



**BERMUDA MONETARY AUTHORITY**  
**STATEMENT OF PRINCIPLES**  
**INVESTMENT BUSINESS ACT 2003**  
**JULY 2022**

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## **I. INTRODUCTION**

1. This Statement of Principles (SoP) is made pursuant to section 9 of the Investment Business Act 2003 (Act), which requires the Bermuda Monetary Authority (Authority or BMA) to publish, in such manner as it sees fit, a SoP in accordance with which it is acting or proposing to act in:
  - a) Interpreting the minimum criteria specified in the Second Schedule to the Act and the grounds for revocation or restriction specified in section 21;
  - b) Exercising its power to grant, revoke or restrict a licence or registration;
  - c) Exercising its power to obtain information, reports and to require production of documents; and
  - d) Exercising other enforcement powers.
2. The SoP should be read in conjunction with the relevant codes of conduct, which are issued pursuant to section 10 of the Act and which prescribe certain standards for the effective control of business by investment providers and for the fair treatment of their clients.
3. The SoP should be read in conjunction with any guidance notes, which are issued pursuant to section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (POCA SEA); and in accordance with section 49M of the Proceeds of Crime Act 1997 (POCA), and section 12(O) of the Anti-Terrorism (Financial and Other Measures) Act 2004.
4. The SoP should also be read in conjunction with the Statement of Principles and Guidance on the Exercise of Enforcement Powers (Enforcement Guide). The Enforcement Guide sets out the principles in accordance with which the Authority acts or proposes to act in exercising its formal powers to compel compliance or to penalise noncompliance with statutory or regulatory requirements. In relation to enforcement activities, where there are any differences between the Enforcement Guide and the SoP, relative to POCA SEA and the SoP, then the content of the Enforcement Guide will prevail.

## **II. EXPLANATION FOR THE STATEMENT OF PRINCIPLES**

5. The SoP, along with the Enforcement Guide, are relevant to the Authority's decisions on whether to issue a licence or registration to an investment provider or whether to revoke or restrict either a licence or registration, once granted. The Authority's interpretation of the minimum criteria for licensing or registration in the Second Schedule and the grounds for revocation in section 21 of the Act, together with the principles underlying the exercise of its powers, encapsulate the main standards the Authority considers when conducting its supervision of an investment provider. The functions of investment business supervision include monitoring the ongoing compliance of investment providers with these minimum standards and verifying compliance with the obligations imposed under the Act

and the policies and procedures of the investment providers. The Authority also monitors investment providers' compliance with other legislative obligations such as those contained in POCA, POCA SEA and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

6. Where concerns arise relative to an investment provider, or the conduct of its business, during the course of supervision of the investment provider, the Authority will consider the steps that must be taken to address the issue and protect clients and, where appropriate, it will seek remedial action by persuasion and encouragement. Where persuasion and encouragement fail, the Authority may adopt stronger measures to ensure compliance. If the Authority considers it necessary to do so, it may, in the public interest, utilise the various powers provided in the Act, including the imposition of restrictions on either the licence or registration and ultimately revocation of the licence or registration. The process by which the Authority may take enforcement action is set out in the Enforcement Guide.
7. The SoP include references to various policy and guidance papers issued by the Authority from time to time. Copies of the relevant material are generally available from the Authority's website: [www.bma.bm](http://www.bma.bm).
8. Section III of the SoP considers the interpretation of each of the minimum criteria for licensing and registration in the Second Schedule to the Act. Section IV sets out the considerations relevant to the Authority's exercise of its discretion to grant either a licence or registration. Section V sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.
9. The Enforcement Guide sets out the interpretation of the various grounds for the initiation of an enforcement action. The Authority will assess whether to initiate an enforcement action on a case-by-case basis, considering the wider context. The assessment will include consideration of whether using alternative tools is more appropriate, taking into account the overall circumstances of the investment provider itself, the conduct under review and the wider context.
10. The Enforcement Guide clarifies the circumstances where the Authority may decide to impose restrictions on a licence or registration, including cases of urgency or, ultimately, to revoke a licence or registration. It is likely that the Authority would exercise its powers to restrict or revoke a licence or registration in the context of the enforcement process. The Authority may also exercise its discretion to utilise such powers in a supervisory context, for example, to impose additional reporting requirements or where an institution ceases operations or conducts limited scope business. These powers might also be used to protect the interests of the public, in connection with an external threat that is not connected to the investment provider's conduct, in accordance with section 10B of the Act.

