



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

**PROPOSED ENHANCEMENTS TO
THE INVESTMENT BUSINESS REGIME**

10 JUNE 2021

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I. INTRODUCTION

1. In March 2018, the Bermuda Monetary Authority (“the Authority”) issued a Discussion Paper (“DP”), entitled “*Proposed Enhancements to Investment Business, Investment Funds and Fund Administration Regimes,*” to initiate engagement with stakeholders on modernisation of each of those frameworks.
2. Following feedback from that consultation process, action was taken in 2019 in respect of the first two of those regimes, with the passage of the Investment Funds Amendment Act 2019 (and supporting instruments) and the Fund Administration Provider Business Act 2019. As the final portion of that engagement, the Authority commenced work in 2020 to review the Investment Business Act 2003 (“the IBA”) and ancillary instruments, with a view to upgrading that framework.
3. Prior to this, the IBA was amended in 2016 to facilitate Bermuda’s readiness for the Directive 2011/61/EU on Alternative Investment Fund Managers (“AIFM”) regime. Notwithstanding those discrete changes, the review initiated in 2020 sought to determine—in the context of evolving global standards and expectations—whether more expansive revision of the framework is warranted to ensure that the regime continues to provide for appropriate oversight of and remains accommodative of future growth in Bermuda’s investment business sector.
4. The review was conducted under three ‘pillars’ or phases and considered:
 - (i) the appropriateness of the framework’s scope;
 - (ii) the adequacy of supervisory and regulatory (including enforcement) requirements and obligations; and
 - (iii) the adequacy of ancillary instruments, including Regulations, Codes, Statement of Principles, Guidance and other supporting documentation which give effect to the framework.
5. From that exercise, the Authority deems it necessary to make enhancements to the framework, principally to widen its scope through amendment of the root concept of “carrying on investment business in or from Bermuda” and strengthening administrative arrangements around exemptions. It is envisaged that these proposed enhancements will serve to further safeguard and promote Bermuda’s reputation as a leading international financial services centre. Beyond those scope-related revisions, a number of other modifications have also been proposed to ensure the framework remains fit for purpose and aligned with sound practice.
6. The proposed legislative changes to give effect to the modernisation of the framework are set out in the illustrative draft version of Investment Business Amendment Bill 2021 (“the draft Bill) and accompanying illustrative draft Investment Business (Registered and Non-Registrable Persons) Order 2021 (“the draft Order”), both of which are attached to this paper. These proposed updates will be supported by revisions to the current suite of Regulations, Codes, Statement of

Principles and Guidance as well any new instruments developed to facilitate appropriate oversight of the sector, to be consulted on later in 2021.

7. A stakeholder letter addressing the feedback from the consultation process will be published after the responses have been reviewed. The Authority intends for the new provisions to enter into force by 1 January 2022.
8. Licensed persons and other interested parties are invited to submit their views on the proposals set out in this paper. Comments should be directed to policy@bma.bm no later than 16 July 2021.

II. EXPANSION OF SCOPE

Expansion of the definition of “carrying on investment business in or from Bermuda”

9. The Authority has determined that the current definition of “carrying on investment business in or from Bermuda”, which relies principally on the criterion of “maintaining a place of business in Bermuda”, should be updated to reflect the global trend towards increasingly decentralised and geographically mobile operating models. This change will, among other things, allow for more effective monitoring of the regulatory perimeter and support the Authority’s response to international regulatory cooperation expectations, especially in respect of Bermuda-formed entities which are currently outside of the regime’s scope.
10. In accordance with the above, the Authority proposes to remove the current definition’s reliance on the linchpin concept of “maintaining a place of business” in Bermuda, such that a person will now be deemed to be “carrying on investment business in or from Bermuda” where that person:
 - (a) carries on investment business and is incorporated or formed in Bermuda;
 - (b) is incorporated or formed outside of Bermuda and carries on investment business in or from Bermuda;
 - (c) engages in an investment activity, the doing of which constitutes the carrying on by such person of investment business in or from Bermuda under an order [made by the Minister].

It is proposed that the Minister retain the ability, after consulting with the Authority, to make an order specifying the circumstances in which a person who is not included within the scope of the new definition may still be regarded as carrying on investment business in or from Bermuda.

11. Consequent on the proposed expanded definition, all Bermuda-formed or incorporated persons who fall within the widened scope will be required to be licensed, and subject to full regulatory and supervisory oversight by the Authority, where they do not qualify for differing treatment under any other section of the amended framework.
12. While the concept of maintaining a place of business will no longer serve as the test of whether investment business is conducted “in or from Bermuda”, an express obligation will remain for specific persons to maintain a place of business in Bermuda.

Introduction of a category of “Class A Registered Persons”

13. The Authority recognises that several Bermuda-formed or incorporated persons carrying on investment business outside of the jurisdiction (and thus falling out of scope of Bermuda’s existing investment business regime) may already be subject to regulatory and supervisory oversight in the jurisdictions in which they operate. As such, these entities may not pose the same nature or degree of risk as entities

which are wholly unregulated, and on that basis, warrant different regulatory treatment. Mindful of this difference, and consistent with its overall risk-based approach to supervision, the Authority proposes that where such persons carry on investment business exclusively outside of Bermuda but are licensed, authorised or registered by a “recognised regulator” in one or more foreign jurisdictions and do not also wish to be licensed in Bermuda, they will be required to apply to the Authority to operate as “Class A Registered Persons”.

14. In keeping with this change, the Authority proposes to introduce a requirement for a person carrying on investment business who:
- (i) is licensed, authorised or registered by a recognised regulator; and
 - (ii) does not maintain a place of business in Bermuda,
- to apply to the Authority for approval to be registered as a Class A Registered Person and be subject thereafter to its ongoing supervision.

It should be noted that an entity that proposes to operate as a Class A Registered Person will not be able to do so until it demonstrates to the Authority that it has secured the requisite licence, authorisation or registration from a recognised regulator. Should the necessary approval not be secured from the recognised regulator, the Bermuda entity in question would be required to notify the Authority forthwith and, should they still wish to carry on investment business in or from Bermuda, submit an application to be licensed or, if applicable, registered as a Class B Registered Person, under the IBA.

For added clarity, a definition of the term “recognised regulator” has been proposed, which emphasises the application of standards equivalent to those applied in Bermuda. The Authority will provide further details on its determination of recognised regulators as part of a subsequent consultation on ancillary instruments later this year. It is anticipated that the Authority’s determination will start with a baseline expectation that the regulator in question is an ordinary member in good standing of the International Organization Of Securities Commissions (“IOSCO”).

Strengthening of the current exemptions regime

15. Under the current regime, several categories of persons who carry on investment business have been exempted – whether owing to the characteristics of their clientele, status as regulated entities or based on their (quasi-) public mandates – from requirements to be licensed and supervised by the Authority in connection with their investment activities. Following a review of the regime’s appropriateness, the Authority still considers the underlying rationale for such persons to be granted relief from the fulsome licensing requirements to be relevant.

16. Notwithstanding the determination that the rationale for retaining exemptions in some form remains appropriate, the Authority is of the view that aspects of the framework are no longer justifiable and, as such, are in need of reform. Primary among these are:
- (i) the requirement for only one-off declaration to the Authority by persons qualifying for exemption;
 - (ii) the absence of periodic reporting to the Authority by exempted persons; and
 - (iii) the absence of powers by the Authority to request information from, or otherwise direct, exempted persons.

Additionally, in view of the diversity of persons currently eligible for exemption, the Authority sees an opportunity for the framework to evolve to one which more appropriately recognises differences in the qualifying bases for such relief.

- **Introduction of a category of “Class B Registered Persons”**

17. In the context of the foregoing, the Authority proposes under the enhanced framework for persons, not including market intermediaries, to continue to qualify for proportionately less oversight than licensed persons in the event that they fully meet either or both of the following:
- (i) exclusively providing investment services to the classes of undertakings specified in paragraphs 1(a) – 1(i) of the Schedule to the existing Investment Business (Exemptions) Order 2004 (the “Exemptions Order”), including (but not limited to) “high income”, “high net worth” and “sophisticated private investors” and “investment funds”¹; or
 - (ii) providing investment services to 20 or fewer clients at any time, and not soliciting investment business from the public.

