

## **INVESTMENT BUSINESS REGULATIONS 2004**

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**BR 7/2004**

**THE INVESTMENT BUSINESS ACT 2003**

**2003 : 20**

**THE INVESTMENT BUSINESS REGULATIONS 2004**

In exercise of the powers conferred upon the Minister of Finance by sections 16, 18, 39 and 86 of the Investment Business Act 2003, the following Regulations are hereby made :—

### **Citation**

1 These Regulations may be cited as the Investment Business Regulations 2004.

### **Interpretation**

2 In these Regulations, "the Act" means the Investment Business Act 2003.

### *Form of licence*

### **Form of licence**

3 An application for a licence made under section 16 of the Act shall be in the form set out in the Schedule.

### *Register of licences*

### **Contents of register**

4 The register of licences compiled and maintained by the Authority pursuant to section 18(4) of the Act shall contain the following particulars in respect of each licence—

- (a) the name of the investment provider;

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- (b) his address, or where the investment provider is a firm, its address;
- (c) where the investment provider is a body corporate—
  - (i) the address of its registered office whether in Bermuda or outside Bermuda; and
  - (ii) the address of its principal office whether in Bermuda or outside Bermuda;
- (d) the date of grant of the licence;
- (e) where limitations are imposed on the licence, particulars of the limitations and date of imposition;
- (f) where limitations are varied, particulars of the variation and date of variation;
- (g) where a licence is revoked, the date of revocation of the licence.

### *Systems and records*

#### **General duty to maintain systems and records**

5 (1) An investment provider, having regard to the size and complexity of the investment provider's business, shall maintain adequate systems of control of the business and records and maintain adequate accounting and other records as will enable the investment provider to discharge the obligations imposed by or under the Act or other provision of law.

(2) An investment provider must maintain accounts for all clients' assets separately from its own, in such a way as to enable such assets, individually and in aggregate to be identified and reconciled at any time.

#### **Duty to provide confirmation note**

6 (1) Except as provided in paragraph (2), an investment provider shall provide each client with a confirmation note containing the particulars specified in paragraph (3) not later than seven days from the date of each transaction effected and carried out by the investment provider .

(2) Where the particulars required by paragraph (3) are in the possession of a third party who is connected with the transaction, an investment provider shall, not later than seven days from the date of receiving such particulars from the third party, provide the client with the confirmation note required by paragraph (1).

(3) A confirmation note shall contain the following particulars—

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- (a) the name and address of the investment provider, and the capacity in which the investment provider is acting;
- (b) the client's designation and account number;
- (c) the date of the transaction;
- (d) the quantity and description of the securities that are the subject of the transaction;
- (e) the nature of the transaction and the unit price (forward or historic) of the securities ;
- (f) the fees, commissions and expenses, if any, charged to the client (directly or indirectly) in connection with the transaction;
- (g) if a purchase, the total cost;
- (h) if a sale, the total proceeds;
- (i) the settlement date;
- (j) if the transaction involves a currency conversion, the relevant rate of exchange.

### **Duty to provide portfolio statement**

7 (1) An investment provider shall provide each client with a portfolio statement containing particulars of—

- (a) all transactions effected and carried out on behalf of the client during the period covered by the statement; and
- (b) all assets held for the account of the client by the investment provider as at the date of the statement.

(2) An investment provider shall provide the first portfolio statement within a period of six months beginning with the date of the opening of the client's account, and thereafter shall provide a statement at least once in every period of six months.

### **Duty to keep accounting records**

8 (1) An investment provider shall keep and maintain up-to-date accounting records in the English language which shall —

- (a) in respect of the investment provider's business, disclose particulars of—
  - (i) assets held for the investment provider's own account;
  - (ii) liabilities incurred for the investment provider's own account; and

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- (iii) entries of income and expenditure made and an explanation of their nature; and
- (b) in respect of the affairs of the clients of an investment provider, disclose particulars of—
  - (i) all assets held, managed or controlled by the investment provider for the account of clients, both individually respecting each client and collectively respecting all clients;
  - (ii) all liabilities incurred by the investment provider on behalf of clients, both individually respecting each client and collectively respecting all clients;
  - (iii) all transactions effected and carried out on behalf of clients, both individually respecting each client and collectively respecting all clients;
  - (iv) every document evidencing title to a client's asset held by the investment provider;
  - (v) where such document is held by a third party, particulars of such document and the name and address of that person; and
  - (vi) entries of the date on which every document evidencing title to a client's asset came into or left the possession or control of the investment provider.

