



BERMUDA

INVESTMENT FUNDS (DEFINITION) ORDER 2019

BR 133 / 2019

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

Citation

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

Interpretation

2 In this Order—

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

“the Act” means the Investment Funds Act 2006;

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

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

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

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

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business (other than investment business, as that term is defined in section 3(1)(b) of the Investment Business Act 2003) and enters into the arrangements for commercial purposes related to that business;

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- (c) arrangements where each of the participants is a body corporate, trust, partnership or other similar entity, legal arrangement or person that is in the same group as the operator;
- (d) arrangements which are holding entities pursuant to regulation 14 of the Economic Substance Regulations 2018;
- (e) arrangements under which—
 - (i) the units of participants consist of instruments which confer rights (other than options to purchase) in respect of only one asset; or
 - (ii) each participant owns a part of the property but such property is not “pooled property” as referred to in section 3(3)(a) of the Act and is instead a property managed as referred to in section 3(3)(b) of the Act on the basis that each participant’s property is not separately bought and sold except when a person becomes or ceases to be a participant;
- (f) arrangements where—
 - (i) each of the participants is an employee or former employee (or spouse, widow, widower, child or step-child under the age of eighteen, of such employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and
 - (ii) the property to which the arrangements relate consists of money or securities in or of a member of that group;
- (g) arrangements where the entire contribution of each participant is a deposit (as such term is defined under section 3 of the Banks and Deposit Companies Act 1999) or sum—
 - (i) paid by an institution (as such term is defined under section 2 of the Banks and Deposit Companies Act 1999);
 - (ii) paid by one company to another at the time when the shareholder controller of both companies would be treated as the same person;
 - (iii) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of the person receiving it;
- (h) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons;
- (i) arrangements, other than open-ended investment funds, under which the rights or interests of the participants are transferable securities listed on a stock exchange;
- (j) arrangements the purpose of which is the provision of clearing services and which are operated by a recognized clearing house or recognized investment exchange;

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- (k) pension funds;
- (l) sovereign wealth funds;
- (m) securitization special purpose vehicles;
- (n) joint ventures;
- (o) debt issues;
- (p) contracts of insurance;
- (q) occupational pension schemes;
- (r) credit unions licensed under the Credit Unions Act 2010;
- (s) insurers registered under the Insurance Act 1978;
- (t) digital asset businesses licensed under the Digital Asset Business Act 2018.

[Paragraph 3(i) amended by 2021 : 4 s.13 effective 21 January 2021]

Commencement

4 This Order shall come into operation on 1 January 2020.

Made this 23rd day of December 2019

Acting Minister of Finance

[Operative Date: 01 January 2020]

[Amended by:
2021 : 4]