



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

**New Legislative Framework for Fund Administrators;
“Fund Administration Provider Business Act 2019”**

April 2019

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The financial services industry and other interested parties are invited to submit their views on the proposals set out in this Consultation Paper. Comments should be addressed to the Bermuda Monetary Authority and sent to policy@bma.bm no later than **23 May 2019**.

I. BACKGROUND

1. In March 2018, the Bermuda Monetary Authority (BMA or Authority) issued a Discussion Paper entitled “[Proposed Enhancements to Investment Business, Investment Funds and Fund Administration Regimes](#)” (the Discussion Paper) in which the Authority sought input from stakeholders regarding the suite of investment legislation under the BMA’s remit. In keeping with its regulatory responsibilities, the Authority reviewed:
 - (i) Potential “gaps” between existing legislative/regulatory provisions and international standards/expectations; and
 - (ii) Emerging expectations and trends with respect to the appropriate oversight of investment businesses, investment funds and fund administrators.
2. In the Discussion Paper, the Authority made specific reference to introducing separate legislation focused exclusively on fund administrators to enhance the Authority’s supervisory and regulatory oversight of this important sector.
3. Based in part on feedback received from the Discussion Paper, and the commitment made by the Authority in its *2018 Business Plan* to support the introduction of legislative proposals in respect of fund administration business to Parliament, the Authority confirms that its proposed approach will involve enacting a new stand-alone fund administration act, being the “Fund Administration Provider Business Act 2019” (the Act). A draft version of the Act accompanies this Consultation Paper (CP).
4. Although this CP focuses exclusively on the fund administration business regime, the Authority confirms that it is committed to progressing enhancements to the investment business and investment funds regimes proposed within the March 2018 Discussion Paper and will solicit industry feedback in this regard in due course.

II. NEW LEGISLATIVE FRAMEWORK FOR FUND ADMINISTRATORS

5. The Investment Funds Act 2006 (IFA) provides the legislative basis for Bermuda’s investment fund and fund administration business regimes. While the IFA has been subject to amendments over time, these amendments have tended to be ad hoc in nature, addressing specific issues and particular circumstances related to investment fund vehicles.
6. As noted in the Discussion Paper, notwithstanding the existence of precedents elsewhere for such dual-focused legislation for fund administrators and investment fund vehicles, the Authority is of the view that oversight of fund administration business and investment fund products will each be better accomplished via separate legislative frameworks. Furthermore, introducing a legislative regime that is specific to fund administrators will put this sector on the same footing as other regulated financial institutions in Bermuda.

7. As suggested in the Discussion Paper, the Authority proposes that a majority of the existing provisions within the IFA related to fund administration business, predominantly found within Part III, be incorporated within the Act. When developing the accompanying draft version of the Act, the Authority sought to ensure that relevant provisions were updated, where appropriate, so as to be consistent with how comparable provisions are presented within recently adopted legislation covering other regulated financial institutions.
8. Particulars regarding existing provisions to be adopted from the IFA, either as is, or in an enhanced form, and any new provisions which the Authority proposes be introduced, are covered in the next section.

III. PROPOSED FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019

9. As noted above, the Fund Administration Provider Business Act 2019 will be built upon a foundation of provisions from Part III of the existing IFA. These provisions are designed to provide consistency and clarity in respect of how fund administrators exercise their functions and how the Authority supervises them. It is also proposed, however, that the Act include new provisions and enhancements, which will facilitate a supervisory and regulatory approach to the sector that is fit for purpose in the current environment.
10. To reiterate, it is essential that the Authority's mandate and specific powers keep pace with the rapid changes occurring in the various financial services sectors for which it is responsible, allowing it to provide consistently appropriate ongoing oversight and to respond promptly when circumstances warrant. The new stand-alone legislation will be responsive to this need.

Proposed modifications to key areas of Fund Administration Business currently addressed in the IFA

Carrying on Fund Administration business in or from within Bermuda

11. Section 41, Part III of the IFA is a core element of the current fund administration business regime. This section prohibits a person from carrying on the business of a fund administrator in or from within Bermuda without a licence. Whilst this restriction is generally clear, the Authority believes that additional certainty is required with regard to when one would be considered to "carry on, or purport to carry on, the business of a fund administrator in or from Bermuda."
12. In order to provide the additional certainty referenced above, while ensuring that the scope of the regime is sufficiently broad, the Authority proposes that the Act address what constitutes carrying on fund administrator business in or from within Bermuda. Specifically, it is proposed that the legislation require that fund administrators will fall within scope if they occupy premises in Bermuda, or make known by way of websites, promotional materials, legal documents or letterheads

that they may be contacted at a particular address in Bermuda or are otherwise seen to be holding themselves out as engaging in or carrying on fund administrator business in or from within Bermuda.

13. In addition to the above, the Authority proposes that the Act make clear that a company incorporated in Bermuda shall not carry on the business of a fund administrator anywhere in the world without being licensed by the Authority.

Safekeeping of Client Assets

14. In response to the European Union's Alternative Investment Fund Managers Directive (AIFMD), and its accompanying "passporting" provisions that contemplated the basis on which non-EU managers and funds would have the right to market to EU investors, in 2016 Bermuda began to prepare an appropriate opt-in regime via amendments to the Investment Business Act 2003 and the issuance of the (yet to be brought into force) Investment Business (Alternative Investment Fund Managers) Rules 2016 (2016 Rules).
15. Under the AIMFD regime, and the above-noted 2016 Rules, depositaries are under a responsibility to ensure the safekeeping of all assets, including financial instruments and other assets, of an Alternative Investment Fund (AIF) through specific legal requirements.
16. The Authority is aware of other jurisdictions that have, in part prompted by the AIFMD, taken steps to expand the range of entities that can function as depositaries or custodians (the term used under Bermuda law) in respect of the safekeeping of financial instruments or other assets. In some instances, fund administrators have been included within this expansion.
17. Given the above international developments and following industry dialogue in the context of the proposed AIFM regime for Bermuda (as noted in the Discussion Paper), the Authority is open to the possibility of Bermuda-licensed fund administrators being authorised to provide certain safekeeping services, subject to a specific application process.
18. To be clear, the Authority does not contemplate fund administrators being permitted to provide safekeeping services in respect of financial instruments, or to hold client monies, but rather being able to provide safekeeping for other assets. It is intended that a fund administrator providing any such safekeeping services be subject to additional obligations, primarily to be contained within regulations to be made by the Minister of Finance pursuant to the Act and an updated code of practice, which the Authority will have the ability to issue.
19. It is expected that above-noted obligations would relate, but not be limited to, additional insurance coverage requirements as well as additional capital and liquidity requirements, specific expectations in respect of outsourcing

arrangements (a matter that is addressed in general terms later in this CP) and provisions regarding the management of conflicts of interest. It is also intended that licensees who are granted permission to provide safekeeping services in respect of their clients' other assets be subject to additional reporting and disclosure obligations, including the requirement to prepare audited financial statements submitted to the Authority on an annual basis.

20. In connection with the foregoing, the Authority requests that industry provide specific feedback as to their interest in fund administrators having the option, subject to a specific application process, to provide safekeeping services in respect of their clients' "other assets."