These persons, who currently qualify as exempt under paragraphs 1 and 3 respectively of the Schedule to the Exemptions Order, are proposed to be re-categorised as “Class B Registered Persons”.

18. In addition to their re-designation, the Authority also deems it necessary to strengthen the framework for approval of these entities to operate in or from within Bermuda, as well as for their ongoing monitoring thereafter. It is therefore intended that eligible persons who are desirous of operating as Class B Registered Persons will apply to and obtain formal approval from the Authority prior to undertaking investment business under such designation.

- **Persons who will be deemed “Non-Registrable”**

19. The Authority intends for the following set of persons, all of whom qualify as exempt under the current framework, to be re-designated as “Non-Registrable Persons” (“NRPs”):

¹ Current references within the Act to ‘collective investment schemes’ will be updated to instead refer to ‘investment funds’, for conformity with language used in the Investment Funds Act 2006 (“the IFA”).

- (i) Investment funds;
- (ii) Persons who are registered under the Insurance Act 1978 to carry on insurance business (as defined under that Act), where such persons provide investment services in connection with the insurance business for which those persons are registered;
- (iii) Persons who are registered under the Insurance Act 1978 as insurance managers, brokers, agents, salespeople, or members of an association of underwriters, where such persons provide investment services in connection with the business for which those persons are licensed;
- (iv) The Government of Bermuda;
- (v) The Bermuda Monetary Authority; and
- (vi) Other public authorities in Bermuda.

20. The Authority, therefore, proposes that the above list of persons be regarded as NRPs. Such persons are not proposed to have any obligations under this framework, where they fully comply with any limitations or conditions that may attach to their designation.

[Appendix 1 on page 19 presents a depiction of the proposed amended framework.]

Proposals to give effect to the introduction of Registered and Non-Registrable Persons

- 21. To give effect to the planned re-categorisation of exempt persons as either Class B Registered Persons or NRPs, it is proposed that current exemption provisions be repealed and replaced by provisions for the Minister to make an order, subject to the negative resolution procedure, specifying the persons or class of persons who may be designated as Class B Registered Persons or NRPs. It is further intended that the Minister may, in consultation with the Authority, amend that order.
- 22. Relatedly, the Authority intends to seek a modification of the existing prohibition against carrying on business unless such person is licensed or exempted from that requirement, to remove references to “exempted” and instead reflect the new proposed categories of “registered” or “non-registrable”.
- 23. The Authority recognises that notwithstanding the foregoing, certain persons who meet the criteria to be either Class B Registered Persons or NRPs may wish to have their investment activities fully licensed. In accommodation of this, it is proposed that such persons may apply to be licensed.
- 24. As a practical measure, the Authority also proposes for the enhanced framework to continue to allow for contracts entered into by persons who conduct investment business in contravention of the prohibition – that is, without being duly licensed, registered or deemed non-registrable – to remain enforceable.

Introduction of a new sandbox licence for investment business-related innovation

25. The abovementioned framework changes will be further supported by the introduction of a sandbox facility, comparable to the framework now in place for the re/insurance and digital asset sectors. This feature will allow eligible persons desirous of pursuing investment business-related innovation to test new technologies and delivery mechanisms, and offer innovative products in a controlled environment, within the parameters of a limited-term sandbox licence.
26. To distinguish this new activity, new licensing nomenclature will be introduced – in the form of “T” and “F” licence categories – thereby demarcating temporary activities licensed for testing under sandbox conditions from those undertaken under a regular full-term licence. Under this proposal, a person seeking to be licensed to conduct investment business would be required to state the type of licence required, whether:
 - (i) a class F licence, under which a person may carry out one or more investment activities (subject to any limitations or conditions imposed by the Authority); or
 - (ii) a class T licence, under which a person may carry out one or more investment activities for a defined period and subject to any restrictions which the Authority may determine. (The Authority may determine, or a person may apply to extend the period of this licence.)

Streamlining convergences between the investment business and other sectors

27. The Authority further intends that entities licensed under the Digital Asset Business Act 2018 (“DABA”), which provide investment services in a manner that is ancillary to their primary digital asset business activities, qualify to be excluded from the requirement to be licensed under the investment business framework. To achieve this objective, the Authority will, in the short term, seek an amendment to the Exemptions Order currently in force to exempt persons who meet those criteria from the requirement to be licensed under the investment business framework. Upon repeal of the Exemptions Order later in 2021, those entities will be subject to treatment as NRPs under the proposed amended framework. Detailed guidance will be provided on the criteria for determining whether an activity is ancillary in nature and on the Authority’s expectations of how these activities will be monitored on an ongoing basis.
28. Concomitant with the aforementioned change, the Authority will also consult in 2021 on proposals to amend the DABA framework to provide a similar pathway for investment providers wishing to conduct ancillary digital asset business activities without having to obtain a licence under the DABA, to qualify for exemption from the requirement.
29. The Authority similarly intends to exempt insurance marketplace providers (“IMPs”) registered under the Insurance Act 1978 from the requirement to obtain an investment business licence, but only to the extent that they arrange deals in

investments in connection with their insurance business. This exemption would not extend to activities beyond that narrow description, including where IMPs may arrange deals in investments with third parties.

Accommodation of additional legal structures

30. The definition of “company” will be updated to provide additional clarity regarding the flexibility permitted by the Authority with respect to the legal structure of undertakings either licensed or registered to conduct investment business. While the Authority does not endorse or promote use of any specific legal form or structure for the conduct of investment business, the definition is being updated to remove doubt as to whether a limited liability company (“LLC”), incorporated segregated accounts company (“ISAC”) and similar structures may be used to undertake investment business in Bermuda. Accordingly, changes have also been proposed to widen the meaning of “controller” of an undertaking to include the LLC manager.
31. During the application process, the Authority will assess the suitability of structures proposed, in the context of the minimum criteria for licensing and registration; however, persons are encouraged to engage the Authority regarding the appropriateness of a proposed structure, even ahead of submitting an application. The Authority will also provide additional details regarding its expectations within the suite of guidance to be updated later in 2021.

III. REFINEMENT OF INVESTMENTS AND INVESTMENT ACTIVITIES

Introduction of a new investment activity of “promotion of investments to the public”

32. Against the backdrop of increasing global emphasis on strengthening the technical standards which support investment business frameworks and increased focus on the conduct of business matters related (not exclusively) to the improper promotion and product mis-selling to retail markets, the Authority intends to establish the conduct of business regulatory regime to enhance protections for customers of financial services in Bermuda. To that effect, the Authority issued a consultation paper, “*Proposal for a Conduct of Business Regulatory Regime*”, in December 2020 to solicit feedback on that objective. Following that exercise, the Authority intends to update the various sectoral Codes as necessary, including those governing investment business, to clarify its expectations in this area.
33. In tandem with that conduct of business objective, the Authority also intends to introduce a new category of investment activity, “promotion of investments to the public”, for ease of identification of persons conducting that specific activity. The First Schedule will be updated to include this new activity, with the following definition proposed:

“PROMOTION OF INVESTMENTS TO THE PUBLIC

- (a) advertising or agreeing to advertise, material or information which promotes an investment to members of the public;*
- (b) issuing or agreeing to issue a prospectus, application form or proposal form in relation to an investment, to members of the public;*
- (c) distributing, circulating or agreeing to distribute, circulate or make available material relating to an investment, to members of the public;*
- (d) This paragraph applies to a person as principal or agent only if he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions;*
- (e) For the purposes of this paragraph, “members of the public” has the meaning given in paragraph 1(6).”*

Refinement of framework definitions

- **Refinement of existing framework definitions relating to client characteristics**
34. While it currently maintains that the thresholds in respect of private investors generally remain appropriate, the Authority has determined that there is merit in standardising terminologies, to the extent applicable and appropriate, with those used in other regulatory frameworks, including the Investment Funds Act 2006 (“IFA”), for greater consistency and clarity. To that effect, amendments are proposed within the draft Order to strengthen the definitions of:
- (i) **‘high net worth private investor’**, to explicitly exclude the value of a person’s primary residence from the calculation of ‘net worth’, for prudence and conformity with other frameworks; and
 - (ii) **‘sophisticated private investor’**, to remove the requirement for each transaction conducted by such person to exceed \$100,000.
- **Refinement of existing framework definitions relating to investments**
35. The Authority is of the view that the definitions of investments set out in the First Schedule of the current Act remain generally adequate and appropriate for an application going forward; however, the term “units in collective investment schemes” will be replaced as relevant throughout the Act with “units in investment funds”, for conformity with the IFA.
36. The Authority also recognises the opportunity to modify the definition of the term “contract for differences” to address spot foreign exchange trading. The proposed modification will clarify that “contracts for differences” also include rights under – *“a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the*

generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers of banks and bureaux de change.”

