 s. 8]*

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

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

[Section 6 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 6 amended by 2019 : 46 s. 8 effective 1 January 2020; Section 6 subsection (2D) inserted and subsection (3D) amended by 2021 : 4 s. 4 effective 21 January 2021]

[Division title "Professional Funds" deleted by 2019 : 46 s. 9 effective 1 January 2020]

Professional funds

6A (1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Class A Fund.

- (2) The requirements referred to under subsection (1) are that—
- (a) the fund is open only to qualified participants;
 - (b) the operator of the fund has appointed as an investment manager for the fund a person who—
 - (i) is licensed under the Investment Business Act 2003;
 - (ii) is authorised or licensed by a foreign regulator recognised by the Authority; or
 - (iii) for the purposes of this Act is carrying on business in or from Bermuda or in a jurisdiction recognised by the Authority, being a person who—
 - (A) has gross assets under management of an amount that is not less than \$100 million; or
 - (B) is a member of an investment management group that has consolidated gross assets under management of an amount that is not less than \$100 million;
 - (c) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;
 - (d) the operator of the fund has appointed the following persons ('service providers') to provide services to the fund—
 - (i) a fund administrator;
 - (ii) *[Repealed by 2021 : 4 s. 5]*
 - (iii) an auditor; and
 - (iv) a custodian or prime broker, except where subsection (2A) applies; and
 - (e) the financial statements of the fund are prepared in accordance with any one of the following standards—
 - (i) International Financial Reporting Standards ("IFRS");

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

(2A) *[Repealed by 2019 : 46 s. 9]*

(3) In this section—

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

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

[Section 6A inserted by 2013 : 28 s. 4 effective 3 October 2013; Section 6A amended by 2018 : 63 s. 17 effective 31 December 2018; Section 6A amended, and subsection (2A) inserted by 2018 : 65 s. 2 effective 15 February 2019; Section 6A amended by 2019 : 46 s. 9 effective 1 January 2020; Section 6A subsection (2)(d)(ii) repealed by 2021 : 4 s. 5 effective 21 January 2021]

Professional Class A fund: procedure for registration

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

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

(3) The operator of a Professional Class A fund must—

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

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

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

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

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

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

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

[Section 6B inserted by 2013 : 28 s. 5 effective 3 October 2013; Section 6B amended by 2018 : 63 s. 17 effective 31 December 2018; Section 6B amended by 2019 : 46 s. 10 effective 1 January 2020; Section 6B subsection (2) amended by 2021 : 4 s. 6 effective 21 January 2021]

Professional Class B fund: qualification

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

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

- (a) the fund is only open to qualified participants;
- (b) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;
- (c) the operator of the fund has appointed the following persons (“service providers”) to provide services to the fund—
 - (i) an investment manager;
 - (ii) a fund administrator;
 - (iii) *[Repealed by 2021 : 4 s. 7]*
 - (iv) an auditor; and
 - (v) a custodian or prime broker,

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

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

(2A) *[Repealed by 2019 : 46 s. 11]*

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

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

[Section 7 amended by 2011 : 48 s. 4 effective 31 December 2011; Section 7 repealed and substituted by 2013 : 28 s. 6 effective 3 October 2013; Section 7 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 7 amended by 2019 : 46 s. 11 effective 1 January 2020; Section 7 subsection (2)(c)(iii) repealed by 2021 : 4 s. 7 effective 21 January 2021]

Professional Class B Fund: procedure for registration

8 (1) The operator of a fund that qualifies for registration as a Professional Class B fund may apply to the Authority for registration.

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

[Section 8 repealed and substituted by 2013 : 28 s. 7 effective 3 October 2013; Section 8 amended by 2018 : 63 s. 17 effective 31 December 2018]

Professional Class B Fund: application for registration

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

(2) *[Repealed by 2019 : 46 s. 12]*

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

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

(5) *[Repealed by 2019 : 46 s. 12]*

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

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

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

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

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(9) *[Repealed by 2021 : 4 s. 8]*

(10) *[Repealed by 2021 : 4 s. 8]*

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

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

[Section 8A inserted by 2013 : 28 s. 8 effective 3 October 2013; Section 8A amended by 2018 : 63 s. 17 effective 31 December 2018; Section 8A amended by 2019 : 46 s. 12 effective 1 January 2020; Section 8A subsection (6) amended, and subsections (9) and (10) repealed by 2021 : 4 s. 8 effective 21 January 2021]

Professional Closed Fund: qualification

8B (1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Closed Fund.

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

- (a) the fund shall be a closed-ended investment fund;
- (b) the fund is open only to qualified participants;
- (c) all qualified participants shall be provided with an investment warning prior to the time of the purchase of units, which shall be in such form and contain such statements and information as the Authority deems appropriate;
- (d) the operator of the fund has appointed—
 - (i) a local service provider who is licensed by the Authority; or
 - (ii) an officer, trustee or representative resident in Bermuda, who has authority to access the books and records of the fund;
- (e) the operator of the fund has appointed an auditor;
- (f) the financial statements of the fund are prepared in accordance with any one of the following standards—
 - (i) International Financial Reporting Standards (“IFRS”);
 - (ii) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
 - (iii) any such other GAAP as the Authority may recognise.

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

[Section 8B inserted by 2019 : 46 s. 13 effective 1 January 2020]

Professional Closed Fund: procedure for registration

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

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

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

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

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

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

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

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

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

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

[Section 8C inserted by 2019 : 46 s. 13 effective 1 January 2020; Section 8C subsection (2) amended by 2021 : 4 s. 9 effective 21 January 2021]

Qualified Participants

9 (1) *[repealed]*

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(1A) *[repealed]*

(1B) *[repealed]*

(2) In sections 6A(2) and 7(2) “qualified participants” means—

- (a) high income private investors;
- (b) high net worth private investors;
- (c) sophisticated private investors;
- (d) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
- (e) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
- (f) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this subsection;
- (g) partnerships, all of whose members fall within one or more of the paragraphs of this subsection;
- (h) trusts, all of whose beneficiaries fall within one or more of the paragraphs of this subsection;
- (i) limited liability companies (LLCs), all of whose members fall within one or more of the paragraphs of this subsection.

