



## **NOTICE**

### **Investment Funds Amendment Act 2013**

In 2012, amendments were made to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001. Those amendments introduced a consistent and enhanced set of enforcement powers and associated procedures across all of those sectors. In addition, the Corporate Service Provider Act 2013 included the same set of uniform powers.

Similar amendments for the Funds sector have now been developed resulting in the Investment Funds Amendment Act 2013 (the 'Bill') a copy of which is attached.

This Bill in particular has had to consider a wider range of persons who may be subject to sanctions, including many of the service providers of a fund. In drafting the Bill, the Legal Team was required to consider how best to implement those sanctions.

A summary of the amendments is contained in the Explanatory Memorandum which may be found at the back of the Bill. Briefly, the Bill provides the Authority with power to impose Directions as a matter of urgency, impose Civil Penalties, issue Prohibition Orders (effectively banning individuals from certain positions) and seek Injunctions. The Bill also makes provision for due process and appeals to a tribunal.

Comments on the proposed Bill may be sent to [policy@bma.bm](mailto:policy@bma.bm) by May 30, 2013.

**A BILL**

**entitled**

**INVESTMENT FUNDS AMENDMENT ACT 2013**

ARRANGEMENT OF SECTIONS

1	Interpretation	10	Section 48 repealed and replaced
2	Section 2 amended	11	Section 11 amended
3	Section 2B added	12	Section 51A added
4	Section 7 amended	13	Section 53 repealed
5	Section 26 amended	14	Section 55 amended
6	Section 31 repealed and replaced	15	Section 64 amended
7	Section 31A added	16	Section 64A added
8	Sections 34 and 35 repealed	17	Section 65 amended
9	Section 47 repealed and replaced	18	Section 66 amended
20	Section 73 added	19	New Part VA and Sections 67A to 67M added
21	Consequential amendments		
22	Commencement		

WHEREAS it is expedient to enhance the powers of the Bermuda Monetary Authority under the Investment Funds Act 2006 to effectively regulate the investment fund industry in Bermuda and to meet appropriate international standards; the Bermuda Monetary Authority proposes to provide for the imposition of civil penalties, the making of prohibition orders and other disciplinary measures including injunctive relief; and to provide for the giving of notices in relation to exercise of disciplinary measures and for the publication of decisions:

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:

### **Interpretation**

1. In this Part, the “principal Act” means the Investment Funds Act 2006 and references to “the Act” and “this Act” shall have a corresponding meaning.

### **Section 2 amended**

2. Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following definitions-

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

“warning notice” means a notice prepared in accordance with section 67J.

### **Section 2B added**

3. The principal Act is amended by inserting the following section after section 2A-

**“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) to issue directions under section 30 and 51;
  - (iv) impose a civil penalty under section 67A;
  - (v) publish a statement in respect of an authorised fund or fund administrator pursuant to section 67C.
  - (vi) make a prohibition order under section 67E; and
  - (vii) publish information about any matter to which a decision notice relates under section 67M.

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

#### **Section 7 amended**

4. Section 7 of the principal Act is amended by adding after subsection (5)-

“(6) Every operator of an exempted fund that fails to file a certificate within the time specified in subsection (3) shall be liable

to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

(7) Where an operator of an exempted fund fails to pay the prescribed fee as provided by subsection (5), 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.”

**Section 26 amended**

5. Section 26 of the principal Act is amended by inserting the words “in such form as the Authority may prescribe” after the word “statement” and before the word “confirming” in subparagraph (b)(i) of subsection (1).

**Section 31 repealed and replaced**

6. Section 31 of the principal Act is repealed and replaced as follows-

**“Notice of directions**

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 31A added**

7. The principal Act is amended by adding the following section after section 31-

**“Directions in cases of urgency**

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 (5) 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 fourteen 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 (5) 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 twenty-eight 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”.

### **Sections 34 and 35 repealed**

8. The principal Act is amended by repealing section 34 and 35.

### **Section 47 repealed and replaced**

9. Section 47 of the principal Act is repealed and replaced as follows-

### **“Statement of Compliance**

47. (1) A licenced fund administrator shall, within four months from the end of its financial year, submit to the Authority-

(a) a statement confirming that it has, with respect to the proceeding financial year, complied with the requirements of this Part; and

(b) (where it has failed to comply with any such requirement within such period) a statement setting out the particulars of the breach.

