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*April 23, 2012*

**A BILL**

**entitled**

**INVESTMENT BUSINESS AMENDMENT ACT 2012**

ARRANGEMENT OF SECTIONS

1	Interpretation	13	Section 50 amended
2	Section 2 amended	14	Section 51 amended
3	Section 9 amended	15	New section 52A added
4	Section 19 amended	16	Sections 55A to E added
5	Section 20 amended	17	Sections 56 to 57 repealed and replaced
6	Section 22 amended	18	Section 58 amended
7	Section 33 amended	19	Section 59 repealed
8	Section 43 amended	20	Section 83A added
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WHEREAS it is expedient to enhance the powers of the Bermuda Monetary Authority under the Investment Business Act 2003 to effectively regulate the investment business industry in Bermuda and to meet appropriate international standards; to provide for the imposition of civil penalties, the making of prohibition orders and other disciplinary measures including injunctive relief; and to provide for the giving of notices in relation to exercise of disciplinary measures and for the publication of decisions:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### **Interpretation**

1. In this Part, the “principal Act” means the Investment Business Act 2003 and references to “the Act” and “this Act” shall have a corresponding meaning.

### **Section 2 amended**

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

“decision notice” means a notice prepared in accordance with section 57;

“warning notice” means a notice prepared in accordance with section 56.”

### **Section 9 amended**

3. Section 9 (1) of the principal Act is amended -

(a) in paragraph (b) by deleting “and” at the end thereof; and

(b) in paragraph (c) by deleting the period and substituting a semicolon; and

(c) by inserting the following new paragraph after paragraph (c) –

“(d) in exercising its powers under –

- (i) section 52A to impose a civil penalty;
- (ii) section 53 to censure publicly;
- (iii) section 53B to make a prohibition order; and
- (iv) section 60 to publish information about any matter to which a decision notice relates.”.

**Commentary:** *This clause would amend section 9 of the Act to widen the scope of matters to be covered by the statement of principles. This amendment would require the Authority to issue a statement of principles in accordance with which it proposes to act in relation to the exercise of its powers to impose civil penalties, censure publicly, make prohibition orders, and publish decisions.*

**Section 19 amended**

4. Section 19 of the principal Act is amended by repealing subsection (3).

**Section 20 amended**

5. Section 20 of the principal Act is amended by-

- (a) repealing subsection (5).
- (b) in subsection (6) by deleting “(whether or not constituting an offence under subsection (5))”.

**Section 22 amended**

6. Section 22 of the principal Act is amended-

- (a) in subsection (1), by deleting “written notice of its intention to do so” and substituting “a warning notice under section 56”;
- (b) by repealing subsections (2) and (3);

(c) in subsection (4), by deleting the tailpiece and substituting “the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him;

(d) by adding the following subsections:

“(4A) After giving a notice under subsection (1) and taking into account any representations made under section 56(2), the Authority shall decide whether—

(a) to proceed with the action proposed in the notice;

(b) to take no further action;

(c) if the proposed action was to revoke the investment provider’s licence, to restrict its licence instead; or

(d) if the proposed action was to restrict the investment provider’s licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4B) Once the Authority has made a decision under subsection (4A) above it shall forthwith provide either a decision notice under section 57 or a notice of discontinuance under section 58 as the case may be.”

(e) by repealing subsections (5) to (12).

**Section 33 amended**

7. Section 33 of the principal Act is amended –

(a) in subsection (1) by deleting the word “or” after paragraph (c) and by adding the word “or” and the following paragraphs after paragraph (d) -

“(e) to impose a civil penalty under section 52A;”

(b) by adding the following subsections after subsection (3) -

“(3A) Any person in respect of whom a prohibition order has been made under section 55A may appeal to the tribunal against the decision.

“(3B) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.”

(c) by repealing subsection (4) and substituting the following -

“The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.”.

**Commentary:** *This clause would amend the grounds of appeal to the tribunal to allow an appeal against a civil penalty imposed under proposed section 52A, and against the making of prohibition orders under section 55A.*

### **Section 43 amended**

8. Section 43 of the principal Act is amended-

(a) in subsection (3) by deleting the words “guilty of an offence and liable on summary conviction to a fine of \$10,000” and substituting “liable to a civil penalty calculated in accordance with subsection (4)”.

