



**BERMUDA MONETARY AUTHORITY**

**GUIDANCE NOTES**

**INVESTMENT BUSINESS**

**GUIDANCE FOR PROSPECTIVE APPLICANTS FOR  
LICENSING AND REGISTRATION**

July 2022

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## I. INTRODUCTION

1. These guidance notes have been issued by the Bermuda Monetary Authority (Authority or BMA) to provide information for prospective applicants regarding the statutory provisions of the Investment Business Act 2003 (Act or IBA) and the supervisory processes which the Authority will apply.
2. The Authority's guidance notes are of general application and seek to take account of the wide diversity of persons and undertakings that may be licensed or registered under the Act. The guidance notes will be kept up to date and revised versions published from time to time.
3. Regulations have also been issued further to Sections 40 and 86 of the Act to prescribe certain requirements, including related to the holding of client money.
4. It should be noted that the Authority has also published a Statement of Principles (SoP) and Code of Conduct and Practice (Code), as provided for under the Act. The SoP provides guidance on the Authority's approach in interpreting the minimum criteria and exercising its power to grant, revoke or restrict a licence or registration and in exercising its power to obtain information and reports, and to require the production of documents.
5. The Code provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on investment business.
6. Pursuant to Section 10A of the Act, the Authority has also issued rules in respect of the maintenance of net assets, capital and liquidity; and filing of statutory returns. Copies of those Rules, the SoP, the Code, and all appendices and schedules referred to throughout these guidance notes, can be found on the Authority's website ([www.bma.bm](http://www.bma.bm)).
7. Additionally, responses to some of the questions that are frequently posed to the Authority regarding the framework have been included within these guidance notes, marked as "FAQs".

## II. REGULATORY SCOPE

### 2.1 Investments, investment business and investment activities

8. The Act's requirements form the statutory basis for regulating investment business in Bermuda. The Act provides for either licensing or registration of any person or entity engaging in investment business, as defined by the Act, either in or from Bermuda, unless such person has been designated as a "Non-Registrable Person".

- ***What is the definition of “investment business”?***
9. Section 3 of the Act defines investment business as “engaging in one or more investment activities by way of business”.
- ***Which “investment activities” are permissible under the Act?***
10. Part 2 of the First Schedule to the Act sets out the six investment activities accommodated under the framework. They are:
- a) Buying, selling, subscribing for, or underwriting, investments, or offering or agreeing to do so, either as principal or agent.
  - b) Making or offering, or agreeing to make:
    - i. Arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, being arrangements which bring about or would bring about the transaction in question; or
    - ii. Arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.
  - c) Managing or offering, or agreeing to manage, assets belonging to another person where those assets consist of or include investments.
  - d) Giving or offering, or agreeing to give, to persons in their capacity as clients or potential clients, advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.
  - e) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where:
    - i. Those assets consist of or include investments falling within any of paragraphs 1 to 8 of Part 1 of the First Schedule to the Act; or
    - ii. The arrangements for their safeguarding and administration are such that those assets may consist of or include investments, and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.
  - f) Promoting investments to members of the public, including:
    - i. Advertising or agreeing to advertise material or information which promotes an investment;

- ii. Issuing or agreeing to issue a prospectus, application for or proposal form in relation to an investment; and
- iii. Distributing, circulating or agreeing to distribute, circulate or make available, material relating to an investment.

It bears emphasis that the Act establishes that a person, whether acting as principal or agent, is only considered to be promoting investments if they continuously solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions.

***FAQ 1:** How does the Authority interpret whether an investment activity (such as dealing in or promoting investments) is being conducted “continuously”?*

***ANSWER:** The term “continuously” is used in this context to differentiate instances in which a firm is in the business of conducting the activity generally, as opposed to doing so in a manner which may be considered “one-off” or exceptional.*

*The Authority recognises that there may, at times, be need for judgment in assessing whether this activity is being carried on “continuously”, and in doing so, will take several factors into consideration, such as the nature of the business, the scale of the activity and the length of the period of over which it is conducted.*

11. Where there is uncertainty, (prospective) applicants are encouraged to engage at an early stage with the Authority to seek clarity regarding the Act’s applicability to their proposed business, including whether a proposed activity would qualify as an investment activity under this framework.