Minimum Criteria for Licensing

21. The minimum criteria for licensing of fund administrators are set out in the Schedule to the IFA. As is the case with all financial service providers under the Authority's supervisory remit, the Authority must be satisfied that the minimum criteria are met, and continue to be met, by entities seeking to be licensed, or are currently licensed, as fund administrators.
22. In this regard, the Authority proposes to update the existing minimum criteria for licensing of fund administrators to ensure that the provisions contained therein are consistent, where appropriate, with those reflected within recently adopted legislation covering other regulated financial institutions.
23. In the above context, the Authority intends to strengthen the existing requirement for "business to be conducted in a prudent manner" by adding a provision specific to maintaining adequate accounting and other records, along with accompanying systems of control and associated policies and procedures. Separately, further emphasis will be given to "corporate governance" obligations by reflecting these independently, rather than as a sub-set of the "fit and proper persons" criteria.

Outsourcing

24. Closely aligned with enhancements proposed in respect of the minimum criteria for licensing, and specifically the requirement for "business to be conducted in a prudent manner", another area which the Authority intends to clarify within the new regime is the proposed outsourcing of certain fund administration functions to any other service provider or person, whether within or outside of Bermuda.
25. The Authority is aware that use of outsourcing arrangements has become commonplace within the financial services sector in recent years, in Bermuda and globally. Accordingly, it is appropriate that the issue of outsourcing be more fully addressed within the new supervisory and regulatory framework being introduced specifically for fund administrators.

26. The Authority must ensure that fund administrators utilising an outsourcing arrangement have systems and policies in place to provide the necessary level of oversight over their outsourced arrangements. This is particularly relevant when fund administration services are to be outsourced to service providers outside of Bermuda, which presents the potential for reputational risk to Bermuda and can disrupt the Authority's ability to efficiently regulate the sector.
27. While the Authority's oversight of outsourcing arrangements within the sector will be built upon the foundation of legislative provisions, it is contemplated that these provisions may be supplemented by relevant code of practice provisions and regulatory guidance.
28. In addition to the guidance issued by the Authority in 2016 about the outsourcing of AML activities, on 5 November 2018 the Authority issued a CP on proposed new outsourcing guidance for regulated service providers. The CP entitled, "New Outsourcing Guidance for Banks, Credit Unions, Trust Companies, Bermuda Stock Exchange, Corporate Service Providers, Money Service Businesses, Investment Firms & Fund Administrators," set out proposed policies and procedures of the Authority to manage and monitor existing activities that have been outsourced, as well as assess the risks arising from outsourcing new activities.
29. In connection with the foregoing, the Authority's oversight of outsourcing arrangements in the fund administration sector will be supported by the guidance ultimately finalised as a result of the above-noted CP and the existing AML outsourcing guidance.

Proposed New Provisions to be included in the Fund Administration Provider Business Act 2019

Statement of Principles

30. It is intended that the new Act shall, consistent with other BMA supervisory Acts for financial service providers, include a provision for a Statement of Principles to be published by the Authority in respect of fund administrators which identifies the manner in which the Authority proposes to act in:
 - a. interpreting the minimum criteria specified in the Schedule to the Act and the grounds for revocation;
 - b. exercising its power to grant, revoke or restrict a licence;
 - c. exercising its power to obtain information, reports and to require production of documents; and
 - d. exercising its powers to impose a civil penalty, censure publicly, make a prohibition order and publish information about any matter to which a decision notice relates.

Reporting Requirements

31. Section 47 of the IFA requires fund administrators to submit an annual statement of compliance to the Authority. However, the information to be included in the statement is general in nature. Given this, based on its supervisory experience, and in order to achieve better alignment with international best practice in this area, the Authority proposes to expand, and specify the requirements of, the statement of compliance. The proposed enhancements include:
 - a. Requiring that the statement of compliance be signed by two directors, one of whom must be the chief executive or equivalent officer
 - b. Introducing more extensive confirmation requirements
 - c. Providing the Authority with power to, upon application, grant an extension in relation to the filing of an annual statement of compliance
32. Separately, with regard to the enhancement of reporting obligations, it is proposed that fund administrators be subject to new requirements with respect to the filing of annual financial statements, including a requirement for the appointment of an auditor and the filing of annual audited financials in instances where the fund administrator has been approved to provide safekeeping services for its clients' other assets.

Proposed enhancement to the Fund Administrators Code of Conduct

33. The Authority proposes to revise the existing Code of Conduct for fund administrators to achieve alignment with, inter alia, the revisions to be made to the minimum criteria for licensing. Specifically, as highlighted in the Discussion Paper, the Authority is aware of instances where the handover of information to new fund administrators, pursuant to the Code of Conduct, has not taken place in an efficient or timely manner. Paragraph 10 of the Code of Conduct requires a fund administrator to cooperate in ensuring a smooth and timely transition of records or other relevant information after termination of its services. To address the challenges that have sometimes been experienced in this area, the Authority proposes that the new Code of Practice will revise the language in the existing Code of Conduct to specifically state that the records or other relevant information pertaining to a fund should be transferred to new fund administrators as soon as practicable, but no later than 30 days from the date of the termination of the previous administrator's services, unless agreed otherwise.

IV. THE FUTURE OF THE CURRENT INVESTMENT FUNDS ACT 2006

34. The remaining provisions in the IFA will focus exclusively on the oversight of investment fund products. As noted in paragraph 4, the Authority will in 2019

continue its review of the IFA, making necessary modifications in line with international standards, emerging expectations and trends.

V. CONCLUSION

35. As previously stated, the Authority is committed to enhancing its supervision and regulation of fund administrators, distinct from its responsibilities in respect of the product of investment funds, via a stand-alone legislative regime. The proposed Fund Administration Provider Business Act 2019 will contain similar regulatory and supervisory powers, duties, functions and obligations of the Authority to those contained within other recently adopted supervisory Acts covering financial institutions.
36. It is proposed that existing Bermuda licensed fund administrators will be “grandfathered in,” and deemed to be licensed under the new Act. Additionally, such existing licence holders will be given one year to comply with all requisite provisions of the new Act. Other entities which may not have required a licence per the provisions pertaining to fund administrators in the existing IFA will need to review their business practices in light of the proposed new legislation to ensure that they can continue to legitimately carry on business in or from within Bermuda.
37. The Authority is of the view that the approach proposed in this CP will bring the Bermuda fund administration provider business regime up-to-date with current international standards, expectations and emerging trends and, in so doing, position the jurisdiction effectively for the future.

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FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019

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Minimum Criteria For Licensing

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SCHEDULE 3
Amendment to Investment Funds Act 2006

WHEREAS it is expedient to make new provision for regulating fund

administration provider business; for the protection of the interests of clients or potential clients of persons carrying on fund administration provider business; and for purposes connected with those 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 1

PRELIMINARY

Citation

1 This Act may be cited as the Fund Administration Provider Business Act 2019.

Interpretation

2 (1) In this Act, unless the context requires otherwise—

“the Authority ”means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

“auditor” means a person approved by the Authority to audit the financial statements of a licensed undertaking under section 22.

“code of practice” means a code of practice issued by the Authority pursuant to section 7;

“company” means a body corporate wherever incorporated;

“controller” has the meaning given in section 3(3);

“Court” means the Supreme Court;

“decision notice” means a notice prepared in accordance with section 46;

“director” has the meaning given in section 3(2);

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“financial instrument” means an investment as prescribed by Part 1 of the First Schedule to the Investment Business Act 2003.