IV. ENHANCEMENT OF REGULATORY / SUPERVISORY MEASURES

37. Complementary to the various scope-related changes outlined above, the updated regime proposes additional regulatory and supervisory changes to improve the Authority’s regulatory capacity. Each of the new or enhanced powers contemplated is deemed to be commensurate with the potential risks posed by each category of licensed or registered person and consistent with the Authority’s risk-based approach to supervision.

Introduction of additional powers in relation to investment business activities

38. Following assessment, the Authority deems it appropriate to pursue specific rulemaking powers to enhance its ability to regulate and supervise investment businesses. (At present, the Act enshrines rulemaking powers only in respect of AIFMs.) It is proposed that the Authority be granted the power to set rules, prescribing prudential standards or technical returns in relation to:
- net assets
 - liquidity
 - financial statements
 - statutory returns

These changes will result in, among other effects, a formalising of the Authority’s expectations regarding maintenance of minimum net assets and adequate liquidity, which are currently set out in the Statement of Principles.

39. Standards delineated in rules may impose varying requirements to be complied with in different situations or in respect of different activities. The Authority also proposes establishing timeframes for submission of information or documents submitted in compliance with any rule or return requirement and the minimum period for retention of those records. Failure to file documents in satisfaction of a rule or return requirement within the specified timeframe may incur a civil penalty.
40. In the context of the aforementioned changes, the Authority also intends to embed additional flexibility within the regime. Specifically, it is proposed that the Authority be granted powers to exempt a person from the requirement to comply with a standard or to modify standards or requirements in respect of a person. With this enhancement, the Authority may determine, or persons may apply for, such exemption or modification, and the Authority may attach conditions to approvals for modification or exemption. (The Authority will also, where it deems appropriate, reserve the right to revoke an exemption or alter a previously approved modification, pursuant to service of a notice.)

41. The Authority will assess fees in connection with applications for exemption or modification of rules and standards, against a sliding scale to be set out in the Fourth Schedule of the BMA Act.

Requirement for either maintenance of a place of business or appointment of a Senior Representative

42. The Authority proposes that each licensed and Class B Registered Person must “maintain a place of business in Bermuda”, which shall be known as its principal place of business. In support of this, the Authority will refine the implication of the requirement to “maintain a place of business” (which currently plays a part in determining whether a person is carrying on business in or from Bermuda), but the phrase will continue to mean:
- (i) in the case of an individual who is a sole trader, that s/he carries on investment business from premises s/he occupies in Bermuda for that purpose;
 - (ii) in any other case, that the undertaking carries on investment business from premises, it occupies in Bermuda for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(For ease, an entity’s registered office (maintained further to its obligations under the Companies Act) may also serve as its principal place of business, provided such office satisfies the requirements in (ii) above.)

43. In lieu of the requirement to maintain a place of business in Bermuda, the Authority proposes to require each Class A Registered Person to appoint an individual approved by the Authority as its Senior Representative. It is therefore proposed for that person, who will serve as the point of contact in Bermuda for the Authority, to maintain an office in Bermuda and be responsible for notifying the Authority of the entity’s likely insolvency as well as:
- (i) any failure by the entity to comply with a condition imposed by the Authority;
 - (ii) any failure by the entity to comply with any modified provision or condition specified in a direction issued by the Authority;
 - (iii) involvement of that Class A Registered Person in criminal proceedings, whether in or outside of Bermuda; and
 - (iv) that Class A Registered Person ceasing to be licensed, registered or authorised by a recognised regulator.

Scaling of minimum criteria for registration vis-à-vis licensing

44. Consequent to the planned addition of two new categories of registered persons to the regime, the existing minimum criteria will be renamed “Minimum Criteria for Licensing or Registration”. No substantive changes are proposed in respect of the current criteria; however, the presentation will be modified to clearly distinguish requirements for registered persons, as against licensees. In addition, minor

amendments will also be made to renumber the existing criteria, to give appropriate prominence to the most recently added “Corporate Governance” criterion.

45. The criteria will apply as follows in respect of each category of registered or licensed person:

Minimum Criteria for Registration or Licensing	Registered Persons		Licensees
	Class A	Class B	
Controllers to be fit and proper persons	✓	✓	✓
Corporate governance	✓	✓	✓
Business to be conducted in prudent manner:			
- Compliance with the Act (as applicable)	✓	✓	✓
- AML / ATF	✓	✓	✓
- Compliance with applicable Codes	✓		✓
- Sanctions	✓	✓	✓
- Minimum net assets	✓		✓
- Adequate liquidity	✓		✓
- Adequate accounting and other records / adequate systems of controls and records	✓	✓	✓
- Insurance	✓		✓
Consolidated supervision	✓		✓
Integrity and skill	✓	✓	✓

Supervisory and enforcement powers in respect of Registered Persons

46. The addition of registered persons to the framework will warrant an extension of the Authority’s existing supervisory and enforcement powers, in order for it to appropriately supervise and regulate the activities of those new persons. The Authority, therefore, proposes for all of its powers which currently apply in respect of licensees, to also apply in respect of Class A and B Registered Persons.

Reporting and other requirements to be met by Registered Persons

47. Consistent with other measures proposed to render the framework more robust, the Authority intends to streamline existing reporting requirements as well as introduce reporting requirements for the new categories of Class A and B Registered Persons. The Authority will also seek, to the extent practicable, to minimise the burden of reporting, including by consolidating AML/ATF and prudential reporting.
48. The Authority intends to scale reporting requirements commensurate with the risk assessed. Both classes of registered persons will be required to file an annual declaration to the Authority within four months of the financial year-end. The Authority will provide additional details regarding these reporting requirements in its subsequent consultation on Rules and other instruments.

Clarification and strengthening of audit requirements

49. The proposals refine the requirement for appointment of auditors by clarifying that audited financial statements must be prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America, International Financial Reporting Standards or such standards as the Authority may recognise. Where a person is obliged to submit audited financial statements, the Authority will require such person to also provide a copy of its auditor’s management letter and management’s response to same, upon request.

For persons holding client money, the Authority also proposes strengthening its ability to determine the robustness of client money arrangements by introducing a requirement for review of controls around holding those monies.

V. IMPLICATIONS FOR AML/ATF SUPERVISION

50. The Authority recognises that the proposed amendment to the definition of “carrying on investment business in or from Bermuda” will have the following additional effects on Bermuda’s AML/ATF regime:
- (i) The proposed re-designation of some currently exempt persons – who are supervised as Non-Licensed Persons (“NLPs”) under Bermuda’s AML/ATF framework as Class B Registered Persons – will not result in any changes in their AML/ATF obligations. However, AML/ATF oversight of those persons will be applied in conjunction with the proportional prudential oversight to which such persons will be subject.
 - (ii) Similarly, persons who do not currently maintain a presence in Bermuda but who are proposed to be brought into scope as Class A Registered Persons will be newly subject to all applicable AML/ATF obligations.

VI. TRANSITIONAL

51. A transitional period of twelve (12) months from the operative date of these changes is proposed for persons to achieve compliance with all applicable requirements.
- (i) Previously unlicensed persons who will require a licence to operate under the amended framework will be required to apply to the Authority to be licensed. Current licensees who remain in good standing, will not be required to apply for a new licence and as such, will be “grandfathered” into the enhanced regime under their existing licences.