### **III. SECOND SCHEDULE: MINIMUM CRITERIA FOR LICENSING AND REGISTRATION**

#### ***Introduction***

11. Before the Authority may grant a licence or registration to an investment provider, the Authority must be satisfied that all the relevant criteria in the Second Schedule of the Act are, or are capable of, being fulfilled by the applicant. Once licensed or registered, investment providers are subject to the Authority's continuing supervision and regulation, to the degree applicable. The Authority assesses whether, on an ongoing basis, the investment provider meets the minimum criteria for licensing and registration. Investment providers are required to submit information about their business at intervals determined by the Authority in accordance with the Act and any related regulations, rules, guidance notes or codes. Where an investment provider fails to meet a criterion, the Authority can and may take action in accordance with the powers vested under the Act and, as detailed in the SoP, POCA SEA and the Enforcement Guide.
12. The Act sets out the minimum criteria for licensing and registration to be met by investment providers. These criteria are interpreted and applied in the context of the particular circumstances of each investment provider, and developments in the sector generally. In addition to reviewing the applicable submissions and other data received from investment providers, the Authority's supervision may involve detailed prudential discussions with the investment provider's senior management, as required. The Authority shall determine the frequency of those discussions by using a risk-based approach, considering the nature, scale and complexity and the risks undertaken by the investment provider and the conduct of its business. Meetings may take place at the Authority's offices or at the investment provider's premises. In the case of Class A Registered Persons, meetings may take place at the senior representative's office.
13. In addition, compliance visits are routinely made on the premises of licensed investment providers to add to the Authority's understanding of the investment provider's management structures, operations, policies and controls, and to assist the Authority in satisfying itself that each investment provider continues to conduct its business prudently and in accordance with all relevant criteria at all times. In the case of Class A Registered Persons, the Authority may perform compliance visits remotely or at the offices of the designated senior representative, after consulting with the relevant recognised regulator, as appropriate.
14. Where an investment provider becomes aware of breaches or potential breaches of any requirement or a contravention of any prohibition imposed by or under the Act, it is expected that the investment provider or, in the case of a Class A Registered Person, its senior representative, will alert the Authority forthwith so that any necessary remedial action can quickly be agreed and taken. Similarly, the investment provider or, for a Class A Registered Person, its senior representative, must alert the Authority to any proposed material change in its business. This

allows the Authority to assess whether the changes affect the investment provider's ability to fulfill the minimum criteria for licensing or registration.

15. This part of the SoP sets out the Authority's interpretation of the minimum licensing and registration criteria.

***Schedule 2, paragraph 1: Controllers and officers to be fit and proper persons***

16. This paragraph provides that every person who is, or is to be, a controller or an officer of an investment provider, whether licensed or registered, is to be a fit and proper person to hold the particular position that he or she holds or is to hold. Section 7 of the Act stipulates that an officer includes a person appointed as director or senior executive.
17. With regard to an individual who is, or is to be a controller or officer, the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge and soundness of judgement to undertake and fulfil their particular duties and responsibilities. The standards required of persons in these positions will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position, but not fit and proper for a position involving different responsibilities and duties.
18. The diligence with which the person is fulfilling, or is likely to fulfill, those duties and responsibilities is also considered so that the Authority can assess whether the person does or will devote sufficient time and attention to them.
19. The Authority's view is that the standards need to be high in the case of persons with primary responsibility for the conduct of an investment provider's affairs, considering the nature, scale and complexity of the investment provider's business.
20. In assessing whether a person has the relevant competence, soundness of judgement and diligence, the Authority considers whether the person has had previous experience with similar responsibilities, the record in fulfilling them and, where appropriate, whether the person has suitable qualifications and training. As to soundness of judgement, the Authority looks to the person's previous conduct and decision-taking.
21. The probity of the person concerned is very important. It is essential that a person who is responsible for the conduct of an investment provider's business is one of high integrity. In contrast to the fitness elements of this criterion, which reflect an individual judgement relating to the position that the person holds or is to hold, the judgement of probity reflects the common standard, applicable irrespective of the particular position held.
22. Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record,

including, but not limited to, convictions for fraud or other dishonesty. The Authority also considers whether the person has contravened any provision of law, including legislation covering the fund administration, trust, banking, insurance, corporate services, money services, digital asset business, digital asset issuance or investment business sectors or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice.