“financial statements” in relation to the business of an undertaking which is

a company, means the statements specified in subsection (1)(a) and the notes mentioned in subsection (1A) of section 84 of the Companies Act 1981;

“financial year” means the period not exceeding 53 weeks at the end of which the balance of an undertaking’s accounts is struck or, if no such balance is struck or a period of more than 53 weeks is employed for that purpose, then calendar year;

“fit and proper person” has the meaning assigned to the term in Schedule 1;

“fund administrator” means a person licensed to carry on fund administration provider business;

“fund administration provider business” has the meaning given in subsection (2);

“investment fund” has the meaning given in section 2 of the Investment Funds Act 2006;

“licence” means a licence granted by the Authority under section 10 (1) and “licensee” and “licensed” shall be construed accordingly;

“Minister” means the Minister of Finance;

“minimum criteria” means the minimum criteria for licensing specified in the Schedule 1;

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

“other assets” means those assets of an investment fund or a fund manager acting behalf of an investment fund; which are not financial instruments;

“senior executive” has the meaning given in section 3 (6);

“share” has the meaning given in section 2 of the Companies Act 1981;

“shareholder controller” has the meaning given in section 3(4);

“subsidiary” has the meaning given in section 86 of the Companies Act 1981;

“undertaking” means—

- (a) a company;
- (b) a partnership;
- (c) or an individual.

“warning notice” means a notice prepared in accordance with section 45.

- (2) In this Act, “fund administration provider business” means the business of

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providing one or more of the following services to an investment fund—

- (a) applying the subscription monies received by a fund in accordance with its constitution and its prospectus;
- (i) processing the issue, conversion and redemption of units of a fund;
- (ii) applying the income of a fund in accordance with its constitution and its prospectus;
- (iii) calculating the net asset value of the units, and their issue, conversion and redemption price;
- (iv) maintaining the accounts of a fund;
- (v) distributing to the participants of a fund all dividends or other distributions which may from time to time be declared and paid by it on units in a fund;
- (vi) any other services or activities the Minister, acting on the advice of the Authority, may specify by notice published in the Gazette.

Meaning of "director", "controller", "senior executive" and "associate"

3 (1) In this Act “director”, “controller”, “senior executive” and “associate” shall be construed in accordance with the provisions of this section.

(2) “Director” in relation to an undertaking—

- (a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
- (b) where it is used in subsections (6) and (7), includes a partner of a partnership.

(3) “Controller” in relation to an undertaking, means—

- (a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
- (b) in the case of an undertaking which is a partnership, a partner;
- (c) in the case of an undertaking which is neither a company nor a

partnership, a sole proprietor;

- (d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
- (e) a person who satisfies the requirements of this paragraph;
- (f) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

(4) For the purpose of subsection (3)(e), a person is a shareholder controller 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 or another company of which it is a subsidiary company;
- (b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the undertaking, or as the case may be, the other company concerned.

(5) In this Act "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.

(6) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—

- (a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the undertaking.

(7) In this section “chief executive” in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(8) In this Act “associate” in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, 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) any company of which that person is a director;

(iv) any person who is an employee or partner of that person;

(b) if that person is a company—

(i) any director of that company;

(ii) any subsidiary of that company;

(ii) any director or employee of any such subsidiary company;

(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 company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(9) For the purpose of subsection (8), “settlement” includes any disposition or arrangement under which property is held in trust.

Carrying on fund administration provider business in Bermuda

4 (1) A person carries on fund administration provider business in or from within

Bermuda where that person provides any of the services under section 2 (2) to an investment fund and —

- (a) occupies a place of business in Bermuda;
- (b) makes it known that it may be contacted at an address in Bermuda —
 - (i) through promotional or marketing materials or information;
 - (ii) by way of advertising;
 - (iii) by use of letterhead or website; or
 - (iv) through contractual or other legal arrangements;
- (c) otherwise is determined by the Authority to be holding themselves out to the public as engaging in or carrying on fund administration provider business in Bermuda on a continuing basis; or
- (d) discharges in Bermuda the duties of a fund administrator, the discharge of which constitutes the carrying on by such person of fund administration provider business in Bermuda under an order made under subsection (2).

(2) The Minister acting on the advice of the Authority may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

- (a) carrying on fund administration provider business in Bermuda;
- (b) not carrying on fund administration provider business in Bermuda.

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

Annual reports

5 The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate an annual report on its activities under this Act in that year.

Authority's statement of principles and guidance provision

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

- (a) in interpreting the minimum criteria and the grounds for revocation specified in section 14;
- (b) in exercising its power to grant, revoke or restrict a licence;
- (c) in exercising its power to obtain information, reports and to require production of documents;
- (d) in exercising its powers—
 - (i) under section 31 to impose a civil penalty;
 - (ii) under section 33 to censure publicly;
 - (iii) under section 35 to make a prohibition order; and
 - (iv) under section 34 to publish information about any matter to which a decision notice relates.

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

(3) The Authority may from time to time give guidance on the application of this Act and regulations made under it.

(4) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit.

Codes of practice

7 (1) The Authority may issue codes of practice in connection with the manner by which licensed undertakings shall carry on fund administration provider business.

(2) Without prejudice to the generality of subsection (1), the Authority may issue codes of practice for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on fund administration provider business.

(3) Before issuing a code of practice, 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.

(4) Every licensed undertaking shall in the conduct of its business have regard to any code of practice issued by the Authority.

(5) A failure on the part of a licensed undertaking to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 2 of Schedule 1 (Minimum Criteria for Licensing).

PART 2 LICENSING

Restriction on carrying on fund administration provider business without a licence

8 (1) Subject to section 9, a person shall not carry on or purport to carry on fund administration provider business in or from within Bermuda unless that person is for the time being is licensed by the Authority.

(2) A person who contravenes this section is guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for one year or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.

(3) The Minister may by regulations subject to negative resolution procedure, make provision for the regulation by the Authority of fund administration provider businesses.

(4) Without prejudice to the generality of subsection (3), regulations may in particular provide with respect to any of the following matters—

- (a) any matter relating to the conduct of a fund administration provider business;
- (b) the requirement for any additional service or services to be deemed a fund administration provider business activity;
- (c) the preparation, adoption and implementation of processes or procedures relating to a fund administration provider business;

(d) the safe-keeping of other assets.

(5) Regulations made under subsection (3) may make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.

(6) "Persons" for the purposes of subsection (1), include companies registered or partnerships formed, in Bermuda.

Fund Administration Provider Business Licence

9 (1) A person may apply to the Authority for a fund administration provider business licence.

(2) An application shall be made in such manner as the Authority may direct and shall be accompanied by—

- (a) a business plan setting out the nature and scale of the fund administration provider business activity which is to be carried on by the applicant;
- (b) particulars of the applicant's arrangements for the management of the business;
- (c) policies and procedures to be adopted by the applicant to meet the obligations under this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (d) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and
- (e) an application fee of such amount as may be prescribed under the Bermuda Monetary Authority Act 1969.

(3) 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.

Grant and refusal of applications

10 (1) Subject to this section, the Authority may on an application duly made in accordance with section 10, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant.

(3) It shall be a condition of every licence issued under this Act that a licensed undertaking shall not hold financial instruments or client monies.

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

(5) The Authority may, on application made by a licensed undertaking, vary or remove any limitation imposed on the scope of its licence.