- (ii) Persons satisfying the criteria of Class A Registered Persons will be required to apply for approval from the Authority to operate as Class A Registered Persons. The Authority will further outline its expectations regarding the timing of submission of applications for Class A registration in Bermuda and licensing by another recognised regulator in updated guidance to prospective applicants.
- (iii) Persons who currently qualify for exemption under either paragraphs 1 or 3 of the Schedule to the existing Exemptions Order, will be required to apply to the Authority to operate as Class B Registered Persons. As such, the existing obligation for such persons to submit a one-time declaration to the Authority will be replaced by a requirement for eligible persons to apply and receive formal approval from the Authority to operate as Class B Registered Persons.
- (iv) Persons who qualify as NRPs under the amended framework will not be required to apply to the Authority for that status and will face no further prudential obligations in relation to the investment business they engage in, provided such activities fully comply with any conditions or restrictions the Authority may apply. (Persons will, however, continue to be subject to all applicable AML/ATF requirements as well as any other prudential requirements attendant to their primary regulated activities.)

VII. OTHER PROPOSED CHANGES

52. The following ancillary changes are also scheduled to give effect to modernising of the framework:

- (i) The Authority is of the view that it is important for the enhanced regime to preserve the Minister’s ability to designate specific persons, by Order, as Class B Registered Persons, eligible for regulatory relief under the framework and, in support of timely and efficient action, for any amendment to such Order to be subject to the negative resolution procedure. The name of the new instrument, “Registered and Non-Registrable Persons Order”, will appropriately reflect the introduction of registrants and other relevant updates to the framework.
- (ii) Where applicable, the amended Act will extend references to registered persons in all sections of the Act that currently reference licensed persons. Accordingly, the definition of the term “investment provider” – which currently refers to licensed persons (including AIFMs) – will be extended, unless expressly stated otherwise, to include Class A and B Registered Persons.
- (iii) The current requirement for displaying licences at an entity’s principal place of business or registered office will be extended to registered persons. Accordingly, each licensed or registered person will be required to display its licence or registration certificate, as applicable, at any of its principal place of business, the office of its Senior Representative, or its registered office. Going

forward, in addition to the list of licensed persons already on its website, the Authority will also maintain a list of registered persons.

53. The Authority intends to require investment providers to apply prior to, and obtain its formal approval in respect of, surrendering a licence or registration.
54. A number of amendments to other legislation are anticipated to give effect to the changes outlined in this paper.
 - (i) The proposed change in the definition of “carrying on investment business in or from Bermuda” would trigger the need for consequential amendment of the BMA Act to introduce the application and annual fees for the two new categories of registered persons, as well as fees applicable for the Authority to consider waiver or modification of a prudential standard or return. There will be no change to existing (application and annual renewal) fees for licensees.
 - (ii) The definition of “licensed AML/ATF regulated financial institution” within the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 will, subject to endorsement by the National Anti-Money Laundering Committee, be also amended to recognise “Registered Persons” which will be newly subject to regulation by the Authority.

VIII. UPCOMING PROPOSALS TO BE ADDRESSED UNDER SEPARATE CONSULTATION EXERCISES

The Authority wishes to advise of the following changes which extend beyond the scope of these proposed Amendment Bill, but which are anticipated to have direct bearing on the framework for regulation of the investment business sector.

Extension of the Innovation Hub facility to the investment business sector

55. In keeping with its commitment to support innovation across Bermuda’s financial services, in 2021, the Authority will extend the scope of its Innovation Hub framework. This change will allow for the raft of services currently provided to the market under that framework – including providing regulatory guidance on standards and expectations to prospective providers of disruptive and innovative solutions – to be made available to other sectors, including investment business licensees.

Revisions to the appeal tribunals framework

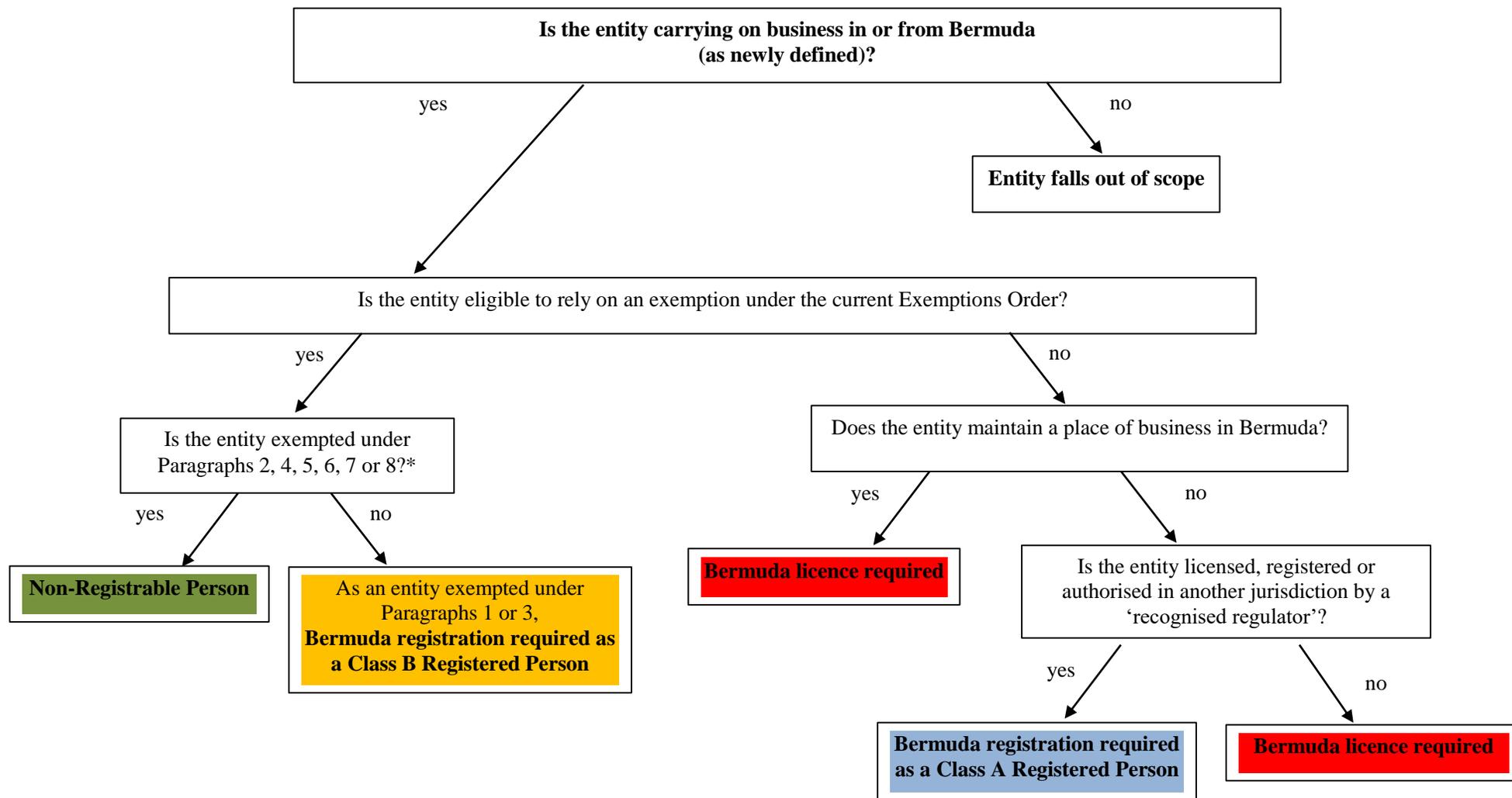
56. In 2021, the Ministry of Finance intends to undertake scheduled revisions to the framework for appeal tribunals, the impact of which is expected to cascade across all of the regulated financial services sectors. It is anticipated that further

amendments to Chapters 3 and 5 of the IBA will be required once those revisions are announced.

Investment exchanges and clearing houses

57. Part IV of this Act which addresses “Regulation of investment exchanges and clearing houses” will be subject to separate review and amendment, as appropriate, at a future date, taking cognisance of the intersections with regulation and supervision of the digital asset financial market infrastructure.

IX. Appendix: SCHEMATIC OF PROPOSED FRAMEWORK



* **NOTE:** Upon commencement of the new regime, it is also proposed that licensed digital asset businesses and registered insurance marketplace providers, where they satisfy certain criteria, will qualify as Non-Registrable Persons (NRPs).