- ***What does carrying on investment business “in or from Bermuda” mean?***

12. Pursuant to section 4 of the Act, a person is deemed to be carrying on investment business in or from Bermuda if that person:

- a) Is incorporated or formed in Bermuda and carries on investment business;
- b) Is incorporated or formed outside of Bermuda and carries on investment business in or from Bermuda; or
- c) Engages in an investment activity deemed to be carrying on of investment business, further to an order made by the Minister.

(In this connection, the Minister may specify by order the circumstances in which a person, who would otherwise not be regarded as carrying on investment business in or from Bermuda, will be considered as doing so.)

- ***What activities are considered as “excluded” under the Act?***

13. Part 3 of the First Schedule to the Act sets out those activities excluded from the definition of investment activity under the following headings:-

- I. Groups, Firms and Joint Enterprises

- II. Sale of Goods and Supply of Services
- III. Employee Share Schemes
- IV. Sale of Body Corporate
- V. Trustees and Personal Representatives
- VI. Advice Given or Arrangements Made in Course of Legal Profession
- VII. Advice Given in Newspapers and Broadcasting Services

**FAQ 2:** *Under what circumstances can the investment activities carried on by a firm be excluded under the “Groups, Firms and Joint Enterprises” provision within Part 3 of the First Schedule of the Act (hereafter referred to within this FAQ as the Schedule), so the firm does not have a requirement to be licensed or registered under the Act?”*

**Answer:** *The “Groups, Firms and Joint Enterprises” exclusion is limited to the following investment activities:*

- *Dealing with investments*
- *Arranging deals in investments*
- *Managing investments*
- *Investment advice*
- *Safeguarding and administering investments*

*This exclusion applies to intra-group dealings and activities and to dealings and activities involving participators in a joint enterprise that take place for the purposes of, and in connection with, that enterprise. If the investment activity takes place wholly within a group of companies or joint enterprise, then the investment provider carrying out such activity would not be required to be licensed or registered under the Act.*

***Illustrative example relating to “Managing investments”:***

*XYZ Limited (the Company) is a Bermuda-incorporated entity that is carrying out investment business in or from Bermuda. The Company is the investment manager for ABC Fund Limited (the Fund). The Fund accepts investments from investors which meet its minimum investment requirements. The Fund has issued two types of shares, voting management shares and non-voting redeemable preference shares. All the voting shares have been issued to the Company.*

*The Fund is a subsidiary of the Company given that the Company owns all the issued voting shares of the Fund and is thus consistent with the definition of subsidiary pursuant to section 5 of the Act. However, despite the Fund being a subsidiary of the Company, the Company would not be able to make use of the group exclusion under Part 3 paragraph (1) (4) (a) of the Act as the Company is not managing investments belonging to the members of the same group or firm.*

*In assessing whether investment management services provided by the Company to the Fund in this illustrative example fall within the group exclusion under Part 3 paragraph (1) (4) (a), one must determine the following:*

- *[test 1] Whether the client of the investment provider is a member of the same group or firm as the investment provider, and*
- *[test 2] Whether the assets/investments to which the activity relates belong to another member of the same group or firm.*

*Please refer to Parts 2 and 3 of the Schedule to the Act for full details of all applicable exclusions and the circumstances to which they relate.*

- ***What types of instruments fall within the definition of “investments”?***

14. Part 1 of the First Schedule outlines (with definitions) the 11 types of instruments accommodated under the Act, being:

- Shares
- Debentures
- Instruments giving entitlement to investments
- Units in investment funds
- Certificates representing investments
- Options
- Futures
- Interests in a partnership
- Contracts for differences
- Long-term business
- Rights and interests in investments

***FAQ 3:*** *Do “digital asset derivatives” (as defined under section 2 “Interpretation” of the Digital Asset Business Act 2008 (“DABA”)) fall within the “investments” listed under Part 1 “Investments” of the First Schedule to the Act (“First Schedule”), for the purposes of determining a licensable investment activity under Part 2 “Investment Activities” of the First Schedule (“Part 2”)?*

***Answer:*** *A digital asset derivative is **not** an “investment” for the purposes of Part 1 “Investments” of the First Schedule. Persons engaging in any investment activity under Part 2 with digital asset derivatives, are required to be licensed under the DABA to carry on such business, unless otherwise eligible for exemption from that regime.*

## **2.2 Persons required to be licensed**

15. Persons seeking to carry on investment business in or from Bermuda are required to apply to the Authority to be licensed unless they meet the criteria to be registered or have been designated as non-registrable. Persons wishing to be licensed may apply

for either:

- a) A “standard” licence, under which a person may carry on one or more investment activities (subject to any limitations imposed by the Authority); or
- b) A “test” licence, under which a person may carry on one or more investment activities for a defined period<sup>1</sup> and subject to any restrictions imposed by the Authority).