(2) For the purpose of paragraph (1), an investment provider may accept and rely on records kept by a third party where such records are capable of being reconciled with records kept by the investment provider.

(3) An investment provider shall permit any client of the investment provider during business hours to inspect, either personally or by his agent, any entry in a record kept by the investment provider of matters relating exclusively to the client as soon as practicable and, in any event, not later than fourteen days from the date on which the investment provider receives a request from the client to carry out the inspection.

(4) An investment provider shall keep either at the investment provider's principal office or registered office, or in such a manner that it can be produced to the Authority within such period as the Authority may specify, the following records for the following periods in respect of all investment business conducted by or through the investment provider—

- (a) entry records which shall include account opening records, verification documentation and written

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introductions, for a period of at least five years from the date of the closing of the account;

- (b) account ledger records, for a period of five years from the date of the relevant transaction or series of transactions; and
- (c) supporting records, which shall include all records in support of ledger entries, credit and debit slips and cheques, for a period of five years from the date of the relevant transaction or series of transactions.

**Information may be kept in electronic form**

9 The information required to be kept by an investment provider under the Act or these Regulations may be recorded and kept by an investment provider in electronic form or such other form as the investment provider thinks fit, provided that it is possible to inspect the information and to produce a copy of it in legible form.

**BR67/1999 revoked**

10 The Investment Business Regulations 1999 are revoked.

**SCHEDULE**

(Regulation 3)

FORM OF APPLICATION FOR AN INVESTMENT BUSINESS LICENCE

**PART I: DETAILS OF APPLICANT**

(complete as appropriate)

Name of applicant	
Address of registered office	Address of principal place of business in Bermuda

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Other places of business in Bermuda	Other places of business outside Bermuda
Any other names which the applicant uses or proposes to use for purposes of or in connection with any business carried on	
Date and place of formation of company/partnership or other body	
Contact name	E-mail address
Fax number	Telephone number
Scope of investment activities proposed (as defined in Part 2 of the First Schedule to the Act) – please check as appropriate	
<input type="checkbox"/> Dealing in investments <input type="checkbox"/> Managing investments <input type="checkbox"/> Safeguarding and administering investments <input type="checkbox"/>	<input type="checkbox"/> Arranging deals in investments <input type="checkbox"/> Investment advice

**PART II: OPERATIONS OF THE UNDERTAKING**

1. Name(s) and address(es) of the applicant's principal banker(s) within the last 10 years.
  
2. Name(s) and address(es) of banker(s) with whom the applicant maintains or proposes to maintain client accounts.

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3. Name(s) and address(es) of the main custodian(s) of the client assets:
  - securities
  - other
  
4. Name and address of the applicant's auditors (where applicable). Please give the name and professional qualification of the relevant partner(s).
  
5. Names and addresses of any other regulatory body with responsibility for the applicant.
  
6. Names of all directors and senior executives (identify with an asterisk independent executive directors).
  
7. Names of all controllers of the undertaking, indicating the relevant category of controller and whether individual or corporate, (for example, "majority shareholder controller" if the person controls 50 per cent or more of the shares or voting power of the institution).
  
8. Names and positions in the undertaking of the persons who effectively direct the business for the purposes of paragraphs 2 and 3 of the minimum criteria for licensing set out in the Second Schedule to the Act.

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9. (a) Where applicable, amount and currency of the company's issued and paid-up share capital.
- (b) Where applicable, amount and currency of the company's authorized share capital.
10. Applicant's financial year-end.