(3) In sections 6A(2) and 7(2)—

“high income private investor” means an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year or has had a joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and “current year” means the year in which he purchases an investment;

“high net worth private investor” means an individual whose net worth or joint net worth with that person’s spouse in the year in which he purchases an investment exceeds \$1,000,000, excluding the value of that person’s residence and any benefits or rights under a contract of insurance; and net worth means the excess of the total assets at fair market value over total liabilities;

“group” has the meaning given in section 2 of the Investment Business Act 2003;

“sophisticated private investor” means an individual who has such knowledge of, and experience in, financial and business matters as would enable him to

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properly evaluate the merits and risks of a prospective purchase of investments.

[Section 9 amended by 2010 : 61 s. 4 effective 22 December 2010; subsections (1), (1A) and (1B) repealed and subsections (2) and (3) amended by 2013 : 28 s. 9 effective 3 October 2013; subsection (2) amended by 2016 : 40 s. 258 effective 1 October 2016; Section 9 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 9 subsection (3) definition "high net worth private investor" deleted and substituted by 2019 : 46 s. 14 effective 1 January 2020]

Registered fund: notice of disqualifying event

9A (1) The operator of a registered fund of any class must give notice in writing to the Authority of the occurrence of any default ("a disqualifying event") of a requirement under section 6A(2) or 7(2).

(2) Such notice must be given within 14 days of the operator becoming aware of the occurrence of the disqualifying event.

(3) In addition to the notice under subsection (2), the operator must, within 45 days of becoming aware of the occurrence of a disqualifying event, give notice in writing to the Authority specifying the particular circumstances leading to the disqualifying event and of the manner and time within which the operator intends to rectify the default.

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

(5) An operator who fails to notify the Authority as required by subsection (2) or (3) is liable to a default fine of \$5,000 and a further fine of \$500 for every day that the fund is in default.

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

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

[Section 9A inserted by 2013 : 28 s. 10 effective 3 October 2013; Section 9A amended by 2018 : 63 s. 17 effective 31 December 2018]

Registered fund may apply to be authorised

10 (1) An investment fund registered under sections 6, 6B, 8 or 8C may make an application under section 12 for authorisation.

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

(a) such fund shall cease to be a registered fund; and

(b) the provisions of this Act shall apply to the fund as an authorised fund.

[Section 10 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 10 subsection (1) repealed and replaced by 2019 : 46 s. 15 effective 1 January 2020]

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Revocation of registration of a registered fund other than by way of consent

10A The Authority may revoke the registration of a registered fund, if it appears to the Authority that—

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

[Section 10A inserted by 2019 : 46 s. 16 effective 1 January 2020]

Procedure on revocation of registration

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

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

[Section 10B inserted by 2019 : 46 s. 16 effective 1 January 2020]

Request for cancellation of registration

10C (1) A registration may be cancelled by the Authority at the request in writing of the operator of the registered fund.

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

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

[Section 10C inserted by 2019 : 46 s. 16 effective 1 January 2020]

Registered Funds: exemption from requirements

10D (1) The Authority may, on the application of the operator of a registered fund, grant a modification of or an exemption from any requirement of sections 6(2A), 6(2B), 6(2C), 6A(2), 7(2) or 8B(2) if it is satisfied that—

- (a) appropriate arrangements are in place to safeguard the interests of participants in the fund;

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

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

[Section 10D inserted by 2019 : 46 s. 16 effective 1 January 2020]

Authorisation

Classes of funds

- 11 (1) The Authority may authorise funds in the following classes—
- (a) institutional fund;
 - (b) administered fund;
 - (c) specified jurisdiction fund;
 - (d) standard fund.
- (2) A fund qualifies for classification as an institutional fund if—
- (a) pursuant to its constitution and offering document—
 - (i) it is only open to qualified participants; or
 - (ii) it requires each participant to invest a minimum amount of \$100,000 in the fund; and
 - (b) it has an officer, trustee or representative resident in Bermuda who is a person who has access to the books and records of the investment fund.
- (3) In this section “qualified participants” has the meaning given in section 9(2).
- (4) A fund qualifies for classification as an administered fund if it is a fund whose administrator is licensed under Part III of this Act and—
- (a) pursuant to its constitution and offering document it requires participants to invest a minimum amount of \$50,000 in the fund; or
 - (b) it is listed on a stock exchange recognized by the Authority for the purposes of this section.
- (5) A fund qualifies for classification as a specified jurisdiction fund—
- (a) if the Minister by Order recognizes—
 - (i) the jurisdiction, outside Bermuda, in which the fund operates; and
 - (ii) a particular law, or particular set of laws, of such jurisdiction as applicable to such fund; and

(b) if the fund satisfies the requirements set out in the fund rules made by the Authority relating to that class of fund and that jurisdiction.

(6) An Order made under subsection (5) is subject to the negative resolution procedure.

(7) A fund qualifies for classification as a standard fund if it does not fall within any other class of fund.

(8) The Minister acting on the advice of the Authority may, by order subject to negative resolution procedure, amend the qualifications for any class of fund, and may add additional classes of funds.

[Section 11 amended by 2011 : 42 s. 2 effective 18 December 2011; Section 11 amended by 2019 : 46 s. 17 effective 1 January 2020]

Applications for authorisation

12 (1) An application for the authorisation of a fund must be made to the Authority by the operator or proposed operator of the fund.

(2) The application—

- (a) must be made in such manner as the Authority may direct;
- (b) must state the corporate name and registered or principal office of each service provider of the fund;
- (c) must be accompanied with a certificate signed by the operator to the effect that the fund complies, or will on authorisation comply, with section 14;
- (d) must contain or be accompanied with such information as the Authority may reasonably require for the purpose of determining the application; and
- (e) must be accompanied by an application fee.

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The Authority may require an applicant to present information which it is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

(5) Different directions may be given, and different requirements imposed, in relation to different applications.

