

AS AMENDED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

INVESTMENT BUSINESS AMENDMENT ACT 2015

WHEREAS it is expedient to make provision for licensing and regulating alternative investment fund managers;

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 2015.

Amends section 2

2 The principal Act is amended in section 2, in the definition of "investment provider", by inserting after the words "section 17" the words ", or under sections 17 and 19E as provided under Chapter 1A of Part III".

Inserts Chapter 1A in Part III

3 The principal Act is amended in Part III by inserting after Chapter 1 the following new Chapter—

"CHAPTER 1A

ALTERNATIVE INVESTMENT FUND MANAGERS

Interpretation

19A In this chapter—

"AIF" means an alternative investment fund within the meaning given in section 19B;

"AIFM" means an alternative investment fund manager within the meaning given in section 19C, which is licensed under sections 17 and 19E;

"AIFM rules" means AIFM rules made by the Authority under section 19H;

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“external AIFM” has the meaning given in section 19C(3)(a);

“internal AIFM” has the meaning given in section 19C(3)(b);

“managing an AIF” is to be interpreted in accordance with section 19C(2), and cognate expressions are to be interpreted accordingly.

Meaning of “AIF”

19B (1) “AIF” means a collective investment undertaking that raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.

(2) An AIF may be open-ended or closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.

Meanings of “AIFM”, “managing an AIF”, “external AIFM” and “internal AIFM”

19C (1) “AIFM” means a person, the ordinary business of which is managing one or more AIFs.

(2) “Managing an AIF” means performing at least risk management or portfolio management for the AIF.

(3) The AIFM of an AIF may be either—

- (a) another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF (“external AIFM”); or
- (b) where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself (“internal AIFM”).

Application of this Chapter

19D This Chapter applies to a person—

- (a) who carries on the investment activity of managing investments;
- (b) whose ordinary business is managing AIFs; and
- (c) who qualifies for exemption under section 13.

Licensing for AIFMs

Application by AIFMs for licence

19E (1) A person to whom section 19D applies may apply to the Authority under section 16 for an investment business licence to which this Chapter applies.

(2) Without prejudice to sections 16 and 17, the Authority must not grant a licence to an applicant for a licence under subsection (1) unless it is satisfied that—

- (a) the applicant is a manager of AIFs;
- (b) the applicant would be the only manager of each AIF it manages;
- (c) the applicant has provided the Authority with such information as may be prescribed in the AIFM rules;
- (d) the applicant meets the prerequisites for taking up activities as an AIFM as may be prescribed in the AIFM rules.

Licensed AIFMs to comply with requirement to manage

19F (1) An external AIFM must ensure compliance by every AIF that it manages, or by another entity on the AIF's behalf, with the provisions of this Act or AIFM rules that are applicable to it.

(2) If an external AIFM is unable to ensure compliance by an AIF it manages, or by another entity on the AIF's behalf, with a provision of this Act and AIFM rules to which the AIF is responsible, the AIFM must immediately inform the Authority about the non-compliance.

(3) The Authority must require the AIFM to take steps to remedy the non-compliance as referred to in subsection (2) by an AIF it manages, or by another entity on the AIF's behalf.

(4) If the non-compliance persists despite the steps mentioned in subsection (3) being taken, the Authority must—

- (a) require the AIFM to cease acting as manager of that AIF;
- (b) require the AIFM to stop marketing the AIF; and
- (c) immediately inform the competent authorities of the foreign countries or territories in which the AIF is marketed of its requirement.

(5) The Authority may use its powers under sections 20 and 21 (power to restrict and revoke a licence) to enforce the requirements mentioned in subsections (2) and (3), but this subsection does not limit the powers of the Authority.

Material changes

Notice of material changes

19G (1) An AIFM must give the Authority notice in such manner as may be required by AIFM rules of any material change to the conditions for initial licensing referred to in subsection (6).

(2) Subsections (3) to (5) apply where an AIFM has notified the Authority under subsection (1) of any material change.

(3) If the Authority decides to exercise any power so as to prevent the implementation of, or impose restrictions in relation to, the proposed changes, it

must inform the AIFM within 28 days of receiving the notice mentioned in subsection (1).