**PART III: INSURANCE COVER**

**Indicate below whether the Applicant has cover in respect of the following:-**

			Limit	Deductible	Insurer	Broker
Errors and omissions	Yes q	No q				
Directors' and officers' liabilities	Yes q	No q				
Fidelity and forgery	Yes q	No q				
Loss of property	Yes q	No q				
Computer crime	Yes q	No q				

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Computer damage	Yes q	No q				
Business interruption	Yes q	No q				
Office contents	Yes q	No q				
Political risk	Yes q	No q				
Other insurance (please provide details)	Yes q	No q				

Has any application for insurance by the applicant or any predecessors in business ever been refused?	
Have any material insurance claims been made by the applicant or any predecessors in business?	

Name(s) and address(es) of insurer(s):

**PART IV: PRIOR ISSUES**

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If the answer to any of the questions below is yes, please give full particulars in the space provided at the back of this questionnaire clearly stating to which question the details relate.

(a) Has the applicant ever applied for and been refused a licence or an equivalent authorisation or registration to conduct banking, investment, insurance or trust business in Bermuda or elsewhere?	Yes/No
(b) Has the applicant failed to satisfy a judgement debt under a court order in Bermuda or elsewhere within a year of the making of the order?	Yes/No
(c) Has the applicant made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?	Yes/No
(d) Has the applicant ever had a receiver appointed over any of its property in Bermuda, or has the substantial equivalent of any such person been appointed in any other jurisdiction? If so, give full particulars.	Yes/No
(e) Has the applicant ever had a petition for an administration order or the substantial equivalent of such a petition served on it in any jurisdiction?	Yes/No
(f) Has the applicant ever had a notice of resolution for liquidation in Bermuda, or had the substantial equivalent of such a notice given in any other jurisdiction?	Yes/No
(g) Has a petition ever been served in Bermuda for the compulsory liquidation of the applicant or any member of a group of which the applicant is a member or has the substantial equivalent of such a petition ever been served in any other jurisdiction?	Yes/No
(h) Has an inspector or other authorised officer of any government department or agency, professional association or other regulatory body appointed under any Bermuda law (e.g. the Companies Act 1981) or equivalent overseas enactment, ever investigated the affairs of the applicant or any member of a group of which the applicant is a member?	Yes/No

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(i) Has the applicant or any member of a group of which the applicant is a member been required to produce books or records pursuant to section 110 of the Companies Act 1981 or similar provisions of regulatory legislation (e.g. section 40 of the Banks and Deposit Companies Act 1999) within Bermuda or elsewhere?	Yes/No
(j) Has the applicant or any member of a group of which the applicant is a member ever been censured, prosecuted or warned as to future conduct, or disciplined or publicly criticized by, or made the subject of a court order at the instigation of any supervisory or regulatory authority?	Yes/No
(k) Has the applicant or any member of a group of which the applicant is a member ever been refused entry in Bermuda or elsewhere to any professional body, stock exchange or trade association concerned with banking, trust or financial services?	Yes/No
(l) Is the applicant or any member of a group of which the applicant is a member engaged or does it expect to be engaged in Bermuda or elsewhere in any litigation which may have a material effect on the resources of the undertaking?	Yes/No

**Declaration**

This declaration must be completed by the applicant in block capitals or typed.

I, (full name and address)

confirm that I have read and understand the provisions of the Investment Business Act 2003 (the "Act") and I declare that the business in respect of which this application is made will be conducted in accordance with the provisions of the Act, the Regulations and any Codes of Conduct.

I declare that the particulars supplied in the application are true to the best of my knowledge and belief.

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Signature of applicant

Position in undertaking

Date

### **WARNING**

Any person who, in relation to an application for a licence, issues a document or supplies information which is false or misleading in a material respect; or signs a document which is false or misleading in a material respect; or takes part in the preparation or issue of a document, or the supplying of information, which is false or misleading in a material respect, shall be guilty of an offence and liable on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both; and on conviction on indictment to a fine of \$100,000 or imprisonment for four years (Section 82 of the Investment Business Act 2003).

Dated this day 3<sup>rd</sup> day of February, 2004.

Minister of Finance