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

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

#### **Section 44 amended**

9. Section 44(3) of the principal Act is amended by repealing subsection (3) and substituting the following –

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

#### **Section 49 amended**

10. Section 49 of the principal Act is amended-

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

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

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

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

*Commentary: this clause would amend section 49 to more narrowly define the documents to be produced to a person appointed to carry out an investigation on behalf of the Authority and to provide for the recovery of costs of an investigation from an investment provider.*

## **Section 49A added**

11. Section 49A is inserted after section 49 of the principal Act as follows-

### **“Investigations of suspected contraventions**

49A (1) The Authority may conduct an investigation if it appears to the Authority that-

- (a) a person may have contravened section 12;
- (b) an exempted person may have contravened any condition or restriction of an exemption order made under section 13;
- (c) an investment provider may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act, regulations, rules or orders made thereunder;
- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 55A.

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

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

**Commentary:** *this provision seeks to widen the powers of investigations by the Authority beyond the current scope of investigating non-licensed*

*and exempted investment provider business. It would include investigations for breaches of any requirements imposed by or under the Act or regulations etc., and investigations into the fitness and propriety of individuals who perform functions in relation to a licensed activity. Further the power to investigate investment providers in relation to business carried on at a time when they were licensed, and in investigations in relation to the ownership and control of former investment providers at a time when they were licensed.*

*These powers would be exercised in conjunction with internal policies and procedures for enforcement. Such policies would provide the steps that need to be taken for escalating and referring matters from supervisors to LS&E for investigation and enforcement. The requirement to give notice for the provision of information, documents etc would put the person concerned on notice that they are under investigation and under compulsion to provide information and answer questions.*

### **Section 50 amended**

12. Section 50 of the principal Act is amended by –

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

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

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

“The Authority may by notice in writing require the person who is the subject of an investigation under section 49A (“the person under investigation”) or any person connected with the person under investigation – ”;



- (c) in subsection (1) (c) by re-lettering paragraph “(c)” as “(a)” and by deleting “investigating the suspected contravention”; and substituting “the investigation”;
- (d) in subsection (1)(d) by re-lettering paragraph “(d)” as “(b)”;
- (e) in subsection (1)(e) by re-lettering paragraph “(e)” as “(c)”;
- (f) in subsection (3) deleting the words “paragraph (e)” and substituting “paragraph (c)”;
- (g) by inserting the following subsection after subsection (1) –
  - “(1A) The Authority may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor, accountant or barrister and attorney of an investment provider which is under investigation by virtue of subsection (1) –
    - (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;
    - (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and

- (c) to take such actions as the Authority may direct in connection with the investigation.
- (h) by inserting the following subsection after subsection (6)-
  - “(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—
    - (a) a member of the group of the person under investigation;
    - (b) a controller of the person under investigation;
    - (c) a partner of a partnership of which the person under investigation is a member.”.

**Commentary:** *This clause (which will be renumbered makes consequential amendments to existing section 40 (which makes provision for the powers of the Authority when conducting investigations) in light of the new provisions on investigations under proposed new section 49A. But it also enlarges the power to apply it to persons connected with persons under investigation. “Connected persons” is defined in proposed subsection (7).*

**Section 51 amended**

- 13. Section 51 of the principal Act is amended –
  - (a) in subsection (1) by deleting the words beginning with “laid by” and ending with “section 50” and substituting “that the Authority is conducting an investigation under section 49A”;
  - (b) by repealing subsection (1)(a) and substituting “(a) a person has failed to comply with a notice served on him under section 50”;

(c) in subsection (2)(a) by deleting “the person mentioned in subsection (1)” and substituting “the person under investigation”;

(d) in subsection (4) by deleting subparagraph (b) and substituting the following-

“(b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 49A.”