(4) The Authority may extend the period of 28 days referred to in subsection (3) by up to 30 days, if it considers this to be necessary because of the specific circumstances of the case, and after having notified the AIFM accordingly.

(5) If the Authority does not inform the AIFM of a decision under subsection (3) within the period of 28 days mentioned in subsection (3) or any extension thereof under subsection (4), the AIFM may implement the changes.

(6) In this section “conditions for initial licensing” means the requirements of section 16(3)(a)(ii),(iii) and (v), and the minimum criteria.

General rule making power

19H (1) The Authority may make such rules applying to AIFMs with respect to the carrying on by them of AIFM business, as appear to it to be necessary or expedient for the purpose of this Chapter.

(2) Without prejudice to the generality of subsection (1), such rules shall include provisions relating to—

- (a) the application information for authorisation;
- (b) requirements for initial capital and own funds;
- (c) requirements for the operating condition of an AIFM including risk management, remuneration, conflicts of interest, liquidity management and investments;
- (d) organisational requirements and systems of governance of an AIFM;
- (e) requirements for carrying out valuation of assets and calculation of net asset values of AIFs managed by an AIFM;
- (f) arrangements for depositaries and their liabilities;
- (g) the preparation and content of annual reports on the AIFs an AIFM manages;
- (h) requirements for AIFMs managing leveraged AIFs;
- (i) the disclosures to be made to investors on AIFs that an AIFM manages or markets;
- (j) the reporting obligations to the Authority and to other competent authorities;
- (k) prerequisites for taking up activities as an AIFM;
- (l) requirements for an AIFM where an AIF that it manages acquires control of companies; and

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(m) requirements for disclosure and reporting by an AIFM regarding acquisitions by AIFs.

(3) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(4) The Authority may, in the rules made under this Chapter, require monetary amounts to be stipulated in foreign currencies.

Transitional

19I A person who, on or before the commencement of this Chapter, is licensed under section 17 of the Act by virtue of an application made under sections 14 and 16 of the Act, may apply to the Authority for a variation of their licence in accordance with section 17(4) of the Act.”.

Commencement

4 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Investment Business Act 2003 (the “principal Act”) to introduce a new Chapter 1A under Part III of the principal Act and to provide for the regulation of alternative investment fund managers (‘AIFMs’). The regulation of AIFMs is in furtherance of transposing certain requirements, terms and conditions set out under the EU Alternative Investment Fund Manager Directive framework into Bermuda law, in order to implement an AIFM regime in the jurisdiction whereby AIFMs may elect to be prudently supervised and regulated by the Bermuda Monetary Authority (the “Authority”).

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act in section 2 with respect to the definition of the term “investment provider” to cause the term to also apply to a licence for an AIFM obtained under section 17 and the new section 19E. As an investment provider under the Act, an AIFM will be subject to the existing provisions of the principal Act in addition to the provisions of the new Chapter 1A inserted into the principal Act under clause 3.

Clause 3 amends the principal Act to provide under Part III for a new “Chapter 1A”. The new section 19A is the interpretation section for the Chapter and provides for the definitions of the terms “AIF”; “AIFM”; “AIFM rules”; “external AIFM”; “internal AIFM”; and “managing an AIF”. The new sections 19B and 19C provide substantively for the definitions of terms listed under section 19A. The new section 19D provides for Chapter 1A to apply to a person: (i) who carries on the business activity of managing investments; (ii) whose ordinary business manages AIFs; and (iii) who qualifies for exemption under section 13. Such a person may apply for a licence in accordance with the new section 19E and any such AIFM rules that the Authority may prescribe. In accordance with its supervisory remit, the Authority is to require, under the new section 19G, that AIFMs give notice of any material change to conditions relating to the initial licensing. Chapter 1A also makes provision for technical matters to be enforced through rules made by the Authority under the new section 19H. The new section 19I makes provision for a transitional clause which provides that persons who already hold a licence in accordance with the Act may apply to the Authority under section 17(4) to have that licence varied to note that they are also licensed in accordance with the provisions of Chapter 1A.

Clause 4 provides for the Minister to cause the Act to come into operation on such a date as the Minister may determine.