23. In addition, the Authority considers whether the person has been involved in any business practices that appear to the Authority to be deceitful, oppressive or improper, or which would otherwise discredit their method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes insofar as they may be relevant to the minimum criteria for licensing and registration, the public interest and the interests of clients and potential clients.
24. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, such as, the Bermuda Bar Association; the Chartered Professional Accountants of Bermuda; the Institute of Chartered Secretaries and Administrators; the Institute of Directors; the Society of Trust and Estate Practitioners; the Chartered Financial Analysts Institute; the Bermuda Stock Exchange or corresponding bodies in other jurisdictions. Those who have been censured or disqualified are unlikely to be acceptable.
25. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time and a person's subsequent conduct are factors that may be relevant in assessing whether the person is now fit and proper for a particular position.
26. Once an investment provider is either licensed or registered, the Authority has continuing regard to the performance of the person in exercising their duties. Imprudence in the conduct of an investment provider's business, or actions that threatened (without necessarily having damaged) the public interest, will reflect adversely on the competence and soundness of judgement of those responsible. Similarly, failure by an investment provider to conduct its business with integrity and professional skills will reflect adversely on the probity and/or competence and/or soundness of judgement of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions—that is, it may determine that a person does not fulfil the criterion based on several instances of such conduct, which, if taken individually, may not lead to that conclusion.

### ***Shareholder controllers***

27. Shareholder controllers, as defined by sections 7(5) of the Act, may hold a wide variety of positions relating to the investment provider, and the application of the fit and proper criterion takes account of this fact. The key consideration is the likely or actual impact on the interests of clients and potential clients of a person holding the position as shareholder controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the investment provider, the higher the threshold will be for the shareholder controller to fulfil the criterion. For example, higher standards will generally be required of a shareholder controller owning 50% or more of the shares of an investment provider, compared with a shareholder controller owning 10%.
28. In reviewing the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority considers two main factors:
  - a) The influence the person has or is likely to have on the conduct of the affairs of the investment provider. If the person does, or is likely to, exercise close control over the business, the Authority would look for evidence that they have the probity and soundness of judgement and relevant knowledge and skills to perform the functions in relation to any activity carried on by an investment provider. Alternatively, if the shareholder does not, or is not likely to, influence the directors and management of the investment provider on the detailed conduct of the business, it would not be necessary to require such a level of relevant knowledge and experience; and
  - b) Whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the investment provider through “contagion” that undermines confidence in that investment provider. For example, if a holding company or major shareholder were to suffer financial problems, it could damage client or potential client confidence in the stability or financial integrity of the licensed or registered investment provider. Generally, the higher the shareholding, the greater the risk of contagion if the shareholder encounters financial difficulties. The risk of contagion is not, however, confined to financial weakness. Publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the investment provider.
29. In the case of the controller who directs or instructs a shareholder controller, similar considerations apply to those relevant to assessing the fulfilment of the shareholder controller’s criterion. In other words, the standards that an indirect controller needs to satisfy are likely to be, at a minimum, the standards also required of the person who is indirectly controlled.
30. Where a person is a controller of an investment provider by virtue of directing or instructing the board of a company or the members of a limited liability company, the standards required are high. The controller has to have the probity and the

relevant knowledge, experience, skills and diligence for managing an investment provider. The qualities required are those which are also appropriate for the board of directors or partners of the investment provider.