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

Authorisation

13 (1) If, on an application under section 12 in respect of a fund, the Authority is satisfied that the fund complies with the requirements of section 14, the Authority may grant the application for the fund to be authorised in the appropriate class.

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

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

(4) An operator may apply to the Authority for a change of classification of an authorised fund.

(5) Section 12 (Applications for authorisation) applies to an application under subsection (4) as it applies to an application for authorisation.

(6) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of authorisation set out in section 14, the Authority may reclassify the fund.

Requirements for authorisation

14 (1) The requirements referred to in section 13(1) are as follows —

- (a) the fund shall prepare annual financial statements which will be audited;
- (b) the fund has appointed, or will on authorisation appoint, an investment manager, an auditor and a fund administrator;
- (c) the fund property has been or will on authorisation be entrusted to a custodian;
- (d) the person appointed as custodian of the fund must—
 - (i) if incorporated in Bermuda, be licensed under the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 or the Investment Business Act 2003;
 - (ii) if incorporated elsewhere, be subject to regulatory supervision equivalent to that imposed by or under the Acts referred to in subparagraph (i); and
 - (iii) be independent of the operator and—
 - (A) in the case of a company fund, of the persons appointed as directors of the company;
 - (B) in the case of a partnership fund, of the partners;
 - (C) in the case of an LLC fund, of the managers;
- (e) the operator of the fund, its officers and its proposed service providers are fit and proper persons to act as such;

- (f) in relation to the operator and service providers, the combination of their experience and expertise is such as is appropriate for the purposes of the fund; and
 - (g) the fund complies, or will on authorisation, comply with the requirements of fund rules and fund offering document rules.
- (2) The person appointed as auditor of the fund must be independent of the operator of the fund and its service providers.
- (3) The constitution of a fund must include provisions for the following—
- (a) the rights and restrictions attaching to the units;
 - (b) the terms for valuation of assets and liabilities;
 - (c) the manner of calculation of the net asset value of each unit and the issue price and redemption price of units;
 - (d) the terms upon which units are issued;
 - (e) the terms upon which units may be transferred or converted, if applicable;
 - (f) the terms upon which units may be redeemed and the circumstances in which redemptions may be suspended; and
 - (g) the investment restrictions or borrowing limitations, if any.
- (4) The Authority may on the application of the operator of a fund disapply the requirement that the custodian must—
- (a) be independent of the operator of a fund;
 - (b) in the case of a company fund, be independent of the directors or any one or more of them;
 - (c) in the case of a partnership fund, be independent of the partners, or any one or more of them; or
 - (d) in the case of an LLC fund, be independent of the managers, or any one or more of them,

in any particular case where the Authority determines that it is appropriate to do so.

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

[Section 14 subsection (1) repealed and substituted by 2010 : 61 s. 5 effective 22 December 2010; subsections (1) and (4) amended by 2016 : 40 s. 258 effective 1 October 2016; Section 14 amended by 2019 : 46 s. 18 effective 1 January 2020]

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Authority may exempt from requirement for fund property to be entrusted to a custodian

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

[Section 15 amended by 2018 : 69 s. 4 effective 1 January 2019]

List of authorised, registered and designated funds to be on Authority's website

16 The Authority shall establish and maintain a list of all investment funds authorised, registered or designated by it to operate in or from within Bermuda on its website at www.bma.bm.”.

[Section 16 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 16 repealed and substituted by 2019 : 46 s. 19 effective 1 January 2020]

Fees

Fees

- 17 (1) The operator of a fund shall pay to the Authority—
- (a) on the making of an application for authorisation;
 - (aa) on the giving of notice of a proposal for which an approval is required under section 25(2);
 - (b) on the making of an application for a change of classification;
 - (ba) on the initial filing of the application for registration in accordance with sections 6, 6B, 8A and 8C, in relation to a registered fund;
 - (bb) *[repealed by 2018 : 63 s. 17]*
 - (bc) on the making of an application under section 10D, 14(4), 14(5), 15 or 40(1);
 - (bd) on the filing of notification under section 5A;
 - (c) annually thereafter on or before 31 March,

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

(2) Different fees may be prescribed for different classes of investment funds.

(3) If an operator of a fund fails to pay the prescribed fee as provided in subsection (1), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(4) The Authority may recover any fee and any penalty fee as a civil debt owing to it in any court of competent jurisdiction.

- (5) The Authority may, where it has made a determination that it is appropriate—
- (a) exempt an operator from the requirement to pay any fee under this section, as may be prescribed under the Bermuda Monetary Authority Act 1969; or
 - (b) reduce any fee required to be paid by an operator under this section by such amount as it considers appropriate, as may be prescribed under the Bermuda Monetary Authority Act 1969.

(6) In granting an exemption from, or reduction of, any fee payment under subsection (5), the Authority may impose any condition on such exemption or reduction, as it may determine appropriate.

(7) The Authority shall not grant an exemption from, or reduction of, any fee payment under subsection (5) unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the business carried on by the operator.

[Section 17 subsection (1)(aa) inserted by 2010 : 2 s. 5 effective 25 February 2010; Section 17 amended by 2010 : 58 s. 8 effective 1 January 2011; Section 17 subsections (1)(ba) and (1)(bb) inserted by 2013 : 28 s. 11 effective 3 October 2013; Section 17 subsection (1) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 17 subsection (1)(bc) inserted by 2018 : 69 s. 4 effective 1 January 2019; Section 17 amended by 2019 : 46 s. 20 effective 1 January 2020; Section 17 subsection (1)(bc) amended by 2021 : 4 s. 10 effective 21 January 2021; Section 17 subsections (5), (6) and (7) inserted by 2021 : 4 s. 10 effective 21 January 2021]

Custodians

Custodian may entrust property to third party

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

Title and Transfer of Units

The registrar

- 19 (1) Every authorised fund and registered fund shall appoint a registrar.
- (2) The registrar shall establish and maintain in Bermuda, in a legible form or in a form capable of being reproduced in a legible form a register of the participants in the authorised or registered fund in accordance with the provisions of the following sections and fund rules.

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(3) The registrar may also appoint such person as it considers fit to be a sub-registrar or branch registrar to carry out on its behalf any or all of its obligations.