(6) A licence issued to a partnership shall be issued in the partnership name, and shall not be affected by any change in the name of the partners.

(7) The Minister acting on the advice of the Authority may by order amend Schedule 1 by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(8) An order made under subsection (7) shall be subject to the negative resolution procedure.

Display and registration of licence

11 (1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Bermuda.

(2) The Authority shall cause a notice of every licence issued under this Act to be published in the Gazette.

(3) The Authority shall compile and maintain, in such manner as it thinks fit, a register containing, in respect of each licence, such particulars as may be prescribed.

(4) The register referred to in subsection (3) shall, at all reasonable times, be available for inspection at the offices of the Authority by any person upon payment of the fee prescribed under the Bermuda Monetary Authority Act 1969 or the matters required to be set out in the register shall be posted by the Authority on its website.

Fees

12 (1) A licensed undertaking shall pay such fee as may be prescribed under the Bermuda Monetary Authority Act 1969—

- (a) on the grant of a licence;
- (b) on or before 31 March in every year after the year in which the licence was granted;
- (c) to extend the filing date of annual financial statements required under section 21;

(2) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding \$5,000.

Restriction of licence

13 (1) Subject to section 17, the Authority may restrict a licence—

- (a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 14, but it appears to the Authority that the circumstances are not such as to justify revocation;
- (b) if it is satisfied that a person has become a controller of an undertaking in contravention of section 24 or has become or remains a controller after being given a notice of objection pursuant to section 25 or 26;
- (c) in connection with the revocation of a licence—
 - (i) when giving the undertaking a warning notice that it proposes to revoke its licence; or
 - (ii) at any time after such warning notice has been given to the undertaking; or
- (d) at any time after the undertaking has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the undertaking's clients or potential clients, and may in particular—

- (a) require the undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business activities in a particular way;
- (b) impose limitations on the acceptance of fund administration provider business;
- (c) prohibit the undertaking from soliciting fund administration provider business either generally or from persons who are not already its clients;
- (d) prohibit the undertaking from accepting new fund administration provider business;
- (e) prohibit the undertaking from entering into any other transactions or class of transactions;
- (f) require the removal of any officer or controller;
- (g) specify requirements to be fulfilled otherwise than by action taken by the undertaking.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an undertaking vary any condition imposed on its licence.

(5) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

Revocation of licence

14 Subject to section 17, the Authority may revoke the licence of an undertaking if the Authority is satisfied that—

- (a) any of the minimum criteria is not or has not been fulfilled, or may not

be or may not have been fulfilled, in respect of the undertaking;

- (b) the undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;
- (c) a person has become a majority shareholder controller of the undertaking in contravention of section 24 or has become or remains such a controller after being given a notice of objection pursuant to section 25 or 26;
- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking; or
- (e) the interests of the clients or potential clients of the undertaking are in any way threatened.

Winding up on petition from the Authority

15 (1) On a petition presented by the Authority by virtue of this section, the court may wind up an undertaking which is a company in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the undertaking be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an undertaking under this section.

Notice of restriction or revocation of licence

16 (1) Where the Authority proposes to—

- (a) restrict a licence under section 13(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or
- (c) revoke a licence under section 14,

the Authority shall give to the undertaking concerned a warning notice under section 45.

(2) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the Schedule 1 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer,

the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him.

(3) After giving a notice under subsection (1) and taking into account any representations made under section 45(2), the Authority shall decide whether—

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

(4) Once the Authority has made a decision under subsection (3) it shall forthwith provide either a decision notice under section 46 or a notice of discontinuance under section 47, as the case may be.

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

Restriction in cases of urgency

17 (1) No warning notice need be given under section 13 in respect of the imposition or variation of a restriction on an undertaking's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case, the Authority may by written notice to the licensed undertaking impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 40.

(4) Section 13(2) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 14(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An undertaking to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of 14 days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5), the Authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

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

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice with effect from the date on which it is given.

Directions to protect interests of clients

18 (1) The Authority may give a licensed undertaking directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the licensed undertaking's clients.

- (3) An undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
- (a) on summary conviction to a fine of \$25,000;
 - (b) on conviction on indictment to a fine of \$75,000.

Notification and confirmation of directions

19 (1) A direction under section 18 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the licensed undertaking concerned.

(2) A direction under section 18(1), except one varying a previous direction with the agreement of the licensed undertaking concerned—

- (a) shall state the reasons for which it is given and give particulars of the licensed undertaking's rights under subsection (3) and section 40; and
- (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the licensed undertaking concerned.

(3) A licensed undertaking to which a direction is given which requires confirmation under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

Surrender of licence

20 (1) A licensed undertaking may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the licensed undertaking may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

PART 3

FINANCIAL STATEMENTS, ACCOUNTS AND AUDITOR

Duty to prepare annual financial statements and accounts

21 (1) Every licensed undertaking shall prepare annual financial statements in respect of all transactions and balances relating to its business.

(2) A licensed undertaking which is a company shall prepare annual financial statements of its business, and shall cause copies of those statements to be laid before the company in general meeting.

(3) A licensed undertaking which is not a company shall prepare annual accounts in such form and containing such particulars as the Authority may direct.

(4) A licensed undertaking shall keep a copy of the most recent audited financial statements or accounts at each of its offices in Bermuda together with the auditor's report thereon.

(5) Not later than four months after the close of its financial year every licensed undertaking shall file a copy of its audited financial statements and the auditor's report or accounts for that year with the Authority.

(6) A licensed undertaking may apply to the Authority to extend the filing date requirement under subsection (5), which shall not exceed three months.

Appointment of auditors

22 (1) Every licensed undertaking that has been approved by the Authority to hold other assets of clients shall annually appoint an auditor approved by the Authority to audit its financial statements.

(2) If a licensed undertaking fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by the licensed undertaking to such auditor.

(3) A licensed undertaking shall forthwith give written notice to the Authority if it—
(a) proposes to remove an auditor before the expiration of his term of office;
(b) or proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) A licensed undertaking which fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.

(5) Subject to subsection (6), the Authority may revoke an approval of an auditor, if it is satisfied that they are no longer a fit and proper person to hold the appointment.

(6) The Authority shall not revoke its approval unless it has first notified the auditor and the licensed undertaking of its intention to do so.

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

Auditor to communicate certain matters to Authority

23 (1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

(2) The circumstances referred to in subsection (1) are—

- (a) his resignation before the expiration of his term of office;
- (b) his intention not to seek to be re- appointed;
- (c) a decision to include a modification of his report on the licensed undertaking's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Authority's functions under this Act.

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

PART 4

OBJECTIONS TO SHAREHOLDER CONTROLLERS

Notification of new or increased control

24 (1) No person shall become a 10% or majority shareholder controller of a licensed undertaking which is a company unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the licensed undertaking; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the licensed undertaking, or that period has elapsed without the Authority having served him under section 25 a written notice of objection to his becoming such a controller of the licensed undertaking.

(2) Subsection (1) applies also in relation to a person becoming a partner in a licensed undertaking which is a partnership.

(3) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (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 (1)(b).