**Commentary:** *Like the earlier clause, this clause makes consequential amendments to section 51 in light of the new provisions on investigations proposed in new section 49A.*

**New section 52A added**

14. The principal Act is amended by inserting the following under the heading in “Chapter 6: Disciplinary Measures” and before section 53-

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

52A (1) Except as provided in sections 19, 43 and 44, every person who fails to comply with any requirement or contravenes any prohibition by or under this Act shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

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

(3) The Authority shall not impose a penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

*Commentary: This provision would introduce new provision for disciplinary measures. It would empower the Authority to impose civil penalties for failure to comply with any requirement or contravention of any prohibition imposed by or under the Act. The maximum amount that can be imposed for any breach is \$500,000.*

*In determining what is an “appropriate” level of penalty, the Authority is required to take into account the provisions of subsection (2): the fine must be effective in the sense that it would be of a sufficient amount to make the person concerned take notice, it must be proportionate to the breach, and it must be dissuasive in the sense that it would act as a deterrent.*

*Subsection (3) precludes the Authority from imposing a fine if the Authority is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure compliance.*

*This clause would extend the power of the Authority to impose civil fines not only for breaches of the AML/CFT regulations, but also for breaches of the provisions of this Act and other requirements imposed by or under it.*

### **Civil penalties procedures**

52B (1) If the Authority proposes to impose a civil penalty, it must give the investment provider a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the investment provider a decision notice.”

*Commentary: This clause makes provision for imposing fines. The Authority must give a warning notice first, followed by a decision notice. Sections 56 and 57 make provision for the contents of such notices.*

### **Section 55A to E added**

15. The principal Act is amended by adding the following sections after section 55-

**“Prohibition orders**

55A (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act (‘a regulated person’).

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

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) An investment provider must ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the prohibition order.

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

(8) This section applies to the performance of functions in relation to regulated activity carried on by a person who is an exempt person in relation to that activity as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person-

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable –

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.

(10) In this section –

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

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

“regulated activity” means any activity that is carried on by way of business requiring licensing or other authority by the Authority under any provision of this Act;

“specified” means specified in the prohibition order.

**Commentary:** *The provision would empower the Authority to ban certain officers from performing functions in relation to any regulated activity, that is to say, an activity that is regulated under the Act. This includes functions in relation to an exempt person.*

*As this provision is replicated in the other Acts, a particular conduct could give rise to simultaneously banning a person from performing functions in relation to investment businesses conducting business in other sectors of the financial services industry. Guidance under this Act would inform affected persons of Authority policy in relation to the amendment or lifting of the ban. The prohibition order will not on the face of it have any qualifications or conditions. Investment providers need not be put on an inquiry as to whether the prohibited person has or has not satisfied any conditions, etc. All they need to know is whether a person is banned from performing a particular function.*

*This section would enable the Authority to make a number of prohibition orders, depending on the circumstances of each particular case and after an assessment of the qualities of the individual concerned. The Authority would be able to prohibit an individual from performing a specified function, for example functions of chief executive, director, senior executive, and risk management. Note that the focus here is on function and not on office. But note that this is a slight shift from the provisions in the minimum criteria where the focus is on the office. The order would specify the functions or class of functions which the person would be prohibited from engaging in. It would also tie this to either a specified regulated activity, a regulated activity within a specified description or all regulated activities. So for example, a person can be banned from performing functions of a senior officer with –*

- any investment provider;*
- a named investment provider,*
- any investment provider of a specified class;*

*Subsection (4) would require the Authority to have regard to certain matters in exercising its discretion to ban. These include such assessment criteria as might be set out in statement of principles. Such criteria would*

*address each of fitness (competence and skills for the job) and propriety (integrity, reputation).*

*The requirement that officers and controllers be fit and proper is a common requirement under the regulatory acts and the Authority has published criteria on this in statements of principles issued under the various regulatory acts. It would be important for the Authority to be consistent and ensure that its approach to fitness and propriety under this provision is not at odds with those established under statement of principles for other purposes.*

*A person who performs or agrees to perform a function in breach of the order would be liable to a civil penalty under section 52A.*

*Subsection (5) would impose an obligation on regulated persons not to employ persons to perform functions that they are prohibited from performing. A breach of such a provision would attract enforcement powers available to the Authority (which would include a financial penalty). This would apply not only to the investment provider concerned but to any company licensed by the BMA.*

*Subsection (6) would enable the Authority, on the application of the person concerned, to vary the prohibition order – or revoke it. It should be noted that the original prohibition order would not have a period of time attached to it because the Authority would not at that time know when the person concerned would become fit and proper. It would be open to the prohibited person to apply to the Authority at any time to seek the revocation or modification of the prohibition order on the basis that the original grounds for the imposition of the order no longer apply. The Authority applying the provisions of section 55D (2) might do so if for example it is satisfied that by virtue of the person obtaining appropriate qualifications and relevant experience, that person is able to satisfy the criteria for fitness and propriety that he had lacked earlier.*



### **Prohibition Orders: procedures**

55B (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

*Commentary: This provision would establish a procedure for making prohibition orders. If the Authority proposes to make such an order it would be required to give a warning notice to the person concerned. The notice would set out the proposed terms of the prohibition. If the Authority then decides to make a prohibition order, it would be required to issue a decision notice. Such an order would be subject to an appeal to the Tribunal.*

*Sections 56 and 57 deal with the contents, etc. of warning notices and decision notices.*

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

55C (1) This section applies to an application for the variation or revocation of a prohibition order.