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

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

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

[Section 19 subsections (1), (2) and (5) amended by 2021 : 4 s. 11 effective 21 January 2021]

The register

20 (1) There shall be entered in the register—

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

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

(2) The registrar shall—

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

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

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

Application of sections 20, 22 to 24 to company funds

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

[Section 21 amended by 2019 : 46 s. 21 effective 1 January 2020]

Identification procedures

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

The register as evidence of title

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

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

Inspection of register and copies of entries

24 (1) Except where otherwise provided in a fund's constitution or offering document, the registrar shall make the register available in Bermuda for inspection by or on behalf of the participants free of charge at all times during ordinary office hours but the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the registrar may from time to time determine.

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

[Section 24 subsection (1) amended by 2019 : 46 s. 22 effective 1 January 2020]

Changes to Investment Funds

Notice of certain changes to be given to Authority

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

- (a) make a material change in the authorised fund's offering document;
- (b) replace a service provider of the authorised fund;
- (c) in relation to an authorised unit trust fund, replace a trustee of the unit trust or appoint any additional trustee or decrease the number of trustees;
- (d) in relation to an authorised company fund, replace a director of the company or appoint any additional director or decrease the number of directors in post;
- (e) in relation to an authorised partnership fund, replace a general partner of the fund;
- (f) in relation to an authorised company fund, reconstruct or amalgamate the company;
- (g) wind up the affairs of the authorised fund; and

(h) in relation to an LLC fund, replace a manager of the limited liability company or appoint any additional manager or decrease the number of managers in post.

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

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

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

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

(6) *[repealed]*

[Section 25 subsection (1) amended by 2016 : 40 s. 258 effective 1 October 2016; subsection (6) repealed by 2016 : 32 s. 19 effective 28 October 2016; Section 25 subsection (1) amended by 2019 : 46 s. 23 effective 1 January 2020; Section 25 subsection (4) amended by 2021 : 4 s. 12 effective 21 January 2021]

Reports to the Authority

Reports to the Authority

26 (1) The operator of an authorised fund shall—

(a) at such time or times or at such intervals or in respect of such period or periods as may be required, furnish the Authority with a report on such activities of the fund as the Authority may reasonably require for the performance of its functions under this Act;

(b) submit to the Authority within six months of its financial year end—

(i) a statement in such form as the Authority may direct confirming that the fund has at all times during the preceding financial year been in compliance with the provisions of this Act, fund rules and prospectus rules applicable to it;

(ii) (in the event that the fund has not been in such compliance) a statement setting out particulars of the breach.

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

(a) within 14 days of the occurrence of any specified matter notify the Authority of its occurrence and the circumstances applicable thereto; and

(b) make a report in writing of such event to the operator;

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

(3) The specified matters are—

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

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

(4) For the purposes of this section —

“reportable event” means an event in relation to which a report is required under subsection (2);

“materially” has the meaning given in section 25(5).

(5) *[repealed]*

[Section 26 subsection (1)(b) amended by 2016 : 32 s. 4 and subsection (5) repealed by 2016 : 32 s. 19 effective 28 October 2016]

Revocation of Authorisation

Revocation of authorisation other than by consent

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

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

Procedure on revocation of authorisation

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

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

Request for revocation of authorisation

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

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

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

Powers of Intervention

Directions to an authorised, registered or designated fund

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

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

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

- (a) the authorised or registered fund and any of its service providers or Overseas Fund;
- (b) any director or controller of any service provider or Overseas Fund;
- (c) any operator of an authorised or registered fund; or
- (d) any person exercising influence over any operator of an authorised or registered fund, or any of its service providers or Overseas Fund by virtue of provisions contained in the authorised or registered fund's constitution; or
- (e) any person employed by or associated, for the purposes of the business of the authorised or registered fund, with the authorised or registered fund, or any of its service providers or Overseas Fund.

(4) A direction under this section may -

- (a) require the operator of an authorised, registered or overseas fund to cease communicating an invitation or inducement to the public to participate in the authorised or registered fund; or
 - (b) require the operator of an authorised, registered or overseas fund to cease the issue, or redemption, or both, of units.
- (5) The Authority may, on its own initiative or on the application of the operator revoke or vary a direction given under this section if it appears to the Authority—
- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
 - (b) in the case of variation, that the direction should take effect or continue in force in a different form.
- (6) It shall be an offence for a person to fail without reasonable excuse to comply with a direction given under this section.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine of \$25,000.

[Section 30 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 30 amended by 2019 : 46 s. 24 effective 1 January 2020]

Notice of direction

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

[Section 31 repealed and substituted by 2016 : 32 s. 5 effective 28 October 2016]

Directions in cases of urgency - authorised, registered or designated

- 31A (1) No notice need be given under section 31 in respect of the giving of a direction in any case in which the Authority considers that the direction should be given as a matter of urgency.
- (2) In any such case, the Authority may by written notice to the operator of the fund impose a direction.
- (3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (4) and section 55.
- (4) The operator of a fund to which a notice is given under this section of the giving of a direction may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Authority.
- (5) After giving a notice under subsection (2), giving a direction and taking into account any representations made in accordance with subsection (4), the Authority shall decide whether—

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

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

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

[Section 31A inserted by 2016 : 32 s. 6 effective 28 October 2016; Section 31A section heading deleted and substituted by 2019 : 46 s. 25 effective 1 January 2020]

Procedure: refusal to revoke or vary direction

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

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

it must give the applicant a warning notice.

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

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

Procedure on revocation of direction and grant of request for variation

33 (1) If the Authority decides on its own initiative to revoke a direction under section 30 it must give separate written notices of its decision to the operator of the authorised or registered fund and its service providers or Overseas Fund.