(2) Every licensed fund administrator that fails to submit a statement to the Authority as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding \$5,000 for every week or part of a week that it is in default.”

### **Section 48 repealed and replaced**

10. Section 48 of the principal Act is repealed and replaced as follows-

#### **“Offences**

48. A licensed fund administrator that holds client monies or other client assets in breach of the condition of its licence imposed by virtue of section 43(3) is guilty of an offence and liable on summary conviction to a fine of \$10,000.”

### **Section 51 amended**

11. Section 51 of the principal Act is amended by inserting the following subsections after subsection (3)-

“(3A) If the Authority proposes to give a direction under this section it must give the fund administrator a warning notice.

(3B) If the Authority decides to give a direction under this section it must give the fund administrator a decision notice.

(3C) The Authority may, on its own initiative or on the application of the fund administrator 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.”

**Section 51A added**

12. The principal Act is amended by adding the following section after section 51-

**“Directions in cases of urgency**

51A (1) No notice need be given under section 51 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 fund administrator 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 (5) and section 55.

(4) A fund administrator to which a notice is given under this section of the giving of a direction may within the period of fourteen 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 (5) 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 twenty-eight days beginning with the day on which the notice was given under subsection (2) give the fund administrator 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 53 repealed and replaced**

13. Section 53 of the principal Act is repealed and replaced as follows-

**“Notice of direction or revocation of licence**

53 (1) If the Authority proposes to revoke a license under section 52 it must give the fund administrator a warning notice.

(2) If the Authority decides to revoke a license under section 52 it must give the fund administrator a decision notice.”

**Section 55 amended**

14. Section 55 of the principal Act is amended-

(a) in subsection (1) by adding the following subsection after subsection (e)-

“(f) to publish a statement in respect of an operator under section 67C;

(g) to impose a civil penalty against a person concerned under S67A.”

(b) by inserting after subsection (3) (b) the following-

“(c) by the decision of the Authority to impose a civil penalty on it under section 67A;

(d) by the decision of the Authority to publish a statement under section 67C;”.

(c) by inserting new subsections “(3A)” and “(3B)” after subsection (3) as follows:

“(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 a revocation or variation of a prohibition order may appeal to the tribunal.”

(d) by repealing subsection (5) and substituting the following–

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

**Section 64 amended**

15. Section 64 of the principal Act is amended by–

(a) deleting the words “all documents relating to the person concerned” and substituting the words “such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation” in subparagraph (a) of subsection (4).

(b) deleting in subparagraph (b) of subsection (4) the semicolon at the end of the subsection and, after the word “an” adding the words “answer such questions relevant to the investigation as the persons appointed under subsection 1 may require; and”

(c) adding the following subsection after subsection (6) -

“(6A) Unless the Authority otherwise directs, the person under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.”

**Section 64A added**

16. The principal Act is amended by adding the following section after section 64 –

### **“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) an excluded fund may not qualify for exclusion under section 6;
- (c) an exempted fund may have failed to satisfy the criterion of exemption 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, regulations, rules or orders made thereunder;
- (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 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 or licensed as the case may be, under this Act; or
- (b) the ownership or control of a fund or fund administrator at any time when it was authorised or licensed under this Act, as the case may be.

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

### **Section 65 amended**

17. Section 65 of the principal Act is amended by-

(a) deleting the section heading and substituting the following-

***“Power to require production of documents”***

(b) deleting in subsection (1) the words beginning with “Where the Authority” and ending with “any other person” and substituting the following -

“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-”;

(c) deleting in subsection (1)(a) the words “investigating the suspected contravention” and substituting “the investigation”;

(d) deleting in subsection (1)(b) the words “by the Authority for the purpose” and substituting “for the investigation”;

(e) deleting in subsection (1)(c) the words “for determining whether such a contravention has occurred” and substituting “to the investigation as the Authority may require”;

(f) by inserting the following subsection after subsection (1) –  
“(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 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 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.”
- (g) by inserting the following subsection after subsection (6)-
- “(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 66 amended**

18. Section 66 of the principal Act is amended-
- (a) in subsection (1) by deleting the words beginning with “laid by” and ending with “section 65(1)” and substituting “that the Authority is conducting an investigation under section 64A”;
  - (b) by repealing subsection (1)(a) and substituting “(a) a person has failed to comply with a notice served on him under section 65”;
  - (c) in subsection (4) by deleting subparagraph (b) and substituting the following-
    - “(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 50.”