16. Holders of a test licence are allowed to carry on one or more investment activities within the controlled environment of the Authority’s general regulatory sandbox<sup>2</sup>, and may offer innovative products and test new technologies and delivery methods in such a manner as agreed with the Authority. The parameters of each test licence, including any conditions or restrictions, are determined on a case-by-case basis prior to licensing and may be adjusted by the Authority during the period of the licence<sup>3</sup>.
17. Each licensed person must maintain a place of business in Bermuda as its principal place of business. In the case of an individual who is a sole trader, that principal place of business is considered the premises which they occupy for the purpose of conducting investment business; while in any other case, an investment provider’s principal place of business is the place from which it conducts investment business activities, employs staff and pays salaries and other expenses in connection with that business.

### **2.3 Persons required to be registered**

18. In addition to licensed persons, the framework also accommodates two classes of registered persons, being Class A Registered Persons and Class B Registered Persons.
19. Any Bermuda-formed or incorporated person seeking to carry on investment business that does not qualify as non-registrable must be regulated. To that effect, where such a person:
  - a) Does not maintain a place of business in Bermuda<sup>4</sup>; and
  - b) Is licensed, authorised or registered to carry on investment business by a “recognised regulator” in one or more foreign jurisdictions,that person must apply to the Authority to be registered in Bermuda as a Class A Registered Person, unless they opt to be fully licensed by the Authority.
20. The term “recognised regulator” is defined in section 2 of the Act. While it is not assured, as determinations will be made on a case-by-case basis, it is likely that the

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<sup>1</sup> The Authority may determine, or persons may apply, to extend the duration of a test licence.

<sup>2</sup> Details of the Authority’s approach to administering its general regulatory sandbox for investment business and other sectors (not including insurance or digital assets), are outlined in the “General Regulatory Sandbox and Innovation Hub Application and Approval Guidelines” available on the Authority’s website ([www.bma.bm](http://www.bma.bm)).

<sup>4</sup> Section 13A(4) of the Act defines the term “maintains a place of business” as:

- a) In the case of a sole trader, if that person carries on investment business from premises it occupies in



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

Authority will recognise as recognised regulators other competent authorities which are ordinary members of the International Organization of Securities Commissions. A Bermuda-formed or incorporated person which is regulated in another jurisdiction and is, therefore, potentially eligible to be registered with the Authority as a Class A Registered Person is encouraged to seek early confirmation from the Authority that its overseas regulator is a recognised regulator within this framework.

21. As such investment providers would otherwise not have the necessary mind and management resident in Bermuda to facilitate effective supervision by the Authority, each Class A Registered Person is required to appoint an individual as its senior representative, to serve as a point of contact in Bermuda. That person is required to maintain an office in Bermuda and has a number of obligations under the Act, such as notifying the Authority of various material changes, including but not limited to those set out in paragraph 53 of these guidance notes.
22. It should be noted that an entity that proposes to operate as a Class A Registered Person will not be able to do so until it demonstrates to the Authority that it has secured the requisite licence, authorisation or registration from a recognised regulator. Should the necessary approval not be secured from the recognised regulator, the Bermuda entity is required to notify the Authority immediately and, should they still wish to carry on investment business in or from Bermuda, submit an application to be licensed or, if applicable, registered as a Class B Registered Person.
23. The framework also provides for various classes of persons who have been specified by the Minister in the Investment Business (Class B Registered Persons) Order 2022 to apply to the Authority for registration as Class B Registered Persons. Among those eligible for registration within this class are persons who:
  - a) Provide investment services exclusively to institutional or sophisticated private investors<sup>5</sup>; or
  - b) Provide such services privately to 20 or fewer clients at any time, and not solicit investment business from the public.(The full details of persons required to apply to be registered as Class B Registered Persons are set out in the above-mentioned Order.)
24. Similar to licensed persons, Class B Registered Persons are also required to maintain a principal place of business in Bermuda, which has a similar meaning as set out in paragraph 17 above.
25. The Minister has via Order also designated a number of persons and classes of persons as Non-Registrable Persons (NRP) and, therefore, not subject to obligations under the Act. Such persons and classes of persons include:
  - a) Investment funds;

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<sup>5</sup> Under the framework, a “sophisticated private investor” is an individual who has such knowledge of, and experience in, financial and business matters as would enable them to properly evaluate the merits and risks of a prospective purchase of investments.