(2) If on an application made under section 30(5) for a direction to be revoked or varied, the Authority decides to revoke or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

[Section 33 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 33 subsection (1) amended by 2019 : 46 s. 26 effective 1 January 2020]

Warning notices

34 *[Repealed by 2016 : 32 s. 7]*

[Section 34 repealed by 2016 : 32 s. 7 effective 28 October 2016]

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Decision notices

35 *[Repealed by 2016 : 32 s. 7]*

[Section 35 repealed by 2016 : 32 s. 7 effective 28 October 2016]

Winding up on petition from the Authority

36 (1) The Authority may present a petition to the Supreme Court for the winding up of a fund which—

- (a) having been authorised or registered under this Act has had its authorisation revoked or been disqualified from registration; or
- (b) is operating, or has been operating, as an investment fund in contravention of any provision of this Act.

(2) On such a petition, the Supreme Court may wind up the fund if it is of the opinion that it is just and equitable that the fund be wound up.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company fund under this section.

(4) Part 13 (Dissolution) of the Limited Liability Company Act 2016 shall apply to the winding up of an LLC fund under this section.

[Section 36 subsection (4) inserted by 2016 : 40 s. 258 effective 1 October 2016; Section 36 subsection (1)(a) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 36 subsection (3) amended by 2019 : 46 s. 27 effective 1 January 2020]

Overseas Fund: notification of windup

36A (1) The operator of an Overseas Fund must, within 14 days of the winding up of the fund, notify the Authority in writing.

(2) The Authority shall, within 30 days upon being notified by the operator of an Overseas Fund under subsection (1), remove the fund from the list of investment funds maintained by the Authority.

[Section 36A inserted by 2019 : 46 s. 28 effective 1 January 2020]

Rules

Fund rules

37 (1) The Authority may make rules (“fund rules”) as to—

- (a) the constitution, management and operation of authorised or registered funds;
- (b) the powers, duties, rights and liabilities of—
 - (i) the operators of an authorised or registered fund;
 - (ii) any of its service providers;
 - (iii) the directors of an authorised or registered company fund;

- (c) the rights of the participants in any such authorised or registered fund; and
 - (d) the winding up of any authorised or registered fund; and
 - (e) prudential requirements of the fund and obligations of the fund operator with respect to its services providers.
- (2) Fund rules may, in particular, make provision—
- (a) as to the issue and redemption of the units by an authorised or registered fund;
 - (b) as to the expenses of an authorised or registered fund and the means of meeting them;
 - (c) for the appointment, removal, powers and duties of a service provider of an authorised or registered fund;
 - (d) requiring any of the service providers of an authorised or registered fund to be resident, or have a place of business in Bermuda;
 - (e) for restricting or regulating the investment and borrowing powers exercisable in relation to an authorised or registered fund;
 - (f) requiring the keeping of records whether in Bermuda or elsewhere, with respect to the transactions and financial position of an authorised or registered fund and for the inspection of those records; and
 - (g) requiring the preparation of periodical reports with respect to the fund and the provision of those reports to the participants and to the Authority.
 - (h) obligations with respect to depositary functions and safekeeping obligations;
 - (i) for additional requirements related to—
 - (i) reports to the Authority;
 - (ii) public disclosure;
 - (iii) disclosure to investors.

(3) Fund rules may make different provisions for different classes of authorised or registered funds and shall be published in such manner as the Authority may determine.

[Section 37 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 37 subsection (1)(b)(iii) amended by 2019 : 46 s. 29 effective 1 January 2020]

Fund offering document rules

38 (1) The Authority may make fund offering document rules requiring the operator of an authorised or registered fund—

- (a) to submit the offering document to the Authority; and

(b) to publish the offering document or make it available to the public on request.

(2) “Fund offering document” means an offering document containing particulars in such form, containing such information about the fund and complying with such requirements as are specified in fund offering document rules.

(3) Fund offering document rules may require the operator of an authorised or registered fund to submit, and to publish or make available, a revised or further fund offering document if there is a significant change affecting any matter –

(a) which is contained in a fund offering document previously published or made available; and

(b) whose inclusion in the offering document was required by the rules.

(4) Fund offering document rules may require the operator of an authorised or registered fund to submit, and to publish or make available, a revised fund offering document if—

(a) a significant new matter arises; and

(b) the inclusion of information in respect of that matter would have been required in a previous offering document if it had arisen when that offering document was prepared.

(5) Fund offering document rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any fund particulars, of compensation to any qualifying person who has suffered loss as a result of—

(a) any untrue or misleading statement in the particulars; or

(b) the omission from them of any matter required by the rules to be included.

(6) “Qualifying person” means a person who has become or agreed to become a participant in the fund.

(7) Fund offering document rules do not affect any liability which any person may incur apart from the rules.

(8) Fund offering document rules made under this section may make different provisions for different classes of funds and shall be published in such manner as the Authority may determine.

[Section 38 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 38 amended by 2019 : 46 s. 30 effective 1 January 2020]

Disapplication of the Statutory Instruments Act 1977

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

Modification or waiver of rules

40 (1) The Authority may, on the application or with the consent of any person to whom any fund rules or fund offering document rules apply, direct that any of such rules—

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

[Section 40 subsection (1) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 40 subsection (1) amended by 2019 : 46 s. 31 effective 1 January 2020]

PART III

FUND ADMINISTRATORS

Restriction on carrying on fund administration without a licence

41 *[Repealed by 2019 : 32 s. 69]*

[Section 41 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Application for a licence

42 *[Repealed by 2019 : 32 s. 69]*

[Section 42 repealed by 2019 : 32 s. 69 effective 31 December 2019]

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Grant and refusal of application for a licence

43 *[Repealed by 2019 : 32 s. 69]*

[Section 43 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Form, display and registration of licences

44 *[Repealed by 2019 : 32 s. 69]*

[Section 44 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Fees

45 *[Repealed by 2019 : 32 s. 69]*

[Section 45 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Notification of new or increased control

45A *[Repealed by 2019 : 32 s. 69]*

[Section 45A repealed by 2019 : 32 s. 69 effective 31 December 2019]

Objection to new or increased control

45B *[Repealed by 2019 : 32 s. 69]*

[Section 45B repealed by 2019 : 32 s. 69 effective 31 December 2019]

Objection to existing shareholder controller

45C *[Repealed by 2019 : 32 s. 69]*

[Section 45C repealed by 2019 : 32 s. 69 effective 31 December 2019]