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

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

**Commentary:** *This provision would establish a procedure for the making of applications to vary or revoke an order, requiring the Authority to serve appropriate notices. Depending on the action that the Authority would take, it would be required to issue a decision notice.*

### **Determination of applications for variation etc.**

55D (1) The Authority may grant an application made under section 55C if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant —

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or
- (c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

**Commentary:** *This provision would permits the Authority to revoke or amend a prohibition order if it is satisfied that a person in respect of whom an order had been made is now fit and proper. Subsection (2) sets out the matters that the Authority may take into account in determining an application for variation or revocation of a prohibition order.*

### **Sections 56 to 57 repealed and replaced**

16. The principal Act is amended by repealing sections 56 and 57 and substituting the following -

#### “NOTICES

#### **Warning notices**

- 56 (1) A warning notice must—
- (a) state the action which the Authority proposes to take;
  - (b) be in writing; and
  - (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is

given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 22(1) proposing action within subsection (1)(a) or (1)(b) of that section must specify the proposed restriction or, as the case maybe, the proposed variation.

(5) A warning notice about a proposal to publish a statement given under section 54 must set out the terms of the statement.

(6) A warning notice given under section 55B must set out the terms of the prohibition.

**Commentary:** *this provision would establish a procedure for the issue of warning notices under sections **22(1), 52(B), 54 and 55B**. A warning notice is the initial step in an enforcement action. It is a ‘minded to’ take action type of notice following an investigation into a breach. It would set out the proposed action and the reasons for it. It would also give an indication of whether or not the Authority proposes to publish its decision. The notice would provide a period, not less than 14 days, to enable the institution or person concerned to make representations. The Authority could extend this period on application.*

### **Decision notices**

57 (1) A decision notice must —

- (a) be in writing; and
- (b) give the Authority’s reasons for the decision to take the action to which the notice relates;
- (c) give its decision; and

(d) give an indication of the right to appeal the decision to the appeal tribunal under section 30.

(2) A decision notice shall be given within ninety days beginning with the day on which a warning notice under section 56 was given; and if no notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 58.

(3) A decision notice about imposing a condition under section 20 must set out the terms of the condition.

(4) A decision notice about the imposition of a civil penalty under section 52A must state the date of payment.

(5) A decision notice about public censure under section 53 must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(6) A decision notice about a prohibition order made under section 55A (2) must—

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

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

(8) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a

further decision notice which relates to different action in respect of the same matter.

(9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.

(10) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice under subsection (8).”

**Commentary:** *this provision would establish a procedure for the issue of decision notices under sections 22(1), 52A, 53, 55B(2) and 55C.*

*A decision notice would inform the institution or the person concerned, that the Authority has now concluded that it is appropriate to take the action in respect of which a warning notice had been issued. It would set out the particulars of the decision and the reasons for the action. The notice would also give an indication of whether or not the Authority would publish the decision; and would inform the institution concerned of its right to appeal to the tribunal.*

*The Authority would be required to make up its mind within 90 days after receipt of representations or if no representation were made, within 90 days from giving the warning notice, as to whether or not it intends to go ahead and give directions, in which case it must issue a decision notice.*

*Subsections (4) to (7) make provision for the contents of decision notices in various cases.*

*Subsection (8) provides for a different action to be taken if, before the direction is given, the Authority decides to take a different action with the consent of the institution. This would apply for example in a case where the Authority decides to issue a prohibition order against an officer, but*

*before issuing it, the institution and the Authority agree on some other enforcement action arising from the same matter, such as the payment of a fine or public censure etc.*

**Section 58 amended**

17. Section 58 of the principal Act is amended-

(a) by deleting subsection (1) and substituting the following-

“(1) Subject to section 57(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.”;

(b) in subsection (2) by deleting “shall” and substituting “must”, by deleting “proceeding” and substituting “action” and by deleting “are” and substituting “is”.-

**Section 59 repealed**

18. Section 59 of the principal Act is repealed.

**Section 60 repealed and replaced**

19. The principal Act is amended by repealing section 60 and substituting the following-

**“Publication**

(1) Subject to sections 22, 53 and 55A, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1) -

(a) before notifying the person concerned ;and

(b) pending an appeal under section 33.”