***Schedule 2, paragraph 1a: Corporate governance***

31. This paragraph provides that the investment provider shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, scale, and complexity of the investment provider. The Authority will take into consideration the investment provider's compliance with the corporate governance policy when assessing whether the investment provider meets the minimum criterion for licensing or registration to implement corporate governance policies and processes.
32. In the case of an investment provider that is a company or partnership, the business should be (a) effectively directed by at least two persons; and (b) under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, scale and complexity of the investment provider. The Authority recognises that standards of good corporate governance may differ among investment providers according to the size and complexity of their respective businesses.
33. In the case of an investment provider that is a company, the directors should include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the circumstances of the investment provider and the nature, scale and complexity of the investment provider.
34. The Authority considers that non-executive directors can play a valuable role in bringing an outsider's independent perspective to the running of the business and to ensure proper challenge to the executive directors and other management. The Authority sees non-executive directors as having an important role as members of an investment provider's audit committee or in performing the role that such a committee would otherwise perform.

***Schedule 2, paragraph 5: Business to be conducted in a prudent manner***

35. Paragraph 5 of Schedule 2 to the Act makes it clear that there is a general requirement for investment providers to conduct their business in a prudent manner. It is the overall responsibility of the board, partners and senior management of an institution to ensure there is effective control over the entire business and that it is conducted prudently. Board members, partners and senior management must understand the underlying risks in the business and be committed to maintaining a robust control environment.
36. Paragraphs 5(2) to (8) set out several specific requirements, each of which must be fulfilled before an investment provider may be regarded as conducting its business in a prudent manner.

37. The Act also makes it clear that the specific requirements outlined in subparagraphs 5(2) to (8) are not exhaustive. Accordingly, the Authority considers a range of other factors in assessing whether an investment provider is prudently run. These include, for example, the investment provider's:
- Management and corporate governance arrangements (such as, in the case of a company, the composition of the board of directors and the arrangements for the board's overall control and direction of the institution)
  - General strategy and objectives
  - Anti-money Laundering/Anti-Terrorist Financing (AML/ATF) policies and procedures
  - Planning arrangements
  - Policies on accounting and market conduct
  - Recruitment arrangements and training to ensure the investment provider has adequate numbers of experienced and skilled staff to carry out its various activities in a prudent manner
  - Ability to maintain adequate liquidity to meet actual and contingent obligations as they fall due
  - Procedures for overseeing, managing and monitoring all outsourced activities
38. Particularly close attention is also paid to the arrangements in place for preventing and detecting criminal activities, and for ensuring compliance with the investment provider's legal obligations in preventing money laundering and terrorist financing. The Authority would also expect investment providers and senior representatives of Class A Registered Persons to occupy premises suitable for the purpose of conducting their business.
39. Failure by the investment provider to comply with applicable laws in foreign jurisdictions in which the investment provider or its subsidiaries (if any) operate may also affect the Authority's assessment of prudent conduct.
40. An investment provider should have policies and procedures to enable it to comply with international sanctions in force in Bermuda.
41. Investment providers face a wide variety of potential major financial risks in their business, although the possibility of many of these risks materialising is, generally, remote. An investment provider will not be regarded as carrying on its business in a prudent manner unless it maintains minimum net assets as the Authority may provide for in rules or additional capital requirements it may otherwise directly require, taking into account the nature, scale and complexity of the investment provider. Investment providers are expected to monitor closely their net asset position. The Authority requires investment providers to maintain

net assets<sup>1</sup> of such amount and in such form as to safeguard the interests of clients and potential clients, having regard to:

- a) The risks inherent in the investment business;
  - b) The risks inherent in any operations of related entities so far as they can affect the institution; and
  - c) Any other factors deemed relevant by those charged with governance of the investment provider or which appear to the Authority to be relevant.
42. An investment provider must also effect a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature, scale and complexity of its operations. In judging the adequacy of insurance protection, the Authority looks to be satisfied that the scope and scale of coverage provides reasonable assurance of the ability of the investment provider to continue to operate if it should face either major damage to its infrastructure or material claims from clients for loss or damage sustained. It is in the first instance for those directing the business of the investment provider to assess the level of risk they face and to determine the type and extent of coverage appropriate for that business. Relevant types of insurance include the following: errors and omissions/professional indemnity; directors' and officers' liabilities; fidelity and forgery; loss of property; computer crime; computer damage; business interruption and office contents. The Authority will review the adequacy of coverage, having regard to the nature, scale and complexity of the business. An investment provider will not be regarded as carrying on its business in a prudent manner unless it maintains insurance coverage that is appropriate to the nature, scale and complexity of its operations.