Contraventions by shareholder controller

45D *[Repealed by 2019 : 32 s. 69]*

[Section 45D repealed by 2019 : 32 s. 69 effective 31 December 2019]

Restriction on and sale of shares

45E *[Repealed by 2019 : 32 s. 69]*

[Section 45E repealed by 2019 : 32 s. 69 effective 31 December 2019]

Notification of change of director, senior executive and controller

46 *[Repealed by 2019 : 32 s. 69]*

[Section 46 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Statement of compliance

47 *[Repealed by 2019 : 32 s. 69]*

[Section 47 repealed by 2019 : 32 s. 69 effective 31 December 2019]

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Offences

48 [Repealed by 2019 : 32 s. 69]

[Section 48 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Codes of conduct

49 [Repealed by 2019 : 32 s. 69]

[Section 49 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Surrender of licence

50 [Repealed by 2019 : 32 s. 69]

[Section 50 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Directions and Revocations

Directions to protect interests of clients

51 [Repealed by 2019 : 32 s. 69]

[Section 51 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Directions in cases of urgency - fund administrator

51A [Repealed by 2019 : 32 s. 69]

[Section 51A repealed by 2019 : 32 s. 69 effective 31 December 2019]

Revocation of licence

52 [Repealed by 2019 : 32 s. 69]

[Section 52 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Notice of direction or revocation of licence

53 [Repealed by 2019 : 32 s. 69]

[Section 53 repealed by 2019 : 32 s. 69 effective 31 December 2019]

Winding up on petition from the Authority

54 [Repealed by 2019 : 32 s. 69]

[Section 54 repealed by 2019 : 32 s. 69 effective 31 December 2019]

PART IV

APPEAL TRIBUNALS

Rights of appeal

55 (1) An operator of an authorised, registered or designated fund which is aggrieved by a decision of the Authority—

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

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

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

(3) *[Repealed by 2019 : 32 s. 69]*

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

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

(4) *[Repealed by 2019 : 32 s. 69]*

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

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

(6) The revocation of an authorisation pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (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.

[Section 55 subsection (4A) inserted by 2010 : 61 s. 7 effective 22 December 2010; subsections (1) and (3) amended, subsections (3A) and (3B) inserted and subsection (5) repealed and substituted by 2016 : 32 s. 12 effective 28 October 2016; Section 55 subsection (1) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 55 amended by 2019 : 46 s. 32 effective 1 January 2020; Section 55 subsections (3) and (4) repealed, and subsection (6) amended by 2019 : 32 s. 69 effective 31 December 2019]

Constitution of Tribunal

56 (1) A Tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(2) The Chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(3) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(4) The Minister shall appoint a panel of not less than six persons three of whom shall have experience of investment fund business and three of whom shall have experience of fund administration, to serve as members of appeal Tribunals.

(5) A person shall not be eligible for appointment as chairman, deputy chairman or member of a Tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority.

(6) There shall be paid to the members of the Tribunal such remuneration and such allowances as the Minister may determine, after consultation with the Minister of Finance when another Minister has been appointed to administer this Act.

[Section 56 subsection (6) inserted by 2017 : 38 s. 8 effective 30 October 2017]

Determination of appeals

57 (1) Where an appeal is brought under the provisions of this Act the chairman or as the case may be the deputy chairman shall nominate two other members from the panel of members, who together with him shall constitute the Tribunal which shall determine the appeal.

(2) On an appeal under section 55 the question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(3) On any such appeal the Tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

(a) where the decision was to impose or vary any direction the Tribunal may direct the Authority to impose different directions or to vary them in a different way; or

(b) where the decision was to revoke an authorisation or a licence the Tribunal may direct the Authority to issue directions instead.

(4) Notice of a Tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the Tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

[Section 57 subsection (2) amended by 2016 : 33 s. 6 effective 1 January 2017]

Costs, procedure and evidence

58 (1) A Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by an operator of an investment fund and a service provider, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (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—

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- (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.

[Section 58 subsection (2)(c) amended by 2019 : 32 s. 69 effective 31 December 2019]

Further appeals on a point of law

59 (1) An authorised or registered fund or other person who has appealed to a Tribunal may appeal to the Supreme Court on any question of law arising from the decision of the appeal by the Tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the Tribunal for re-hearing and determination by it.

(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.

[Section 59 subsection (1) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 59 subsection (1) amended by 2019 : 32 s. 69 effective 31 December 2019]

PART V

INFORMATION GATHERING AND INVESTIGATION

INFORMATION GATHERING

Power to obtain information

60 The Authority may by notice in writing served on—

- (a) the operator of an authorised or registered fund; or
- (b) any of its service providers;
- (c) *[Repealed by 2019 : 32 s. 69]*

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

[Section 60(a) amended by 2018 : 63 s. 17 effective 31 December 2018; Section 60 amended by 2019 : 32 s. 69 effective 31 December 2019]

Power to require production of documents

61 (1) The Authority may—

- (a) by notice in writing served on the operator of an authorised or registered fund require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

- (b) authorise an officer, servant or agent of the Authority on producing such evidence of his authority, to require such person to provide him forthwith with such information, or to produce to him such documents, as he may specify;

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

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

(3) The power under this section to require the operator of an authorised or registered investment fund 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 the operator of that authorised or registered investment fund or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the operator of the authorised or registered investment fund or licensed fund administrator 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 participants or potential participants of an authorised or registered investment fund (“A”) to do so, it may also exercise the powers conferred by section 60 and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been—

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

(5) The Authority may, by notice in writing, served on any person who is or is to be a controller or officer of an operator of an authorised or registered investment fund require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(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.

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(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.

[Section 61 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 61 amended by 2019 : 32 s. 69 effective 31 December 2019]

Right of entry to obtain documents

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

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

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

Communication with Authority

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

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

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

[Section 63 amended by 2018 : 63 s. 17 effective 31 December 2018]

Investigations

Investigations on behalf of the Authority

64 (1) If it appears to the Authority desirable to do so in the interests of participants or potential participants of an authorised or registered fund, 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 authorised or registered fund or licensed fund administrator's business or any particular aspect of it; or
- (b) the ownership or control of the operator of an authorised or registered fund;

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

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

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

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

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

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

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by an operator of an authorised or registered fund 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 person under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(7) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an authorised or registered fund 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.