INVESTMENT BUSINESS ACT 2003

BR / 2022

INVESTMENT BUSINESS (REGISTERED AND
NON REGISTRABLE PERSONS) ORDER 2022

The Minister of Finance, in exercise of the powers conferred upon him by section 4 (2) of the Investment Business Act 2003 and acting on the advice of the Bermuda Monetary Authority, makes the following Order—

Citation

1 This Order may be cited as the Investment Business (Registered and Non-Registrable Persons) Order 2022.

Interpretation

2 In this Order—

"Act" means the Investment Business Act 2003;

"Class B Registered Person" means those specified persons set out under Schedule 1;

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

"investment funds" means those investment funds authorized or registered under the Investment Funds Act 2006;

"investment services" means investment activities undertaken in the course of carrying on investment business;

"market intermediary" means a person who engages or holds himself out as engaging in the business of dealing in investments as principal or agent on an investment exchange;

“Minister” means the Minister of Finance;

“Non-Registrable Person” means those specified persons set out under Schedule 2;

"sophisticated private investor" means—
an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.

SCHEDULE 1

CLASS B REGISTERED PERSONS

The following persons must register with the Authority in accordance with section 13B of the Act as “Class B Registered Persons”—

1. Persons, other than market intermediaries, who provide investment services exclusively to one or more of the following classes of undertakings—
 - (a) high income private investors;
 - (b) high net worth private investors;
 - (c) sophisticated private investors;
 - (d) investment funds
 - (e) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
 - (f) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
 - (g) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
 - (h) partnerships, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
 - (i) trusts, all of whose beneficiaries fall within one or more of the subparagraphs of this paragraph, except subparagraph (d).

2. Persons who provide investment services to not more than twenty persons at any time, and do not provide investment services to, or solicit investment business from, the public.

SCHEDULE 2

NON- REGISTRABLE PERSONS

The following classes of specified persons are designated in accordance with section 13D of the Act as Non-Registrable Persons—

1. Investment funds
2. Persons who are licensed under the Digital Asset Business Act 2018 to carry on digital asset business (pursuant to section 2 (1) of that Act), who provide investment services ancillary to the digital asset business for which those persons are licensed under such Act.
3. Persons who are registered under the Insurance Act 1978 to carry on insurance business (pursuant to section 1(1) of that Act) who provide investment services in connection with the insurance business for which those persons are registered under such Act.
4. Persons registered under the Insurance Act 1978 as insurance managers, brokers, agents, salesmen, or members of an association of underwriters (within the meaning of section 1 of that Act) recognized by the Authority, who provide investment services in connection with the business for which they are licensed under that Act.
5. Persons registered under the Insurance Act 1978 as insurance marketplace providers (within the meaning of section 2 of that Act) who arrange deals in investments in connection with the business for which they are registered under that Act.
6. The Government of Bermuda.
7. The Bermuda Monetary Authority.
8. Public Authorities established in Bermuda.

Made this day of 2022

Minister of Finance

A Bill

entitled

INVESTMENT BUSINESS AMENDMENT ACT 2021

1	Citation
2	Amends section 2
3	Amends section 4
4	Amends section 7
5	Inserts sections 10A and 10B
6	Amends PART III title
7	Amends section 12
8	Repeals and replaces section 13
9	Inserts sections 13A, 13B, 13C and 13D
10	Amends section 14
11	Amends section 15
12	Inserts section 16
13	Amends section 17
14	Inserts sections 17A, 17B, 17C and 17D
15	Amends section 18
16	Amends section 19
17	Amends section 26
18	Amends section 38
19	Amends section 40
20	Amends section 41
21	Amends section 45
22	Amends section 49A
23	Amends section 84
24	Amends First Schedule
25	Amends Second Schedule
26	Transitional
27	Consequential amendments

WHEREAS it is expedient to make provision for matters relating to the supervision and regulation of investment businesses and for connected matters: Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Investment Business Act 2003 (the "principal Act"), may be cited as the Investment Business Amendment Act 2021.

Amends section 2

2 Section 2 (1) of the principal Act is amended—

- (a) by inserting in the appropriate alphabetical order the following definitions—

“Class A registered person” means a person registered under section 13A;

“Class B registered person” means a person registered under section 13B;

“incorporated segregated account” has the meaning given in section 2 of the Incorporated Segregated Accounts Companies Act 2019;

“incorporated segregated accounts company” has the meaning given in section 2 of the Incorporated Segregated Accounts Companies Act 2019;

“limited liability company” or “LLC” means a company formed under the Limited Liability Company Act 2016;

“minimum criteria” means the minimum criteria for licensing and registration specified in the Second Schedule;

“Non- registrable person” means a person falling within such specified class of persons under the Order;

“Order” means the Investment Business (Registered and Non-Registrable Persons) Order 2021;

“recognised regulator” means a regulatory authority recognised by the Authority to be empowered by law to supervise entities conducting investment business in a country or territory outside of Bermuda, which imposes standards equivalent to those established by, or under this or any other Act;—on persons conducting investment business in Bermuda;

“registered person” means a Class A registered person or a Class B registered person;

- (b) in the definition of “company” by inserting after “elsewhere” the words, “an incorporated segregated accounts company, an incorporated segregated account, a LLC”;
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- (c) in the definition of “investment provider” by inserting after the reference to “III” the words “and any registered person;”.

Amends section 4

3 Section 4 of the principal Act is amended—

- (a) in subsection (1) by deleting paragraph “(a)” and substituting the following—
 - “(a) carries on investment business and is incorporated or formed in Bermuda; or
 - (ab) is incorporated or formed outside Bermuda and carries on investment business in or from Bermuda.”;
- (b) by repealing subsections (6), (7) and (8).

Amends section 7

4 Section 7 of the principal Act is amended—

- (a) in subsection (3) by inserting the following new subsection after subsection “(f)” —
 - “(g) a manager of a LLC.”.
- (b) in subsection (4) by inserting—
 - (i) “or LLC” after the word “undertaking”;
 - (ii) a new subparagraph after subparagraph (c) as follows—
 - “(d) is a member, assignee and other person granted an interest in a LLC.”.

Inserts sections 10A and 10B

5 The principal Act is amended by inserting the following new sections after section 10 as follows—

“Prudential and other returns

10A (1) The Authority may make Rules prescribing prudential standards or technical returns in relation to—

- (a) cybersecurity;
- (b) financial statements;
- (c) net assets;
- (d) liquidity;
- (e) statutory returns;

which shall be complied with by investment providers as applicable.

(2) The Authority may in such Rules or statutory returns prescribe standards that impose different requirements to be complied with by investment providers in different situations or in respect of different activities.

(3) Audited financial statements and accounts shall be in a prescribed form and different forms of return may be prescribed for investment providers holding different classes of licence or registration.

(4) Not later than four months after the close of its financial year every investment provider shall file with the Authority any information or documents required in relation to any applicable Rule or statutory return required to be prepared by it under this section.

(5) Every investment provider shall keep a copy of the most recent return filed with the Authority at its or principal place of business or at the office of its appointed senior representative as applicable, for a period of not less than five years beginning with its filing date under subsection (4).

(6) Every investment provider that fails to file audited financial statements, accounts, any information or documents required in relation to a Rule or statutory return within the time specified in subsection (4) is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

Authority may exempt or modify prudential standards or requirements or take necessary actions

10B (1) The Authority may, where it has made a determination or on the application of an investment provider, exempt it from the requirement to comply with any prudential standard or requirement applicable to it under this Act or modify any such prudential standard or requirement.

(2) In granting an exemption or modification under this section the Authority may impose such conditions on the exemption or modification as it considers appropriate.

(3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the investment provider.

(4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the licensed undertaking of its proposal to revoke its approval and the reason for its proposal.

(5) An investment provider served with a notice under subsection (4) may within a period of 28 days from the date of the notice make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

(6) Without prejudice to its powers under subsection (1), the Authority where it has made a determination, may take any action necessary or desirable to protect the public, clients or potential clients of the investment provider where the Authority concludes that due to the nature, scale and complexity of the investment provider, such action is necessary and in the interest of the public or is required to be taken for the protection of clients or potential client.

(7) Before taking any such action under subsection (6), the Authority shall serve notice on the investment provider giving its reasons therefore.

(8) An investment provider served with a notice under subsection (7) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action.

(9) The Authority shall notify an investment provider of any actions it has taken.

Amends PART III title

6 The title “PART III” shall be amended by deleting “AND EXEMPTIONS” and substituting the words “, REGISTRATION OR DESIGNATION AS NON-REGISTRABLE”.