- b) Persons registered under the Insurance Act 1978 to carry on insurance business (as defined in that Act) as:
  - i. Insurance managers, brokers, agents or salesmen; or
  - ii. Insurance marketplace providers, whose investment business (or, in the case of insurance marketplace providers, only in relation to “dealing in investments”) is conducted in connection with their insurance business;
- c) Persons licensed under the DABA whose investment business is conducted in a manner deemed ancillary to their digital asset business;
- d) The Government of Bermuda, the Authority and other public bodies in Bermuda.

(The full details of persons deemed as non-registrable under this framework are set out in the Investment Business (Non-Registrable) Persons Order 2022.)

- 26. Where a NRP is found to be carrying on investment business in a manner inconsistent with any conditions set out in the above-mentioned Order (as well as in this and any other related guidance<sup>6</sup>), that person may be required to apply for an investment business licence.
- 27. Even where a person qualifies as non-registrable based on their status as an entity that is regulated by the Authority under another regime, such person may also be licensed under the Act.

### III. APPLICATIONS

#### 3.1 Permissible structures for conducting investment business

- 28. An application for a licence or registration under the Act may be made by any of the following:
  - a) A local or exempted company incorporated under the Bermuda Companies Act 1981 (“Companies Act”);
  - b) An overseas company permitted by the Minister of Finance, pursuant to the Companies Act 1981, to conduct business in Bermuda;
  - c) A partnership formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992;
  - d) An overseas partnership permitted by the Minister of Finance to conduct business in Bermuda;
  - e) A limited liability company formed under the Limited Liability Company Act 2016;

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<sup>6</sup> In particular, these guidance notes should be read in conjunction with other guidance which the Authority has issued to define the term “ancillary”, and outline the Authority’s criteria for determining whether an investment business activity being conducted by a digital asset business (which is regulated by the Authority and, therefore, eligible as a NRP under the investment business framework), is being conducted in a manner which satisfies that definition of “ancillary”.

- f) An incorporated segregated accounts company or an incorporated segregated account formed under the Incorporated Segregated Accounts Company Act 2019; or
  - g) An individual or unincorporated entity seeking to conduct investment business, as defined, in or from Bermuda.
29. Notwithstanding the foregoing list, it bears emphasis that the Authority does not endorse or encourage the use of any specific legal form or structure for the conduct of investment business. During the application process, the Authority assesses the suitability of structures in the context of the business plans proposed and taking cognisance of the minimum criteria; however, persons are encouraged to engage the Authority regarding the appropriateness of a proposed structure, even ahead of submitting an application.
30. Where an applicant is a legal person, it must have the objects and powers in its memorandum of association, articles of incorporation or similar document that enable it to carry on investment business of the type proposed by the applicant.
31. In assessing an application, the Authority considers the interaction of a number of factors, including the nature, scale and complexity of the investment business being carried on; the number of individual relationships involved; the variety and complexity of the responsibilities that are to be undertaken; and the resources that the investment provider has at its disposal.
32. The minimum criteria for licensing and registration require, *inter alia*:
- a) Controllers/officers to be fit and proper persons;
  - b) Investment providers to observe proper corporate governance policies and processes;
  - c) Business to be conducted in a prudent manner;
  - d) Full cooperation where there is consolidated supervision; and
  - e) Investment providers to demonstrate integrity and skill.

The Authority recognises that differences in their structure and legal form may affect how investment providers are able to demonstrate satisfaction of these minimum criteria. The SoP sets out additional details on how these criteria may be interpreted and applied in diverse circumstances and contexts.

### **3.2 Role of the Assessment and Licensing Committee (ALC or Committee)**

33. Under section 4D of the Bermuda Monetary Authority Act 1969 (BMA Act), the functions and powers of the Authority may, by an instrument in writing, delegate to an officer or servant of the Authority or a committee constituted by the Board of Directors from persons who are officers or servants of the Authority, any function or power vested in the Authority. The responsibility to make decisions on applications

for licensing and registration under the Act is sub-delegated to the Banking, Trust, Corporate Services and Investment (BTCSI) ALC.