[Section 64 subsection (4) amended and subsection (6A) inserted by 2016 : 32 s. 13 effective 28 October 2016; Section 64 amended by 2018 : 63 s. 17 effective 31 December 2018; Section 64 amended by 2019 : 32 s. 69 effective 31 December 2019]

Investigations of suspected contraventions

64A (1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 5 or section 41;
- (b) a private fund may not qualify for registration under section 6;
- (c) a professional fund may have failed to satisfy the criterion of registration required by section 9;
- (d) the operator of an authorised fund, a service provider or a fund administrator may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act or rules made by the Authority under section 37;
- (e) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 67E.

(2) The power conferred by subsection (1)(d) may be exercised in relation to a former authorised or registered fund or, as the case may be, fund administrator, but only in relation to—

- (a) business carried on at any time when the fund or fund administrator was authorised, registered or licensed, as the case may be, under this Act; or

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- (b) the ownership or control of a fund or fund administrator at any time when it was authorised, registered or licensed under this Act, as the case may be.

(3) In this section, “regulated activity” has the meaning given in section 67E.

[Section 64A inserted by 2016 : 32 s. 14 effective 28 October 2016; Section 64A amended by 2018 : 63 s. 17 effective 31 December 2018]

Power to require production of documents

65 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 64A (“the person under investigation”) or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.

(1A) The Authority may by notice in writing require every person who is or was a director, controller, partner, senior executive, officer, employee, agent, banker, auditor, accountant, service provider or barrister and attorney of an authorised fund, registered fund or licensed fund administrator which is under investigation by virtue of subsection (1)—

- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation and which are in his custody or power;
- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or

documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

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

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

(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (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.

[Section 65 section heading deleted and substituted, subsection (1) repealed and substituted and subsections (1A) and (7) inserted by 2016 : 32 s. 15 effective 28 October 2016; Section 65 subsection (1A) amended by 2018 : 63 s. 17 effective 31 December 2018]

Powers of entry

66 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 64A—

- (a) that a person has failed to comply with a notice served on him under section 65;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;

- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of or extracts from any such documents;
 - (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 65(1).
- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
 - (b) until the conclusion of proceedings if, within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 65(1).
- (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.

[Section 66 subsection (1) repealed and substituted and subsection (4) amended by 2016 : 32 s. 16 effective 28 October 2016]

Obstruction of investigations

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

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

- (2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both.

PART VA
DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

67A (1) Except as provided in sections 9A, 17 and 45, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a civil penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a civil penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

[Section 67A inserted by 2016 : 32 s. 17 effective 28 October 2016]

Civil penalties procedure

67B (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.

[Section 67B inserted by 2016 : 32 s. 17 effective 28 October 2016]

Public censure

67C (1) If the Authority considers that the fund operator or a fund administrator has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

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

[Section 67C inserted by 2016 : 32 s. 17 effective 28 October 2016]

Public censure procedure

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

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

[Section 67D inserted by 2016 : 32 s. 17 effective 28 October 2016]

Prohibition orders

67E (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by the operator of a fund, a person who is licensed by the Authority under this Act or a person performing functions in relation to the activities of a service provider ('a regulated person').

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

(3) A prohibition order may relate to—

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

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

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

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

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

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is a registered person 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.

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(10) In this section—

“exempted person” *[repealed by 2018 : 63 s. 17]*

“registered person” means a person who is registered under any of the provisions of this Act;

“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.

[Section 67E inserted by 2016 : 32 s. 17 effective 28 October 2016; Section 67E amended by 2018 : 63 s. 17 effective 31 December 2018]

Prohibition Orders: procedure

67F (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.

[Section 67F inserted by 2016 : 32 s. 17 effective 28 October 2016]

Applications relating to prohibition orders: procedures

67G (1) This section applies to an application for the revocation or variation of a prohibition order.

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

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

[Section 67G inserted by 2016 : 32 s. 17 effective 28 October 2016]

Determination of applications for variation etc.

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

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

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

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

[Section 67H inserted by 2016 : 32 s. 17 effective 28 October 2016]

Injunctions

Injunctions

67I (1) If, on the application of the Authority, the Supreme Court (the "Court") is satisfied—

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

the Court may make an order restraining the contravention.

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

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

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

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

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

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

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

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

[Section 67I inserted by 2016 : 32 s. 17 effective 28 October 2016]

PART VB
NOTICES

Warning notices

67J (1) A warning notice must—

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

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

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

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

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

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

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

[Section 67J inserted by 2016 : 32 s. 17 effective 28 October 2016]

Decision notices

67K (1) A decision notice must—

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

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 67J was given and, if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 67L.

(3) A decision notice about the giving of a direction or variation under section 30 must set out the terms of the direction or variation.

(4) A decision notice about the giving of a direction under section 51 must set out the terms of the direction.

(5) A decision notice about the imposition of a civil penalty under section 67A must state the date of payment.

(6) A decision notice about public censure under section 67C must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(7) A decision notice about a prohibition order made under section 67F must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(8) A decision notice shall state the day on which it is to take effect.

(9) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(10) The Authority may give a further decision notice as a result of subsection (9) only if the person to whom the original notice was given consents.

(11) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (9).

[Section 67K inserted by 2016 : 32 s. 17 effective 28 October 2016]

Conclusion of actions

Notices of discontinuance

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

(2) A notice of discontinuance must identify the action which is being discontinued.

[Section 67L inserted by 2016 : 32 s. 17 effective 28 October 2016]

Publication

Publication

67M (1) Subject to sections 67C and 67E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1)—

(a) before notifying the person concerned; and

(b) pending an appeal under section 55.