Amends section 12

7 Section 12 (1) of the principal Act is amended by deleting “is exempted by” and substituting the words “registered or designated as a non-registrable person by the Minister under the Order”.

Repeals and replaces section 13

8 Section 13 of the principal Act is repealed and replaced as follows—

“Minister may make an order

13 (1) The Minister may, on the advice of the Authority make an order specifying the persons or class of persons who may be designated for the purposes of the Act as a Class B Registered Person or a Non-Registrable Person.

(2) An order made under subsection (1) may provide for a person designated thereunder to be subject to such limitations or conditions on the scope of the investment activity or the manner of operating the investment business as the Minister after consultation with the Authority, may determine to be appropriate having regard to the nature, scale and complexity of the proposed business.

(3) The Minister may, after consultation with the Authority, amend the order to add, modify or delete persons to be designated as a Class B Registered Person or a Non-Registrable Person.

(4) An order made under this section may include savings and transitional provisions.

(5) An order made under this section is subject to negative resolution procedures.

(6) Where in pursuance of this section a Class B Registered person or a Non-Registrable person is subject to a limitation or condition upon registration or designation as applicable and the limitation or condition is contravened, such registration or designation shall not have effect, and accordingly proceedings may be brought for an offence under section 12.”.

Inserts sections 13A, 13B, 13C and 13D

9 The principal Act is amended by inserting the following new provisions after section 13—

“Registered Persons- Class A

13A (1) Any person carrying on investment business in or from Bermuda—

- (a) that is licensed, authorised or registered by a recognised regulator; and
- (b) which does not maintain a place of business in Bermuda;

shall be required to make an application for registration to the Authority in accordance with subsection (2) as a Class A Registered person.

(2) Subject to this section, an application for registration as a Class A Registered person may be in such form as may be prescribed and made to the Authority in such manner as the Authority may direct.

(3) An application for registration under subsection (2) shall be accompanied by—

- (a) a business plan setting out the nature, scale and complexity of the investment business which is to be carried out by the applicant;

(b) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;

(c) such other information, documents and reports as the Authority may require for the purpose of considering the application.

(4) For the purposes of this section, “a person maintains a place of business in Bermuda” —

(a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies in Bermuda, for that purpose;

(b) in any other case, if it carries on investment business from premises it occupies in Bermuda, for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(5) The Minister may, after consultation with the Authority, make an order amending the meaning of maintaining a place of business.

(6) An order made under subsection (5) may include saving and transitional provisions.

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

Registered Persons- Class B

13B (1) Any person falling within the class of specified persons under Schedule 1 to the Order, shall be required to make an application for registration to the Authority in accordance with subsection (2) as a Class B Registered Person.

(2) Subject to this section, an application for registration as a Class B Registered person may be in such form as may be prescribed and made to the Authority in such manner as the Authority may direct.

(3) An application for registration under subsection (2) shall be accompanied by—

(a) business plan setting out the nature, scale and complexity of the investment business which is to be carried out by the applicant;

- (b) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;
- (c) such other information, documents and reports as the Authority may require for the purpose of considering the application.”.

Principal place of business- Class B Registered persons

13C (1) Every Class B Registered person shall maintain a place of business in Bermuda, which shall be its principal place of business.

(2) For the purposes of this section, “maintains a place of business in Bermuda” shall mean —

- (a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies in Bermuda for that purpose;
- (b) in any other case, if it carries on investment business from premises it occupies in Bermuda, for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(3) The Minister may, after consultation with the Authority, make an order amending the meaning of “maintaining a place of business”.

(4) An order made under subsection (3) may include saving and transitional provisions.

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

Non- Registrable Persons

13D (1) Any person falling within the class of specified persons under Schedule 2 to the Order, shall be regarded by the Authority for the purposes of this Act as a Non-Registrable Person.”.

Amends section 14

10 Section 14 of the principal Act is amended—

- (a) in the title by deleting “Exempted” and inserting the word “Class B registered and Non-Registrable”;
 - (b) in subsection (1) by deleting “exempted by or under an order made under section 13 (“exempted person”)” and inserting the words “specified by an order made by the Minister under section 13”;
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- (c) in subsection (2) by deleting “an exempted” where it occurs and substituting the words “a Class B registered or non-registrable person”.

Amends section 15

11 Section 15 of the principal Act is amended in the title by deleting “unlicensed” and substituting the words “not licensed, registered or designated as non -registrable”.

Amends section 16

12 Section 16 of the principal Act is amended—

- (a) in subsection (1) by inserting after “a” the words “Class F or Class T”;

- (b) by inserting the following new paragraphs after paragraph (1) —

“(1A) An application shall state the class of investment business licence required.

(1B) The classes of investment business licence referred to in subsection (1A) which may be applied for under this Act are a—

- (a) class F licence, under which a person shall be licensed to engage in any or all investment activities;

- (b) class T licence, under which a person shall be licensed to engage in any or all of investment activities for a defined period determined by the Authority and is subject to such restrictions as the Authority may determine.

(1C) The Authority, where it has made a determination or on the application of a person, may extend the defined period of a class T licence for such additional period of time as it deems appropriate.

(1D) An application in respect of any extension to the defined period of a class T licence in accordance with subsection (1C) shall be in such form as the Authority may direct, accompanied by such information as the Authority may require and the application fee of such amount prescribed by the Authority under the Bermuda Monetary Authority Act 1969.”.

- (c) in subsection (2) by inserting after “a” the words “Class F or Class T”;

- (d) in subsection (3) by inserting after “a” the words “Class F or Class T”;

- (e) in subsection (4) by inserting after “application” the words “for a Class F or Class T”.

Amends section 17

13 The principal Act is amended by repealing section 17 (6) and (7).

Inserts sections 17A, 17B, 17C and 17D

14 The principal Act is amended by inserting the following new provision after section 17—

“Principal place of business- Licensed persons

17A (1) Every person licensed under section 17 shall maintain a place of business in Bermuda, which shall be its principal place of business.

(2) For the purposes of this section, “maintains a place of business in Bermuda” means —

(a) in the case of an individual who is a sole trader, if he carries on investment business from premises he occupies, in Bermuda, for that purpose;

(b) in any other case, if it carries on investment business from premises it occupies, in Bermuda, for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(3) The Minister may, after consultation with the Authority, make an order amending the meaning of “maintaining a place of business”.

(4) An order made under subsection (3) may include saving and transitional provisions.

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

Grant and refusal of an application for registration

17B (1) Subject to this section, the Authority may on an application duly made in accordance with sections 13A and 13B and after being provided with all such information, documents and reports as it may reasonably require, grant or refuse the application for registration.

(2) A registration issued under this section may be subject to such limitations or conditions on the scope of the investment activity or the manner of operating the investment business as the Authority may determine to be appropriate having regard to the nature, scale and complexity of the proposed business.

(3) The Authority may, on application made by a registered person, vary or remove any limitation or condition imposed on the scope of its registration,

such application for variance or removal of any limitation shall be in such manner as the Authority may direct and in such form as the Authority may prescribe.

Senior Representative

17C (1) Every Class A registered person shall appoint a senior representative that satisfies the requirements of subsection (2).

(2) The senior representative shall be a person approved by the Authority to act in such capacity on behalf of the registered person.

(3) The approved senior representative shall maintain an office in Bermuda.

(4) At the time of registration, registered persons shall provide written notice to the Authority of the —

- (a) location of the senior representative's office;
- (b) particulars of the senior representative.

(5) If any information required by notification in accordance with subsection (4) is altered, registered persons shall give particulars of the alteration in writing within 14 days of the date the alteration was made.

(6) Without reason acceptable to the Authority —

- (a) a registered person shall not terminate the appointment of its senior representative; and
- (b) a senior representative shall not cease to act as such, until it or he gives 30 days' notice in writing to the Authority of the intention to do so.

(7) If a senior representative wilfully fails to give notice required in accordance with subsection (6) (b) to the Authority he commits an offence.

Senior representative to report certain events

17D (1) A senior representative shall forthwith notify the Authority, in such manner as it may direct, —

- (a) on his reaching a view that there is a likelihood of the registered person for which he acts becoming insolvent; or
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred.

(2) Within 14 days of such notification, the senior representative shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to him.