***Schedule 2, paragraph 5(6): Adequate accounting and record-keeping systems***

43. The Authority does not regard an investment provider's records and systems as adequate unless they enable its business to be prudently managed and the investment provider is able to comply with the Act. In other words, the records and systems must be such that the investment provider is able to fulfill the various other elements of the prudent conduct criterion and identify threats to the public interest. They should also be sufficient to enable the investment provider to comply with notification and reporting requirements under the Act. Thus, delays in providing information or inaccuracies in the information provided will call into question the fulfillment of the requirement of sub-paragraphs 5(6) and (7). The systems for client records should be sufficient to enable the investment provider to maintain its books and records with satisfactory back-up in place.
44. The nature and scope of the particular records and systems that an investment provider should maintain should be commensurate with its needs and particular

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<sup>1</sup> This paragraph should be read in conjunction with the Investment Business (Net Assets, Capital and Liquidity) Rules 2022, and its accompanying guidance.

circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether an investment provider's records and systems are adequate, the Authority considers the nature, scale and complexity of its business.

45. The Authority requires investment providers to keep and maintain up-to-date accounting records in the English language, which:
- 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
    - 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 assets 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.
46. For the purpose of paragraph 45 above, 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.
47. The Authority requires investment providers to keep, either at their principal office or registered office or senior representative's office, or in such a manner that they 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, including account opening records, verification documentation and written 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, including 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.
48. Any of the records required by paragraph 47 may be recorded and kept by an investment provider in electronic form or such other form as the investment provider sees fit, provided that it is possible for the information to be inspected and for a copy of it to be produced in legible form. Information must be maintained to ensure there is a clear and precise audit trail for every transaction.

***Schedule 2, paragraph 6: Consolidated supervision***

49. The Authority may agree to take on a wider role of consolidated supervisor of an investment provider and its related institutions, particularly when the related institutions may have implications for the investment provider. Under such an arrangement, the investment provider and its related institutions are expected to fully cooperate with and provide all requested information to the Authority.
50. This paragraph requires the Authority to be satisfied, in the case of investment providers that are members of wider groups or have ownership links with other entities, that the structures and relationships are not such as to obstruct the conduct of effective consolidated supervision. The Authority needs to ensure that any risks to an investment provider arising from its membership to a wider group are fully considered. The objective, however, is to supervise the entity as part of its group, and not to supervise all companies in the group.
51. In order to conduct such monitoring and assessment, the Authority may need access to information relating to other parts of the group and to other connected entities. Where there are obstacles to transparency as a result of the particular structure adopted or the location of parts of the group, the Authority needs to satisfy itself that adequate information will be forthcoming and that the structure and relationships are not such as to cause any other risks to the interests of the investment provider's clients and potential clients.

***Schedule 2, paragraph 7: Integrity and skill***

52. This paragraph is concerned with the way the business of the investment provider is conducted and is distinct from the question of whether its controllers and officers are fit and proper persons. The business of an investment provider must be conducted ethically and honestly, and the staff employed by the

investment provider must have the skills and knowledge appropriate to the nature, scale and complexity of the investment provider.

53. The integrity element of the criterion requires the investment provider to observe high ethical standards in conducting its business. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the investment provider fails to comply with recognised ethical standards such as those embodied in the code of practice and conduct. The Authority considers the seriousness of the breach of the code, whether the breach was deliberate or an unintentional and unusual occurrence, and its relevance to the fulfilment of the criteria in the Second Schedule and otherwise to the interests of clients and potential clients.
54. The Authority would expect an investment provider to have a number of employees sufficient to carry out the range and scale of its business. The Authority, in determining whether an investment provider has sufficient personnel, may consider the human resources that the investment provider may draw upon through other arrangements (e.g., outsourcing, secondments, or other similar arrangements, as well as the methods of recruitment) to ensure that the investment provider employs an adequate number of persons who are fit and proper to perform the duties for which they are employed.
55. Staff must be provided with on-the-job training on the investment provider's internal policies, procedures and internal controls. The investment provider should ensure that adequate training is provided that is specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities and cyber/information security policies and controls.
56. Investment providers shall establish procedures to ensure the adequate supervision of staff in their dealings with clients. Appropriate records relating to the training, experience and qualifications of staff must be maintained.