[Section 67M inserted by 2016 : 32 s. 17 effective 28 October 2016]

PART VI

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

68 (1) Except as provided by sections 69, 70 and 71—

(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and

(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid;

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

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

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

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

(b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

Disclosure for facilitating the discharge of functions of the Authority

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

(2) Without prejudice to the generality of subsection (1), section 68 does not preclude the disclosure of information by the Authority to the auditor or accountant of an authorised or registered fund, if it appears to the Authority that disclosing the information

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would enable or assist the Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the participants or potential participants.

[Section 69 subsection (2) amended by 2018 : 63 s. 17 effective 31 December 2018]

Disclosure for facilitating the discharge of functions by other authorities

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

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

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

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

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;

(b) in connection with any other proceedings arising out of this Act.

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

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

Information supplied to the Authority by relevant overseas authority

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

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

(a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or

(b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section—

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

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

PART VII

MISCELLANEOUS AND SUPPLEMENTAL

False documents or information

- 72 (1) Any person who, for any purposes of this Act—
- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
 - (b) signs a document which is false or misleading in a material respect; or
 - (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect;
- is guilty of an offence and is liable—
- (i) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
 - (ii) on conviction on indictment to a fine of \$100,000 or to imprisonment for four years or to both.
- (2) It shall be a defence for a person charged with an offence under subsection (1) to prove—
- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
 - (b) if not an individual, that every person acting on its behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

Offences by companies

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

[Section 73 subsections (1) and (2) amended by 2016 : 40 s. 258 effective 1 October 2016]

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Criminal conviction or civil penalties

73A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 67A in relation to the same matter.

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

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

[Section 73A inserted by 2016 : 32 s. 18 effective 28 October 2016]

Section 80 of the Criminal Jurisdiction and Procedure Act 2015 not to apply

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

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

[Section 74 headnote and subsection (1) amended by 2015 : 38 s. 91 effective 6 November 2015]

Repeals

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

Transitionals

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

Classification under repealed provisions	Reclassification under this Act
Bermuda Standard Scheme	Standard Scheme
Bermuda Institutional Scheme	Institutional Scheme

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

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

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

(5) Every fund exempted by or under regulation 3A of the repealed provisions shall on the commencement of this Act be exempted under this Act, and the Authority shall enter particulars of such exemption in the register established under section 16.

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(6) Upon the registration of such exemption, the provisions of this Act shall apply to such fund as if it applies to funds exempted under section 7 pursuant to an application made under section 8.

(7) The operator of a fund to which subsections (1) and (5) apply may, within a period of 6 months from the date of commencement of this Part, apply to the Authority for a change of classification.

(8) Sections 13(5) and (6) apply to an application under subsection (7) as they apply to an application under section 13(4).

(9) Where an application is made under subsection (7) no fee shall be payable under section 17.

(10) A company which, on the day of commencement of this Part, is carrying on fund administration business may continue to carry on such business without a licence under Part III of this Act—

- (a) for a period not exceeding twelve months beginning with that date; and
- (b) if within that period application is made for a licence, until that application is disposed of or withdrawn.

Consequential amendments

77 (1) The Bermuda Monetary Act 1969 is amended—

- (a) by repealing sections 1(2)(a), 1(3) and 29(1)(ca);
- (b) in section 21(1)(d), by deleting “collective investment schemes” and substituting “investment funds as defined in section 2 of the Investment Funds Act 2006”;
- (c) in the Third Schedule, by inserting the following two entries—
 - (i) “Investment funds as defined in section 2 of the Investment Funds Act 2006”;
 - (ii) “Fund administrators as defined in section 2 of the Investment Funds Act 2006”;
- (d) in the Fourth Schedule—
 - (i) by repealing paragraphs (1) and (2) under the heading “Bermuda Monetary Authority Act 1969”;
 - (ii) by inserting the following new item in its alphabetical place—

“Investment Funds Act 2006

Application fee authorisation (all funds)	\$ 750.00
Reclassification fee (all funds)	\$ 750.00
Annual fee -	
Standard fund	\$1,250.00
Administered fund	\$ 750.00

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Institutional fund	\$ 750.00
Application fee exempted funds	\$ 500.00
Annual fee exempted funds	\$ 500.00
Application fee fund administrator's licence	\$7,500.00
Annual fee (fund administrator)	\$7,500.00".

(2) The Investment Business Act 2003 is amended in the First Schedule, Part I, by deleting "unit trust scheme within the meaning of the Stamp Duties Act 1976" and substituting "investment fund as defined in section 2 of the Investment Funds Act 2006";

(3) The Trusts (Regulation of Trust Business) Exemption Order 2002 is amended—

- (a) in paragraph 7(2)(c), by deleting "collective investment scheme approved by the Authority under the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998" and substituting "investment fund authorised under the Investment Funds Act 2006";
- (b) in paragraph 7(2)(d), by deleting "collective investment scheme exempted under regulation 3(2) or 3A of the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998" and substituting "investment fund exempted under section 7 of the Investment Funds Act 2006".

SCHEDULE

(Section 5(2A))

MINIMUM CRITERIA FOR LICENSING

Operators, officers and service providers to be fit and proper persons

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

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

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

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

Business to be conducted in prudent manner

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

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

- (a) this Act;
- (b) any other enactment, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti- Terrorism (Financial and Other

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Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti- Terrorist Financing) Regulations 2008;

(c) the code of conduct; and

(d) international sanctions in force in Bermuda.

[Schedule amended by 2010 : 61 s.8 effective 22 December 2010; amended by BR 5 / 2014 para. 2 effective 24 January 2014; amended by 2016 : 32 s. 19 effective 28 October 2016; Schedule repealed by 2019 : 32 s. 69 effective 31 December 2019; Schedule inserted by 2019 : 46 s. 33(1) effective 1 January 2020]

[Assent Date: 28 December 2006]

[Operative Date: 7 March 2007]

[Amended by:

2010 : 2
2010 : 61
2010 : 58
BR 5 / 2011
2011 : 42
2011 : 48
2013 : 28
BR 5 / 2014
2015 : 38
2016 : 40
2016 : 32
2016 : 33
2017 : 38
2018 : 63
2018 : 69
2018 : 65
2019 : 46
2019 : 32
2021 : 4]