## **New Part VA and Sections 67A to 67M added**

19. The principal Act is amended by inserting the following after section 67-

### **“PART VA**

#### ***Disciplinary Measures***

##### **Power to impose civil penalties for breach of requirements**

67A (1) Except as provided in sections 7, 17, 45 and 47, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding

\$500,000, as the Authority considers appropriate, for each such failure or contravention.

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

(3) The Authority shall not impose a penalty 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.

### **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.

### **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.

### **Public censure procedure**

67D (1) If the Authority proposes to publish a statement in respect of a fund 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. The decision notice shall set out the terms of the statement.

### **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, vary or revoke the prohibition order.

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

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

(10) In this section –

“exempted person” means a person who is exempt from the requirement to be authorised by or under any of the provisions of this Act;

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

“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;

“specified” means specified in the prohibition order.

### **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.

### **Applications relating to prohibition orders: procedures**

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

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

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

### **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.

### *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.

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 30 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 under 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.

## **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 appeal 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 or variation

(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 (2) must—

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

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

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

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

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

### *Conclusion of actions*

#### **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.

### *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 73 added**

20. The principal Act is amended by inserting the following section after section 72-

##### **“Civil debt and Civil Penalties**

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

#### **Consequential amendments**

21. The Schedule (which makes consequential amendments) has effect.

## **Commencement**

22. This Act 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.

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SCHEDULE V (section 21)

1. The following provisions of the principal Act are repealed –
  - (a) section 25(6)
  - (b) section 26(5)
  - (c) section 45(3)
  - (d) section 48(b), (c), (d), and (e)
  - (e) section 51(4)
2. The Schedule to the Act Minimum Criteria for Registration is amended—
  - (a) in paragraph 1(1) by deleting the words “hold the particular position which he holds or is to hold” and substituting “perform functions in relation to any activity carried on by the licensed fund administrator”; and
  - (b) in paragraph (2) by repealing subparagraph (4) and substituting the following—
    - “(4) In determining whether a licensed fund administrator is conducting its business in a prudent manner, the Authority shall take into account any failure by the licensed fund administrator to comply with the provisions of—
      - (a) this Act;
      - (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti- Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
    - (b) the code of conduct; and

(d) international sanctions in force in Bermuda.

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## **Explanatory Memorandum**

Clause 2 proposes to add the defined terms “decision notice” and “warning notice” in the relevant alphabetical order under the “Interpretations” section of the principle Act.

Clause 3 proposes to insert a new section 2B to make provision for the BMA to issue and publish a statement of principles which sets out the manner in which it will or proposes to act in relation to such matters as : the power to grant or revoke an authorisation; the exercise of its powers in relation to the grant, revocation and restriction of a licence under Part II of the principle Act; obtaining and requiring the production of documents; the issuance of directions in accordance with sections 30 and 51; the imposition of civil penalties under section 67A; the publication of a statement relating to an authorised fund or fund administrator under section 67C; the power to make a prohibition order under section 67E and to publish information about any matter to which a decision notes relates under section 67E.

The BMA is required to also publish a new statement of principles or a statement of change of principles in the same manner in which it published the original statement of principles in the event it proposes to make a material change to the published version.

Clause 4 proposes to amend section 7 “Grant of Exemption” under the principal Act to make provision for an operator of an exempted fund that fails to file a certificate within the relevant time, to be liable to a civil penalty not exceeding \$5,000 for each week or part of the week that it is in default. Additionally, where the operator of a fund fails to pay the prescribed fee it shall be required to pay a late penalty fee of 10% of the

fee for every month or part thereof during which the penalty remains unpaid.

The amendments to clause 5 are proposed to amend section 26 (1) (b) (i) under “Reports to the Authority” of the principal Act; so that the statement confirming that the fund has at all times during the preceding year been in compliance with its requirements under the Act etc., shall now be provided in such form as the Authority may prescribe.