Objection to new or increased control

25 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 24 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed undertaking;
- (b) that the interests of clients and potential clients of the licensed undertaking would not be in any manner threatened by that person becoming a controller of that description of the licensed undertaking; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed undertaking as a controller of

the description in question the criteria in Schedule 1 would continue to be fulfilled in the case of the licensed undertaking or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 40.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 24 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with a notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 24(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until 14 days after the end of the period within which representations can be made

under subsection (3).

Objection to existing controller

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

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 40.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controller

27 (1) Subject to subsection (2), any person who contravenes section 24 by—

- (a) failing to give the notice required by subsection (1)(a) of that section;
- (b) or becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a

preliminary notice under section 25(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within 14 days of becoming aware of the fact.

(3) Any person who—

- (a) before the end of the period mentioned in section 24 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 25(2);
- (b) contravenes section 24 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him' shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.

(5) A person guilty of an offence under subsection (3) shall be liable—

- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

Restriction on sale of shares

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

- (a) has contravened section 24 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
- (b) having become a controller of any description in contravention of section 24 continues to be one after a notice has been served on him; or
- (c) continues to be a controller of any description after being served under section 25 with a notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation, no payment shall be made of any sums due from the undertaking on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 25 or 26—

- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
- (b) if an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the licensed undertaking of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the licensed undertaking; and
- (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that licensed undertaking.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed undertaking or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

PART 5

CHANGE OF CONTROLLER OR OFFICER

Notification of change of controller or officer

29 (1) A licensed undertaking shall give written notice to the Authority of the fact of any person having become or ceased to be a controller or officer of the licensed undertaking.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the licensed undertaking becomes aware of the relevant facts.

(3) A licensed undertaking which fails to give a notice required by this section

shall be liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed under subsection (1) it shall be liable to a civil penalty not exceeding \$5,000.

PART 6

STATEMENT OF COMPLIANCE

Statement of Compliance

30 (1) Every licensed undertaking shall, within four months from the end of its financial year, file with the Authority a statement of compliance, signed by two directors of the undertaking, one of whom must be the chief executive or equivalent officer, made up to the end of its financial year, certifying that the undertaking has complied with—

- (a) the minimum criteria for licensing requirements under Schedule 1; and
- (b) all codes issued by the Authority under section 7.

(2) A licensed undertaking shall also confirm in the statement of compliance where it has failed to comply with any requirement under subsection (1) (a) and (b) and shall set out the particulars of the breach.

(3) A licensed undertaking that fails to deliver a statement as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default.

PART 7

DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

31 (1) Except as provided in section 12, 29, or 30, 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.

(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

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concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

Civil penalties procedures

32 (1) If the Authority proposes to impose a civil penalty, it must give the licensed undertaking concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the licensed undertaking concerned a decision notice.

Public censure

33 (1) If the Authority considers that a licensed undertaking 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 licensed undertaking.

Public censure procedure

34 (1) If the Authority proposes to publish a statement in respect of a licensed undertaking under section 33, it must give the institution a warning notice.

(2) If the Authority decides to publish a statement under section 33, (whether or not in the terms proposed) it must give the licensed undertaking concerned a decision notice.

Prohibition orders

35 (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ('a regulated person').

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

(7) The Authority shall 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) 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 such fine and imprisonment;
- (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both such fine and imprisonment.

(9) In this section—

“regulated activity” means any activity that is carried on by way of a business requiring licensing or other authority under any provision of this Act, regulations, rules or orders made thereunder;

“regulated person” has the meaning given in subsection (1); “specified” means specified in the prohibition order.

Prohibition Orders: procedures

36 (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

37 (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.

38 (1) The Authority may grant an application made under section 37 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;
- (c) or possesses a level of competence, required in relation to persons performing functions of the kind to which the application relates.

Injunctions

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

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

the Court may make an order restraining the contravention.

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

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

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

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

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

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 8

RIGHTS OF APPEAL

Rights of Appeal

40 (1) A licensed undertaking which is aggrieved by a decision of the Authority—

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
- (b) to revoke its licence;
- (c) to refuse an application for a licence made under section 10(5);
- (d) to impose a civil penalty under section 31; or
- (e) to publish a statement in respect of it pursuant to section 33,

may appeal against the decision to the tribunal constituted in accordance

with section 40 (the tribunal).

- (2) Where—
- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 13(2)(a); or
 - (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an undertaking,

the controller or officer to whom the ground relates or whose removal is required may appeal to the tribunal against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom a notice of objection is served under section 25 or 26 may appeal to the tribunal 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 became or continued to be a controller in circumstances in which his doing so constitutes an offence under section 27(1), (2) or (3).

(4) Any individual in respect of whom a prohibition order has been made under section 35, may appeal to the tribunal.

(5) 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.

(6) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

(7) The revocation of a licensed undertaking's licence 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;
- (b) and if such an appeal is brought, until it is determined or withdrawn.

Constitution of tribunals

41 (1) A tribunal shall be constituted in accordance with this section, where an appeal is brought under section 40, to determine the appeal.

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(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) 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.

(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister under subsection (6), who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have experience of fund administration provider business.

(5) 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.

(6) The Minister shall appoint a panel of not less than nine persons with experience of fund administration provider business to serve as members of appeal tribunals.

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

Determination of appeals

42 (1) On an appeal made under section 40, 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.

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

- (a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) 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.

Costs, procedure and evidence

43 (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 a licensed undertaking and by a person who is to be a controller or officer of a licensed undertaking, 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 the negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

(a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;

(b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

Further appeals on a point of law

44 (1) A licensed undertaking or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for rehearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

PART 9

NOTICES AND INFORMATION

Warning notices

45 (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 about a proposal to publish a statement under section 32 must set out the terms of the statement.

(5) A warning notice given under section 36 must set out the terms of the prohibition.

Decision notices

46 (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 40.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 45 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 47.

(3) A decision notice about the imposition of a civil penalty under section 32 must state the date of payment.

(4) A decision notice about public censure under section 33 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.
- (5) A decision notice about a prohibition order made under section 35 (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.
- (6) A decision notice shall state the day on which it is to take effect.
- (7) 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.
- (8) The Authority may give a further decision notice as a result of subsection (7) only if the person to whom the original notice was given consents.
- (9) 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 (7).

Notices of discontinuance

47 (1) Subject to section 46(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

48 (1) Subject to sections 16, 33 and 35, 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 notice under subsection (1)—
- (a) before notifying the person concerned;
 - (b) and pending an appeal under section 40.

Power to obtain information and reports

- 49 (1) The Authority may by notice in writing served on a licensed undertaking—
- (a) require the undertaking 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 ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;
 - (b) require the undertaking to provide the Authority with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under paragraph (a).

(2) The person appointed by a licensed undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking, of the functions of the Authority under this Act.

General power to require production of documents

- 50 (1) The Authority may—
- (a) by notice in writing served on a licensed undertaking 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 producing such evidence of his authority to require it to provide to him 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 a licensed undertaking, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a licensed undertaking or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking 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 licensed undertaking in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients or potential clients of a licensed undertaking which is a company to do so, it may also exercise the powers conferred by section 49 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that undertaking;
- (b) a subsidiary company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of more than 50% of the voting power at a general meeting.

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

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

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

Right of entry to obtain information and documents

51 (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 49(1) and 50(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 49(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 49(1) and 50(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 such fine and imprisonment.