#### **IV. PRINCIPLES RELATING TO THE GRANTING OF LICENCES AND REGISTRATION**

57. To grant a licence or registration under the Act, the Authority needs to be satisfied that all minimum licensing and registration criteria in the Second Schedule are met. In order to be so satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria can be met, the Authority retains a residual discretion to not grant a licence or registration if it doubts the criteria will be met on a continuing basis or if it

considers that, for any reason, there might be significant threats to the public interest or interests of clients or potential clients.

58. The Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the investment provider and relevant, connected parties to enable it to monitor the fulfilment of the criteria and to identify potential threats to the investment provider's clients.

## **V. POWERS TO OBTAIN INFORMATION AND REPORTS**

59. The Authority's supervisory arrangements for licensed and registered investment providers comprise three principal elements. First, the Authority conducts certain off-site analyses and reviews based on data received from investment providers. This is supplemented with regular prudential discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current performance, material compliance and control issues, and business development and strategy questions.
60. The Authority intends to conduct on-site reviews of licensees and Class A Registered Persons on either a routine or ad hoc basis, and consistent with its risk-based approach to supervision, to assess ongoing compliance with aspects of the licensing and registration criteria and, in particular, with paragraph 5(2) of the Second Schedule to the Acts. These compliance reviews are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the investment provider's operations. They also provide an opportunity for the Authority to check, through sample testing, that the procedures and practices in place within an investment provider are, in practice, enabling it to fulfil the specific obligations imposed by the Proceeds of Crime Act 1997 and the associated regulations.
61. Supervision involves the receipt and analysis of a variety of regular and ad hoc information from investment providers. The Authority's standard reporting arrangements are kept under review and amended from time to time in light of developments.
62. Section 45 of the Act provides formal powers of the Authority by notice in writing to require from an investment provider such information as it may reasonably require for the performance of the Authority's functions under the Act. The section also provides for the Authority to require an investment provider to make available a report by its auditor (or by an accountant or other person with relevant professional skill) on any aspect of or any matter about which the Authority has required or could require the investment provider to provide. In the case of reports commissioned under section 45(1)(b), the Authority has agreed it will, wherever possible, be commissioned from the investment provider's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular technical skills or when the Authority has had previous concerns about the quality or completeness of work conducted by the external auditor.

63. The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, the Authority's general policy is to use its own staff to assess directly through the on-site work, described above, the adequacy of an investment provider's systems and controls. Nevertheless, where particularly specialised work is required or other special considerations arise, the Authority may commission a professional report under section 45.
64. Section 46 of the Act provides statutory powers for the Authority by written notice to require an investment provider to produce relevant documents or information. This power can also be used to obtain relevant documents in the possession of other persons and also to require information or documents from entities related to an investment provider. Section 47 of the Act provides the Authority with specific powers to enter the business premises of persons on whom a notice under sections 45(1) or 46(1) has been served for the purpose of obtaining relevant information or documents. (In the case of Class A Registered Persons, it would be the premises of the senior representative). The Authority makes routine use of section 45 and section 46 powers, when conducting its on-site review visits to licensed and registered investment providers, to deal with any client confidentiality issues that might arise during compliance testing.
65. Much of the information required by the Authority for its supervision of investment providers is provided pursuant to the Authority's statutory powers in the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements, notably, the requirement for an investment provider to submit a certificate of compliance, signed by two officers (either two directors or one director and a senior executive), certifying that the investment provider has complied with the minimum licensing and registration criteria to the best of their knowledge, as provided for in section 44 of the Act.

## **VI. CONCLUSION**

66. The SoP are of general application and seek to take into account the diversity of investment providers that may be licensed or registered under the Act and the prospect of institutional and market changes. Consequently, the SoP may be revised and developed further over time. If the Authority makes a material change to the SoP, the Authority will publish a statement of the change or the revised version of the SoP.

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