**Commentary:**

*Subsection (1) leaves it to the Authority to decide what information should be published about a decision.*

*Subsection (2) makes provision prohibiting the Authority from publishing a decision unless it has first notified the person concerned, and pending the outcome of an appeal that might have been made.*

**Section 83A added**

20. The principal Act is amended by adding the following section after section 83 –

**“Civil debt and Civil Penalties**

83A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 52B in relation to the same matter.

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

**Commentary:** *This provides a mechanism for the recovery of civil penalties imposed under the Act. The BMA would be able to claim the amount owing by way of civil proceedings in court. The clause also directs that where a person is convicted of a criminal charge, no civil penalty can be imposed relative to the same matter.*

**Commentary: Consequential amendments**

21. Schedules I and II (which make consequential amendments) have effect.

**Commentary:** *This provision seeks to make amendments that are consequential to the introduction of civil penalties for breaches and obligations that, under current provisions, attract criminal penalties.*

**Commencement**

22. This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette and the Minister may appoint different days for different provisions.



## SCHEDULE I

(section 20)

1. The following provisions of the principal Act are repealed –
  - (a) section 20(5)
  - (b) section 24(4)
2. The Schedule to the Act (Minimum Criteria for Licensing) is amended—
  - (a) by repealing paragraph 5(2) and substituting the following—

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

    - (a) this Act;
    - (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Antiterrorist Financing) Regulations 2008;
    - (c) the code of conduct; and
    - (d) international sanctions in force in Bermuda.

## SCHEDULE II

(section 20)

### AMENDMENT TO THE INVESTMENT BUSINESS APPEAL TRIBUNAL REGULATIONS 2004

#### **Amends Paragraph 3**

(1) Paragraph 3 of the Investment Business Appeal Tribunal Regulations 2004 (the “principle Regulations”) is amended–

- (a) in subparagraph (a) by deleting “serves notice in writing on the appellant of its decision.” and inserting “gives a decision notice to the appellant.”;
- (b) in subparagraph (c) by deleting “serves notice in writing on the appellant of its decision.” and inserting “gives a decision notice to the appellant.”.

#### **Schedule amended**

(2) (1) Paragraph (1) of the Schedule to the principle Regulations is amended–

- (a) in subparagraph (a) by deleting “any notice served under section 22 (1) or 22 (4)” and inserting “the warning notice given under section 56”.
- (b) in subparagraph (b) by deleting “22 (5)” and inserting “56 (2)”.
- (c) in subparagraph (c) by deleting “any decision notice served under section 22 (7)” and inserting “the decision notice given under section 57 (2)”.

(d) by deleting paragraph (d).

(3) Paragraph (2)(a) of the Schedule to the principle Regulations is amended by deleting “22 (4)”.

(4) The following paragraphs are inserted after paragraph 4 of the principle Regulations—

“5 In the case of an appeal against a decision of the Authority to impose a civil penalty—

- (a) a copy of the warning notice given under section 52B(1) of the Act;
- (b) a copy of the decision notice given under section 52B(2) of the Act; and
- (c) a copy of any written representations made in accordance with section 56(2) thereof.

6 In the case of an appeal against a decision of the Authority to publish a statement in respect of an institution—

- (a) a copy of the warning notice given under section 54 of the Act;
- (b) a copy of the decision notice given under section 55 of the Act; and
- (c) a copy of any written representations made in accordance with section 56(2) thereof.

7 In the case of an appeal against a decision of the Authority to make a prohibition order—

- (a) a copy of the warning notice given under section 55B(1) of the Act;
- (b) a copy of the decision notice given under section 55B(2) of the Act; and
- (c) a copy of any written representations made in accordance with section 56(2) thereof.

8 In the case of an appeal against a decision of the Authority to refuse to revoke or vary a prohibition order a copy of the decision notice given under section 55C(3) thereof.”