(3) As respects any senior representative, this section applies to the following events, being events in which the investment provider for which he acts as senior representative is involved, that is to say —

- (a) failure by a registered person to comply substantially with a condition imposed upon the licensed undertaking by the Authority;
- (b) failure by a registered person to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the investment provider by the Authority;
- (c) involvement of a registered person in any criminal proceedings whether in Bermuda or abroad;
- (d) the registered person ceasing to be registered in or from within Bermuda.”.

Amends section 18

15 Section 18 of the principal Act is amended—

- (a) by deleting the title, and inserting the following—
“Display of licences and registrations”
- (b) in subsection (2) by—
 - (i) inserting after “licence” the word “or registration”;
 - (ii) inserting “, the offices of its appointed senior representative” after the word “business
- (c) by deleting subsections (1), (3) and (4) and substituting the following—

“(1) The Authority shall publish on its website a list of every investment provider.”.

Amends section 19

16 Section 19 of the principal Act is amended—

- (a) in subsections (1) (a) and (b) by inserting “or registration” after the word “licence”;
 - (b) by inserting the following after subsection (1) (b) —
 - “(c) on an application for approval to exempt or modify prudential or technical standard requirements applicable to an investment provider in accordance with the provisions of section 12 (1C);
 - (d) on an application made by an investment provider to surrender a licence or registration in accordance with section 26 (1);”.
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Repeals and replaces section 26

17 Section 26 of the principal Act is repealed and replaced as follows—

“Surrender of licence or registration

26 (1) An investment provider may make an application to the Authority to surrender its licence or registration.

(2) An application shall be in such form as the Authority may determine and shall be accompanied by such documents and information as the Authority may require.

(3) The surrender of a licence or registration 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.”.

Amends section 38

18 Section 38 of the principal Act is amended by inserting the following after subsection (5) —

“(6) Notwithstanding subsection (1), the Authority may require an investment provider to prepare financial statements or accounts in such manner as it may direct.”.

Amends section 40

19 (1) Section 40 of the principal Act is amended by inserting a new subparagraph after subparagraph (f) as follows—

“(g) require review of controls relating to clients’ money during an audit by an approved auditor.”.

(2) Subsection (4) shall be repealed and replaced as follows—

“(4) For the purposes of this section—

(a) “institution” means a company carrying on deposit-taking business within the meaning of the Banks and Deposit Companies Act 1999 approved by the Authority for the purposes of this section;

(b) “investment provider” means all investment providers other than a Class B registered person.”.

Amends section 41

20 Section 41 of the principal Act is amended—

(a) in subsection (1) by inserting “or registration” after the word “licence”;

(b) by inserting the following new subsections after subsection (1) —

“(1A) Financial statements of investment providers shall be audited by an approved auditor in accordance with generally accepted auditing standards and prepared in accordance with generally accepted accounting standards for Canada, the United Kingdom, the United States of America, International Financial Reporting Standards or such accounting standards as the Authority may recognise; and the approved auditor shall be required to provide an auditor’s report in respect thereof.

(1B) Every investment provider shall submit a copy of its auditor’s management letter and management’s response letter, to the Authority upon request made by the Authority.

(1C) Every investment provider is required to notify the Authority in writing of a qualification made by its approved auditor in relation to his audit report within 5 days of receipt of such qualification.”.

(c) by repealing and replacing subsection (5) as follows —

“(5) For the purposes of this section—

(a) “approved auditor” means an auditor who is a person entitled to practice as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Act;

(b) “investment provider” means all investment providers other than a Class B registered person.”.

Amends section 45

21 Section 45 (1) (a) of the principal Act is amended by inserting “and any code of practice, and for safeguarding the interests of clients and potential clients of the investment provider” after the word “Act”.

Amends section 49A

22 Section 49A (1) of the principal Act is amended by deleting and replacing subparagraph (b) as follows—

“(b) a Non-Registrable person has contravened any condition imposed by the Authority on it in relation to the manner in which it may carry on investment business or conduct any investment activity;”;

Amends section 84

23 Section 84 (3) of the principal Act is amended in subparagraphs (a) and (b) by inserting “, senior representative’s office where applicable” after the word “business”.

Amends First Schedule

24 The First Schedule is amended in—

(a) Part 1 —

- (i) by revoking the title of paragraph 4 and replacing it as follows—
“INVESTMENT FUNDS”;
- (ii) in paragraph 9 by inserting the following new subsection after subsection (2) —

“(3) For the purposes of this section, “contracts for differences” means a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers of banks and bureaux de change.”.

(b) Part 2 by—

- (i) revoking and replacing paragraph 1. (6) (a) as follows—
“(a) licensed, registered or non-registrable persons;”;
- (ii) inserting the following new paragraph after paragraph 5.

“PROMOTION OF INVESTMENTS TO THE PUBLIC

- “6. (a) advertising or agreeing to advertise, material or information which promotes an investment to members of the public;
- (b) issuing or agreeing to issue a prospectus, application form or proposal form in relation to an investment, to members of the public;
- (c) distributing, circulating or agreeing to distribute, circulate or make available, material relating to an investment to, to members of the public;
- (d) This paragraph applies to a person as principal or agent only if he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions;

- (e) for the purposes of this paragraph, “members of the public” has the meaning given in paragraph 1. (6).”.

Amends Second Schedule

25 The Second Schedule to the principal Act is amended in the title by inserting “AND REGISTRATION” after the word “LICENSING”.

Transitional

26 (1) All existing investment providers shall be deemed by the Authority to hold a Class F licence, and shall be further deemed to satisfy all criteria in connection with the holding of such licence, immediately upon the date of the coming into operation of this Act.

(2) There shall be no application required to be submitted to the Authority or new or additional fees payable by any investment provider under subsection (1), in connection with the change to its licence class.

(3) Every exempted person or any person conducting investment business that is not licensed prior to the operative date of this Act, shall be required to make an application to the Authority to become licensed, or registered as a registered person, within twelve months of the operative date of this Act.

(4) Notwithstanding subsection (3), Non-registrable persons shall not be required to apply to be registered.

(5) An application under subsection (3) shall—

(a) be made to the Authority in accordance with applicable provisions relating to the licensing and registration of persons under sections 13, 13A and 13B of the Act; and

(b) clarify at the time of application submission, whether a Class F or Class T licence is required.

Consequential amendments

27 The Schedule, which makes consequential amendments to the—

(a) The Bermuda Monetary Authority Act 1969;

(b) the Investment Business (Exemptions) Order 2004; and

(c) the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008,

has effect.

THE SCHEDULE

(Section 26)

THE BERMUDA MONETARY AUTHORITY ACT 1969

1. Amends Third Schedule

The Third Schedule to the Bermuda Monetary Authority Act 1969 is amended in the list of “FINANCIAL INSTITUTIONS”, by inserting “or registered” after the word “provider”.

2. Amends Fourth Schedule

The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended by repealing and replacing Part C “Investment Business Act 2003” as follows: —

Investment Business Act 2003			
1	Applying:		
	(a)	to be granted an extension to the filing deadline under section 10A(4) for:	
	(i)	First month past filing deadline	\$750
	(ii)	Second month past filing deadline	\$750
	(iii)	Third month past filing deadline	\$750
	(b)	for an exemption or modification from a standard or requirement under section 10B(1)	\$710
	(c)	for variation or deletion of conditions under section 17(4)	\$1,420
	(d)	for variation or deletion of conditions under section 17B(3)	\$1,420
2	Applying:		
	(a)	for a registration pursuant to section 13A	\$2,840
	(b)	for a registration pursuant to section 13B	\$2,840
	(c)	for a licence pursuant to section 16(1)	\$2,840
	(d)	to be granted an extension to a Class T. Licence pursuant to section 16(1C)	\$2,840

3	Annual fee pursuant to section 19(1)(b)		
	(a)	where the investment provider carries on:	
		(i) an investment activity of a kind specified in paragraph 2 of Part 2 of the First Schedule to the Act in connection with shares or units in an investment fund	\$2,710
		(ii) an investment activity of a kind specified in paragraph 4 of Part 2 of the First Schedule to the Act or	\$2,710
		(iii) an investment activity not falling within (i) and (ii) above	\$2,710
	(b)	where the investment provider carries on an investment activity of a kind specified in paragraphs 1, 2 and 3 of Part 2 of the First Schedule to the Act but is not licensed to hold client assets	\$6,780
	(c)	where the investment provider carries on an investment activity of a kind specified in Part 2 of the First Schedule to the Act and is licensed to hold client assets	\$13,560
4	Annual licence fee payable pursuant to section 19(1)(b) where an investment provider falls within paragraphs (2)(a), (b) or (c) and is part of a group which is subject to consolidated supervision by the Authority as home regulator under the Investment Business Act 2003, and that group:		
	(a)	has controlled net assets not exceeding \$500 million	\$78,330
	(b)	has consolidated net assets exceeding \$500 million	\$313,240
Annual fees in respect of (2) and (3) above are due on or before 31st March in every year.			