PART 10

INVESTIGATIONS

Investigations on behalf of the Authority

52 (1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Authority may appoint one or more competent persons to investigate and report to the Authority on—

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- (a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or
- (b) the ownership or control of the undertaking, and the Authority shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the undertaking under investigation;
- (b) a subsidiary company or related company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of more than 50% of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) he shall give it 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 or barrister and attorney of a licensed undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 53(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the 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 questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the persons so appointed 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 a licensed undertaking 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.

(7) Unless the Authority otherwise directs, the licensed undertaking under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(8) 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 a licensed undertaking which is under investigation or a company which 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 such fine and imprisonment.

(9) 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.

(10) 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.

Investigations of suspected contraventions

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

- (a) a person may have contravened section 8;
- (b) an undertaking may have contravened a requirement imposed by or under this Act, regulations, rules or orders made thereunder;
- (c) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 35.

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

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

Power to require production of documents during investigation

54 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 53 (“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 enquiry as the Authority may require.

(2) The Authority may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking 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.

(3) 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.

(4) 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 (a) of that subsection or exercising the powers conferred by subsection (3).

(5) 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 (4) 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 such fine and imprisonment.

(6) 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.

(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.

(8) 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 a group to which the person under investigation belongs;
- (b) a controller of the person under investigation;

- (c) a partner of a partnership of which the person under investigation is a member.

Powers of entry

55 (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 53 and—

- (a) a person has failed to comply with a notice served on him under section 54;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 54; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 54 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 under investigation 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) 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 53.

(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 53.

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

Obstruction of investigations

56 (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 8; or
- (b) under section 53,

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 such fine and imprisonment;

- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

PART 11

SAFE-KEEPING OF OTHER ASSETS

Safe-keeping of other assets

57 (1) An undertaking may apply to the Authority to obtain approval to offer the service of holding other assets.

(2) An application made under this section shall be in such form, contain such information and be accompanied by such documents as the Authority may require.

PART 12

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

58 (1) Except as provided by sections 59, 60 and 61 no person who—

- (a) under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) obtains information directly or indirectly from a person who has received it as provided under paragraph (a),

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

Disclosure for facilitating the discharge of functions of the Authority

59 (1) Section 58 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

- (a) its functions under this Act; and
- (b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 58 does not preclude the disclosure of information by the Authority to the auditor or accountant of a licensed undertaking, or the person appointed to make a report under section 49(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that section or would otherwise be in the interests of the clients or potential clients.

Disclosure for facilitating the discharge of functions by other authorities

60 (1) Section 58 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 58 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 58 and 59 and this section.

- (4) Section 58 does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 49(1)(b);
 - (b) with a view to the undertaking of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
 - (c) in connection with any other proceedings arising out of this Act.

(5) Section 58 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 52, 54 or 55 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 purposes mentioned in this section.

Information supplied to the Authority by relevant overseas authority

61 (1) Section 58 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 58 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 undertaking 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 14

MISCELLANEOUS AND SUPPLEMENTAL

False documents or information

- 62 (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;
 - (c) or takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment;
 - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.
- (1) to prove—
- (3) It shall be a defence for a person charged with an offence under subsection
- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
 - (b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

Offences by licensed undertaking

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

Restriction on use of words "Fund Administration Provider Business"

64 (1) No person other than a licensed undertaking, may use a name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is licensed to carry on fund administration provider business under this Act.

(2) A person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Notices

65 (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

- (2) Any such document may be given to or served on the person in question—
- (a) by delivering it to him;
 - (b) by leaving it at his principal place of business; or
 - (c) by sending it to him at that address by facsimile or other similar means which produces a document containing the text of the communication.

- (3) Any such document may in the case of a company be given to or served—
- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or

- (b) by sending it by registered post addressed to the company's principal place of business.

Service of notice on Authority

66 (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produces a document containing the text of the communication.

Civil debt and civil penalties

67 (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 31 in relation to the same matters.

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

Consequential amendments

68 (1) Schedule 1 has effect.

(2) Schedule 2 which makes consequential amendments to the Bermuda Monetary Authority Act 1969 has effect.

(3) Schedule 3 which makes consequential amendments to the Investment Funds Act 2006 has effect.

(4) Schedule 4 which makes consequential amendment to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 has effect.

Transitional

69 (1) This section applies to an undertaking which on the commencement of this Act is a licensed undertaking carrying on fund administration provider business under a licence issued by the Authority under the repealed enactment.

(2) On the commencement of this Act the Authority shall issue to an undertaking to which this section applies, a fund administration provider business licence, and thereupon the provisions of this Act shall apply to the licensed undertaking as if such licence were issued pursuant

to an application made under section 10.

(3) An undertaking shall not be liable to pay the fee prescribed by virtue of section 12 (1) on the issue of its licence under subsection (2), but shall be liable to pay the fee prescribed thereby on or before 31 March and annually thereafter, and the provisions of section 12 (2) shall apply in relation to failure to pay such fee.

Commencement

70 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.

SCHEDULE 1

MINIMUM CRITERIA FOR LICENSING

Controllers and officers to be fit and proper persons (section 10(2))

1. (1) Every person who is, or is to be, a controller or officer of the licensed undertaking is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of clients or potential clients of the licensed undertaking are, or are likely to be, in any way threatened by his holding that position.

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

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

Business to be conducted in prudent manner

2. (1) The licensed undertaking shall conduct, or, in the case of an undertaking which is not yet carrying on fund administration provider business, will conduct its business in a prudent manner.

(2) In determining whether a licensed undertaking is conducting its business in a prudent manner, the Authority shall take into account any failure by the undertaking to comply with the provisions of—

- (a) this Act;
- (b) any applicable law, including the 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;
- (c) any codes issued by the Authority pursuant to this Act;
- (d) international sanctions in effect in Bermuda.

(3) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of \$50,000 or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed undertaking.

(4) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records and has developed policies and procedures pertaining to its obligations under this Act or any other Act.

(5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensed undertaking to be prudently managed and the licensed undertaking to comply with the duties imposed on it by or under this Act or other provisions of law.

(6) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of its operations.

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

Integrity and skill

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

Corporate Governance

4. (1) The licensed undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

(2) Without prejudice to subparagraph (1) the business of the licensed undertaking shall be effectively directed—

- (a) by at least two persons; and
- (b) be under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

Consolidated Supervision

5. The position of the licensed undertaking within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

AMENDMENTS TO THE BERMUDA MONETARY AUTHORITY ACT 1969

The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule—

(a) under the heading “**Investment Funds Act 2006**” by repealing paragraphs “(12)” and “(13)”;

(b) by inserting the following new item in its alphabetical order—

“Fund Administration Provider Business Act 2019

(1) Application fee under section 12 (1) (a)	\$8,940
(2) Annual licensing fee under to section 12 (1) (b)	\$9,840

AMENDMENTS TO THE INVESTMENT FUNDS ACT 2006

The Investment Funds Act 2006 is amended—

- (a) in section 2—
 - (i) in subsection (1) by deleting the words “fund administrator”;
 - (ii) by repealing subsection (2).
- (b) in section 2B (1) (v) by deleting the words “or fund administrator”.
- (c) by repealing PART III in its entirety.
- (d) in section 55—
 - (i) by repealing subsections (3) and (4);
 - (ii) in subsection (6) by deleting the words “or a fund administrator’s licence
- (e) in section 58 (1) (c) by deleting the words “or by a licensed fund administrator and by a person who is to be a controller or officer of a fund administrator”;
- (f) in section 59 (1) by deleting the words “licensed fund administrator”;
- (g) in section 60 (c) by deleting the words “any licensed fund administrator”;
- (h) in section 61 in—
 - (i) subsections (1), (2) and (5) by deleting the words “or as the case maybe, a licensed fund administrator”;
 - (ii) subsection (3) by deleting the words “or a licensed fund administrator”;
 - (iii) in subsection (3) (a) by deleting the words “licensed fund administrator”;
 - (iv) in subsection (4) by deleting the words “or, as the case may be, the clients or potential clients of a licensed fund administrator.”.
- (i) in section 64 in—
 - (i) subsection (1), by deleting the words “or as the case may be the clients of a licensed fund administrator”;

- (ii) subsection (1) (b) by deleting the words “or, as the case may be, of the licensed fund administrator”;
 - (iii) subsections (4) and (6)(c) by deleting the words “or licensed fund administrator”;
 - (iv) subsection (5) by deleting the words “or a licensed fund administrator”.
- (j) by repealing the provisions of the Schedule.