Clause 6 proposes to repeal and replace the current provisions under section 31 of the principal Act by inserting a new section “Notice of Directions” to provide for the issuance of either a warning or decision notice by the Authority where it proposes to or gives a direction under section 30 of the principal Act “Directions to an authorised fund”.

Clause 7 proposes to insert a new section 31A to make provision for the Authority to give directions in the case of urgency similarly to the powers exercised under other regulatory Acts.

Clause 8 proposes to repeal sections 34 “Warning notices” and 35 “Decision notices” under the principal Act as new measures and procedures are proposed to be adopted under the Bill in this regard.

The proposals under Clause 9 shall amend section 47 “statement of compliance” under the principal Act to include a requirement for licensed fund administrators that fail to submit the relevant statement to the Authority to be liable to a civil penalty of \$5,000 for every week and part of a week that it is in default.

Clause 10 proposes to repeal and replace the “Offences” provision under section 48 of the principal Act.

Clause 11 proposes to amend section 51 “Directions to protect the interests of clients” under the principal Act, to make provision for the Authority to give a fund administrator a warning notice where it proposes

to give a direction; and to give a fund administrator a decision notice where it makes a decision to issue a direction. Provision is also made for the Authority on its own or where a fund administrator has made an application; to vary or revoke a direction issued where certain conditions are met.

Proposed clause 12 shall make provision for a new Section 51A to be inserted under the principal Act to allow the Authority to issue a direction in urgent cases.

Clause 13 proposes to repeal and replace section 53 of the principal Act “Notice of direction or revocation” to make provision for where the Authority proposes or decides to issue a direction to a fund administrator, then the Authority is required to give that fund administrator a warning notice and a decision notice as the case may be.

Clause 14 proposes to amend section 55 of the principal Act “Rights of appeal” to make provision for a licensed fund administrator or an operator of an authorised fund (as the case may be ) to appeal against a decision of the Authority taken in relation to the imposition of a disciplinary measure.

Clause 16 proposes to amend section 64 of the principal Act “Investigations on behalf of the Authority” to narrowly define the documents to be produced to a person appointed to carry out an investigation on behalf of the Authority and to provide for the recovery of costs of an investigation.

Clause 16 makes provision for a new clause 64A to be inserted under the principal Act to widen the scope for investigations by the Authority beyond the current scope of investigating non-licensed authorised or exempted business and is proposed to include investigations for: breaches of requirements imposed by or under the Act or regulations etc. and investigations into fitness and propriety of

individuals who perform functions relating to a licensed activity. In addition, the power to investigate investment funds or fund administrators in relation to a business carried on at the time when they were licensed; and investigations in relation to the ownership and control of former investment funds or administrators at a time when they were licensed; is also proposed.

Clause 17 proposes to amend section 65 by changing the existing heading to “Power to require production of documents”; making consequential amendments to existing section 64 and increases the power to apply it to any person connected with a person under investigation.

Clause 18 seeks to make consequential amendments to clause 66 in connection with the new provisions on investigation proposed under new section 64.

Clause 19 proposes to insert a new Part VA “Disciplinary Measures” and new clauses 67A to 67M; to introduce new disciplinary measures. It would empower the Authority to impose civil penalties for failure for licensed persons etc. to comply with any requirement or contravention of any prohibition imposed by, or under the Act. In determining the appropriate level of penalty the Authority is required to take into account the provisions of subsection (2) whereby the fine must be effective (i.e., of an amount that the person takes notice) and proportionate to the breach. It should also be dissuasive in the sense that it would act as a deterrent. Subsection (3) precludes the BMA from imposing a fine if the BMA is satisfied that the person concerned took all reasonable steps and that they exercised due diligence to ensure compliance. Clauses relating to the requirements re the imposition of injunctions and requirements of the Authority in relation to publication of matters under this Part are also proposed.

Clause 20 proposes to amend clause 73 of the principle Act “Offences by companies” to provide a mechanism for the recovery of civil penalties imposed under the Act. Through the exercise of this power the BMA would be able to claim the amount owing by way of civil proceedings in court. The clause also proposes that where a person is convicted of a criminal charge, no civil penalties can be imposed relating to the same matter.

Clause 21 makes provision for consequential amendments to be made.

Clause 22 provide for Commencement. The Act shall come into operation on such day appointed by the Minister of Finance by publication of a notice in the Gazette and may be appointed on different days for different provisions.