3. THE INVESTMENT BUSINESS (EXEMPTION) ORDER 2004

The Investment Business (Exemptions) Order 2004 is revoked.

4. Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (the “principal Act”)

The principal Act is amended in section 2 (1) by inserting “or registered” after the word “licensed” in the definition of “licensed AML/ATF regulated financial institution”.

INVESTMENT BUSINESS AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Investment Business Act 2003 (the “Act”) to, amongst other things, make provision for the prudent regulation and supervision of licensed and registered undertakings, and other consequential and related matters.

Clause 1 amends the Investment Business Act 2003 to the Investment Business Amendment Act 2021.

Clause 2 seeks to amend section 2 by inserting definitions of the following: new types of investment providers to be known as a “Class A Registered Person” and a “Class B Registered Person”; “Order”, Non-registrable person”, “recognised regulator”, “registered person”; and proposes to amend the current definition of “investment provider” to include such new registered persons. Section 2 is further amended to expand the definition of company by including the terms of Incorporated Segregated Accounts Company “ISAC” and Limited Liability Company “LLC”.

Clause 3 proposes to amend section 4 by deleting paragraph (a) and substituting new paragraphs (a) and (ab) such that the criteria for what constitutes “carrying on investment business in or from Bermuda” will include entities that are (i) carrying on investment business, and are incorporated or formed in Bermuda; (ii) entities formed or incorporated outside of Bermuda and carrying on investment business in or from Bermuda.

Clause 4 proposes to amend section 7 by including in the definition of Controller within subsection 3 the term “manager of an LLC” and making an associated change in subsection 4 to include the term “a member assignee and other person granted an interest in an LLC”.

Clause 5 inserts new sections 10A and 10B with the Title “Prudential and other Returns”. Section 10A allows the Authority to make Rules prescribing prudential standards or technical returns in relation to: (i) cyber security; (ii) financial statements; (iii) net assets; (iv) liquidity; and (v) statutory returns. Section 10B enables, under appropriate circumstances, the Authority, where it has made a determination, or on the application of an investment provider, to exempt an undertaking from the requirement to comply with any prudential standard or requirement or modify any such prudential standard or requirement.

Clause 6 proposes to revise the title of “**PART III**”, such that Part III shall now address the registration and supervision of registered persons and persons designated as non-registrable persons.

Clause 7 proposes to amend section 12 (1) to replace the reference to “exempted” in the Order to be issued by the Minister with a reference to registered and non-registrable persons.

Clause 8 seeks to repeal and replace section 13, as the current exemption regime is being substituted in favour of a registration and non-registrable person regime. The Minister shall be provided with a power to make an order specifying those persons who shall be designated as a Class B Registered Person or a Non-Registrable Person. These classes of persons are similar to those persons formerly exempt under the old regime. The order shall be subject to negative resolution process and may include savings and transitional features. The Minister shall also be imbued with the power to amend the order, on the advice of the Authority, as to persons who may be specified as Class B persons or designated as Non-Registrable Persons and may also expand, modify or delete such categories of persons;

Clause 9 proposes to insert new sections 13A through to 13D in order to impose qualification requirements in respect of Class A Registered Persons, Class B Registered Persons and Non-Registrable Persons and, where appropriate, establish application and other requirements in respect of these new classes of persons. A person falling within Schedule “1” of a new order to be made by the Minister pursuant to the exercise of his powers under section 13, shall be required to register as a “Class B” Registered Person, while persons falling within the class of persons designated by the Minister under Schedule “2” to the order shall be designated Non-Registrable Persons. Section 13C imposes a requirement on Class B Registered Persons to “maintain a place of business in Bermuda” and defines what is meant by this phrase. The new provision allows the Minister, in consultation with the Authority, to amend the meaning of this phrase within the order and stipulates that the order may include saving and transitional provisions and is subject to the negative resolution procedure.

Clause 10 amends section 14 by deleting reference to the “exemption” regime and substitutes requirements relating to the new registration and non-registrable person regime.

Clause 11 seeks to amend the title of section 15 to align it with the new regime comprising licensed, registered and non-registrable persons.

Clause 12 seeks to amend section 16, by introducing a tiered licensing system. All new investment providers shall have the option of applying for a class “F” (full) licence” or a class “T” (temporary) licence. A Class F licence shall be regarded as a “traditional” investment business licence; while a “T” licence shall allow applicants to be licenced to conduct investment business temporarily, for the duration specified in the licence. All current licensees shall be designated as having a Class F licence when the Act comes into force via the Transitional provisions.

Clause 13 seeks to repeal current sections 17(6) and (7) in the Act.

Clause 14 seeks to insert new provisions as sections 17A through to 17D. Section 17A introduces the definition and requirements of “maintaining a place of business in Bermuda” and provides a power for the Minister to amend such requirements. It further provides that the order may include savings and transitional clauses and is subject to the negative resolution procedure. Section 17B provides the Authority with the ability to grant or refuse an application for registration or impose limitations or conditions on the scope of the investment activity or the manner of operating depending on the nature, scale and complexity of the proposed business. Sections 17C and 17D impose on Class A Registered Persons the requirement to appoint a senior representative and sets out the Authority’s expectations for the senior representative, including in respect of requirements for reporting certain events in relation to the operations of a Class A Registered Person.

Clause 15 proposes to amend section 18, to modernise the manner in which the Authority publishes information with respect to licensed or registered entities.

Clause 16 proposes to amend section 19 of the Act to align this provision to reflect the new registration regime and for the term “investment provider” to refer to both licensed persons and the new registered classes of persons.

Clause 17 seeks to amend section 26 to make provision for the process of surrendering a licence or registration.

Clause 18 amends section 38 to require an investment provider to prepare financial statements in such a manner as the Authority may direct.

Clause 19 amends section 40 to provide a power for the Authority to review controls relating to clients’ money during an audit procedure. This section also specifies that Registered Class B persons cannot hold clients’ money.

Clause 20 amends section 41 to introduce a new requirement for audited financial statements to be submitted to the Authority by Registered Persons and stipulates the manner in which these audited financial statements must be submitted. This section is further amended to require the submission of the auditor’s management letter, including management’s response, to the Authority in the prescribed manner.

Clause 21 amends section 45 to impose a new requirement on investment providers to adhere to any code of practice for safeguarding the interests or potential interests of clients’ money.

Clause 22 amends section 49A to allow the Authority to investigate a non-registrable person to ensure the manner in which it carries on investment business or conducts any investment activity is prudent.

Clause 23 amends section 84 by inserting the provision to allow the Authority to serve a notice relating to a Class A Registered Person at the office of that person’s senior representative.

Clause 24 seeks to amend the First Schedule to the Act, in Part 1, by repealing and replacing the term “Collective Investment Scheme with the term “Investment Funds”. Part 1 of the First Schedule is further amended, by inserting an additional provision within the definition of “Contracts for Differences”.

Part 2 of the First Schedule is amended to introduce a new investment activity of “promotion of investments”.

Clause 25 amends the Second Schedule by inserting in the title the phrase “and Registration”.

Clause 26 Transitional, provides for existing investment providers to automatically be deemed by the Authority as Class F licence holders from the date the Act is operational; and embeds a provision requiring unlicensed or exempted persons conducting investment business, other than persons designated as non-registrable persons, to make an application to the Authority within twelve months of the operative date of the Act to become licensed or registered or be deemed as non-compliant with the Act by the Authority.

Clause 27 makes provision for a consequential amendment to the Fourth Schedule to the Bermuda Monetary Authority Act 1969 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.