AMENDMENTS TO THE PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING SUPERVISION AND ENFORCEMENT) ACT 2008

The Proceeds of Crime (Anti-Money laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is amended in section 2 (2) by inserting the following new paragraph after paragraph (i) —

“(j) Fund Administration Provider Business Act 2019;”.

FUND ADMINISTRATION PROVIDER BUSINESS BILL 2019

EXPLANATORY MEMORANDUM

This Bill makes new provision for regulating the business of fund administration provider businesses and for the protecting of the interests of clients or potential clients of persons carrying on fund administration provider business.

Clause 1 provides for a citation of the Bill.

Clause 2 provides for definitions in the Bill. Clause 2(2) provides for the substantive interpretation of the term “fund administration provider business”. For purposes of the Bill the term is interpreted to mean the provision of fund administration provider business.

Clause 3 provides for the substantive interpretation of the terms “director”, “controller”, “senior executive” and “associate” that are of significant use in the Bill.

Clause 4 provides for the substantive interpretation of the phrase “carrying on fund administration provider business in Bermuda”. The clause provides for the circumstances that are to apply to a person for such person to be considered as carrying on fund administration provider business in Bermuda, where such person is situated either within Bermuda or outside of Bermuda.

Clause 5 imposes a duty on the Bermuda Monetary Authority (“the Authority”) to publish annual reports.

Clause 6 requires the Authority to publish a statement of principles. This statement is to indicate to persons carrying on fund administration provider business how the Authority proposes to carry out certain aspects of its licensing and supervisory functions. This clause also allows the Authority to publish guidance on the application of the Bill and regulations made under it.

Clause 7 empowers the Authority to issue codes of practice. Persons carrying on fund administration provider business are required to observe these codes of practice. A failure to observe the codes of practice could lead to regulatory sanctions.

Clause 8 makes provision for persons to be restricted from carrying on fund

administration provider business without being licensed.

Clause 9 provides a procedure for making applications to the Authority for licences. An application must be accompanied by a business plan, application fee (to be prescribed under the Bermuda Monetary Authority Act 1969) and such other information or documents as the Authority may require.

Clause 10 empowers the Authority to grant or refuse applications for licences. The Authority must refuse an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant. The Minister is empowered to amend Schedule 1 that sets out the minimum criteria by order, under clause 10(7).

Clause 11 requires licences to be displayed. The Authority is required to publish a notice in the Gazette of each licence issued under the Act. It is also required to compile a register of licences which must be available for inspection by members of the public.

Clause 12 provides for fees to be prescribed under the Bermuda Monetary Authority Act 1969. It provides for the fees to be payable on the grant of the licence and thereafter annually on or before 31 March. Where a licensed undertaking fails to tender such fee in time, it shall be liable to a civil penalty.

Clause 13 makes provision for the Authority to license undertakings. Clause 14(1) empowers the Authority to restrict the licence of an undertaking in certain circumstances.

Clause 14 provides for the revocation of a licence. Paragraphs (a) to (e) set out the grounds for revocation.

Clause 15 provides for the winding-up of a licensed undertaking that has had its licence revoked, if it is just and equitable to wind it up.

Clause 16 requires the Authority to give notice to a licensed undertaking where it proposes to restrict, vary a restriction or revoke its licence. The Authority is required to give the undertaking a warning notice in writing which must state the action it proposes to take and give reasons for the proposed action. The licensed undertaking is given the opportunity to make representations to the Authority.

Clause 17 provides for the imposition of restrictions in cases of urgency where the situation warrants immediate action.

Clause 18 provides for the giving of directions by the Authority to a licensed undertaking following the revocation or surrender of its licence. In these circumstances there is no licence subsisting on which the Authority can impose restrictions for the protection of clients. This clause seeks to empower the Authority to give a licensed undertaking such directions as appear to the Authority desirable for safeguarding the

interests of the clients. Failure to comply with directions is a criminal offence.

Clause 19 provides for the notification and confirmation of directions given by the Authority to licensed undertakings. The clause requires that the Authority give directions by notice in writing and empowers the Authority to vary a direction by a further direction. The Authority may revoke a direction by notice in writing. The clause further provides that a direction given shall cease to have effect at the end of 28 days unless it is confirmed by a further notice given by the Authority.

Clause 20 provides for the surrender of a licence by an undertaking. The surrender of a licence is irrevocable, unless it is expressed to take effect at a future date, and before that date the Authority by notice in writing allows it to be withdrawn.

Clause 21 provides for the licensed undertaking to prepare annual financial statements and to appoint an auditor who must audit the accounts.

Clause 22 requires for licensed undertakings to appoint an approved auditor.

Clause 23 requires approved auditors to communicate certain matters to the Authority.

Clause 24 requires any person who proposes to become a 10 %, or majority shareholder controller of a licensed undertaking (or a partner in a licensed undertaking) to obtain the prior approval of the Authority. Such a controller is required to serve notice on the Authority of his proposal and to only become such a controller if the Authority either does not object or does not respond within a specified period.

Clause 25 provides for the Authority to object to any person who seeks to become a controller unless it is satisfied of a number of matters, one of which is that the person concerned is a fit and proper person to become a controller of the licensed undertaking. Provision is made for the giving of appropriate notices and for the making of representations by the person concerned.

Clause 26 provides for the Authority to object to an existing controller who it considers is no longer a fit and proper person. Provision is made for the giving of notices and for the making of representations by the person concerned.

Clause 27 provides for contraventions by a controller of various requirements under the Bill. Contraventions are committed, in particular, with respect to the failure by a person to notify the Authority as required that the person is to become a 10% or majority controller of a licensed undertaking or where a person fails to comply with notices of objection to him being a controller given by the Authority. The penalties that may be imposed range from \$25,000 to \$50,000.

Clause 28 provides for the imposition by the Authority of certain restrictions on the shares of a controller. The Authority may also apply to the court for an order for the sale of specified shares.

Clause 29 requires a licensed undertaking to notify the Authority of any change in its controllers or officers. Where an undertaking fails to comply, it shall be liable to a civil penalty.

Clause 30 makes provision for a licensed undertaking to within four months from the end of its financial year, deliver to the Authority a statement of compliance signed by an officer of the licensed undertaking, certifying that the licensed undertaking has, (with respect to the preceding financial year) complied or failed to comply with the minimum criteria for licensing under Schedule 1; and that it has observed any limitations imposed on it by the Authority under its license (if applicable).

Clause 31 empowers the Authority to impose civil penalties of up to \$500,000 for failure to comply with any requirement, or contravention of any prohibition, imposed by or under the Bill.

Clause 32 sets out the procedure for imposing fines. The Authority must give a warning notice first, followed by a decision notice. Clauses 44 and 45 make provision for the content of such notices.

Clause 33 provides for public censure of a licensed undertaking by the publication of a statement by the Authority stating that such undertaking has contravened a requirement imposed by or under the Bill.

Clause 34 sets out the public censure procedure. The Authority must give a warning notice first, followed by a decision notice.

Clause 35 Empowers 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.

Clause 36 sets out the procedure for making prohibition orders. The Authority must give a warning notice first, followed by a decision notice.

Clause 37 establishes a procedure for the making of applications to vary or revoke a prohibition order, requiring the Authority to serve appropriate notices.

Clause 38 permits the Authority to revoke or vary a prohibition order if it is satisfied that a person in respect of whom an order had been made is now fit and proper.

Clause 39 allows for the issuing of three types of injunction orders by the Supreme Court on the application of the Authority. The first is an order restraining a person from

contravening any requirement imposed by or under the Bill; the second is an order requiring persons to take steps to remedy a contravention of such a requirement; and the third is an order restraining a person from disposing or otherwise dealing with assets.

Clause 40 provides for appeals to appeal tribunals against decisions of the Authority restricting or revoking a licence.

Clause 41 provides for the establishment of appeal tribunals. A tribunal comprises a chairman, or deputy chairman to act in his absence, who must be a barrister and attorney of at least seven years standing; and two other members with experience of money service business. The chairman and deputy chairman of the tribunal are appointed by the Minister. The other members are appointed by the chairman, or, in his absence, by the deputy chairman from a panel.

Clause 42 provides for the jurisdiction and powers of the tribunal in the determination of appeals.

Clause 43 provides for costs, procedure and evidence. Under this clause, a tribunal has power to give directions as to costs and the Minister has power to make regulations prescribing procedure and evidence.

Clause 44 provides for appeals against the decisions of the tribunal to lie to the Supreme Court on questions of law only. Appeals to the Court of Appeal lie with leave of that court.

Clause 45 establishes a procedure for the issue of warning notices.

Clause 46 establishes a procedure for the issuing of decision notices.

Clause 47 requires the Authority to give a notice of discontinuance to the person concerned if, following the issue of a warning notice the Authority decides not to proceed with the proposed action.

Clause 48 allows the Authority to decide what information should be published about a decision and prohibits the Authority from publishing a decision unless it has first notified the person concerned, and pending the outcome of any appeal that might have been made.

Clause 49 provides for the obtaining of information and reports from a fund administration provider business. A report requested by the Authority under this clause may be prepared by a fund administration provider business' auditor, accountant or other person. An auditor, accountant or other person is required to report to the Authority any facts which indicate to him that the minimum criteria is not or has not been or may not be fulfilled by a licensed undertaking which are likely to be of material significance for the exercise of the Authority's functions.

Clause 50 provides for the production of documents for examination by the Authority. The Authority may also require the parent or a subsidiary company of a fund administration provider business to produce documents for its examination, if it appears to it to be desirable in the interests of the clients.

Clause 51 provides for a right of entry into premises occupied by a fund administration provider business, by officers, servants and agents of the Authority to obtain information or documents in certain circumstances.

Clause 52 provides for the investigation of a fund administration provider business.

Clause 53 provides empowerment to the Authority to investigate suspected contraventions of fundamental requirements in the Bill including the requirements not to carry on a fund administration provider business without a licence, requirements that apply to a fit and proper person's ability to perform functions in relation to a fund administration provider business and other requirements imposed by or under the Bill, regulations, rules or orders for purposes of the Bill.

Clause 54 provides that the Authority may require the person under investigation or any person connected to the person under investigation to provide information, produce documents or attend for questioning. Clause 54(6) precludes the use of statements given in the course of such investigations as evidence against that person.

Clause 55 provides for the issue of search warrants by a magistrate in cases where a person is suspected of removing, tampering or destroying documents required by the Authority for its functions, or in cases where a person under investigation or any person connected to the person under investigation refuses to provide the information or documents requested under clause 54.

Clause 56 makes it an offence to obstruct investigations.

Clause 57 provides for a fund administrator to apply to the Authority to offer the service of holding other assets of a client.

Clause 58 prohibits the disclosure of information relating to the business or other affairs of persons coming into the possession of any person exercising functions under the Act.

Clause 59 authorises the disclosure of information if it is necessary for facilitating the discharge of the functions of the Authority.

Clause 60 authorizes disclosure to the Minister and to other authorities in Bermuda for the purpose of enabling or assisting them to discharge their regulatory functions. Disclosure

may be made to overseas regulators who exercise functions corresponding to the functions of the Authority, provided that such overseas regulators are subject to similar restrictions on further disclosure. Information may be disclosed for the purposes of criminal proceedings and may be disclosed to the Director of Public Prosecutions or a police officer not below the rank of inspector.

Clause 61 imposes similar restrictions on the disclosure of information supplied to the Authority by an overseas authority.

Clause 62 creates offences in connection with false documents or information.

Clause 63 provides for the trial and punishment of directors and officers of a money service business for offences committed by companies in circumstances where such persons are implicated in the commission of an offence under the Act.

Clause 64 prohibits the use of the term "fund administration provider business" by persons not holding a licence in accordance with the Act.

Clause 65 provides the procedure for the giving and serving of notices to a fund administration provider business.

Clause 66 provides that a notice required under the Bill to be given or served on the Authority shall not be regarded as given or served until it is received by the Authority.

Clause 67 directs that where a person is convicted of a criminal charge, no civil penalty can be imposed relative to the same matter. The clause also provides a mechanism for the recovery of civil debt imposed under the Bill. The Authority would be able to claim the amount owing by way of civil proceedings in court.

Clause 68 makes provision for the Authority to make prudential standard rules relating to the filing of annual financial statements by licensed undertakings; and the ability for a licensed undertaking to hold other assets of clients.

Clause 69 provides for the Bill to come into operation on such day as the Minister may appoint by notice published in the Gazette. This clause also provides for different provisions of the Bill to come into operation on different days.

Clause 70 Commencement.

Schedule 1 provides the minimum criteria required under clause 10 (2) for the licensing of a fund administration provider business under the Bill. For this purpose the Schedule requires amongst other things; for controllers and officers of licensed undertakings to be fit and proper persons; stipulates the composition of the board of directors for undertakings that are companies; and requires the business of licensed undertakings to be conducted in

a prudent manner.

Schedule 2 makes provision for amendment to the Fourth Schedule to the Bermuda Monetary Authority Act 1969 under the heading “**Investment Funds Act 2006**” by repealing licensing and annual fees payable by fund administrators under such Act and instead, providing for licensing and annual fees to be payable in accordance with requirements under the (new) heading “**Fund Administration Provider Business Act 2019**”.

Schedule 3 provides for amendments to the Investment Funds Act 2006 to be made to remove all licensing and supervisory requirements of fund administrators in Bermuda as such will be solely captured in the new Act.