34. The ALC structure was established in 2007 by the Authority's Board of Directors to consider applications for licensing of financial services businesses seeking to operate in or from within Bermuda. The ALC for investment business consists of a chairperson, who is ordinarily the Director of the Supervision (BTCSI) Department, and includes a multi-disciplinary panel of relevant expertise drawn from the Supervision, Corporate Authorisations, Financial Stability and Research, Policy Development, Legal Services and Enforcement and Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Departments within the Authority.
35. The Committee generally convenes when required to review applications presented for consideration in order to reach a consensus on whether to approve, defer or decline applications for licensing or registration. Applicants will be informed of the ALC's decision as soon as possible subsequent to the meeting, followed by a formal letter from the Authority confirming the same.

### **3.3 Application requirements and process**

36. An application for a licence or registration must be made in the form prescribed by the Authority and accompanied by such fees as may be prescribed within the BMA Act (refer to the 'Fees' section of the Authority's website, [www.bma.bm](http://www.bma.bm)). Application forms are available in electronic form on the Authority's website.
37. An applicant must submit a business plan setting out the nature and scale of the investment business proposed. Business plan requirements are included in the application form available on the Authority's website ([www.bma.bm](http://www.bma.bm)).
38. An applicant should also submit relevant supporting documents such as policies, procedures, manuals, reports and confirmations to support statements and other particulars in a business plan.
39. The Authority requires that an applicant submit completed institutional or personal questionnaires as applicable. Questionnaires are required from each shareholder/controller, director and officer (as defined in section 2 of the Act) responsible for the applicant's business. Personal and Institutional questionnaires are available on the Authority's website ([www.bma.bm](http://www.bma.bm)).
40. In addition to satisfying the above mentioned prudential requirements, applicants must also submit the requisite Anti-Money Laundering and Anti-Terrorist Financing policies and procedures, which form part of all applications to ensure compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (Regulations).

41. The name, contact details and relevant qualifications for the appointed reporting officer should also be provided in accordance with Regulations 16 and 17.
42. The application form includes a checklist outlining the primary supporting documents required to be submitted with each application for licensing and registration.
43. In considering an application for an investment business licence or registration, the Authority may:
  - a) Carry out any enquiries which it considers appropriate (e.g., approaching other regulatory authorities);
  - b) Ask the applicant, or any specified representative of the applicant, to attend a meeting with the Authority to answer questions and explain any matter(s) the Authority considers relevant to the application;
  - c) Seek additional information from the applicant;
  - d) Visit the applicant to review the proposed premises and files pertaining to the business that it is proposed to conduct in the licensed or registered entity;
  - e) Request any information furnished by the applicant to be verified in such manner as the Authority may specify; and
  - f) Take into account any other information which it considers relevant in relation to the application.
44. The Authority will not grant a licence or registration unless it is satisfied that the minimum criteria are met or are capable of being met by the applicant. Nevertheless, even when so satisfied, the Authority always retains the discretion not to grant a licence or registration—notably if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that for any reason there might be significant threats to the interests of clients or potential clients.
45. The Act imposes no time limit within which the Authority must reach a decision in respect of an application. In practice, the Authority seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may vary, however, depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary. Generally, the Authority would not expect an application that has been submitted, which is accurate and complete, to remain outstanding for a period in excess of three months—and in cases, the timetable will be appreciably less. It should be noted, however, that applications that do not fully address the requirements of the Authority, necessitating follow-up requests for supplemental information, will likely take longer to be determined.

## **IV. THE SUPERVISORY PROCESS**

46. The Authority uses a risk-based framework to conduct its supervisory programme, which enables the Authority to:
- a) Carry out the responsibilities placed on the Authority by various acts in an effective and efficient manner;
  - b) Allocate resources to the most pertinent risk areas; and
  - c) Observe and adhere to international best practices while monitoring and responding to external developments, taking into consideration the nature of the Bermuda market.
47. The Authority's supervision of investment business involves regular meetings with the investment provider's senior management, as required, together with scrutiny of financial and other relevant qualitative information on the investment provider's performance. In the case of licensed investment providers, this may also involve regular on-site visits to their premises. While the Act provides certain supervisory powers for the Authority to require information from investment providers, the Authority expects each investment provider to voluntarily and routinely furnish the information necessary for its supervision and to behave in an open and cooperative manner. An investment provider must disclose to the Authority appropriately anything relating to the firm and its application of which the Authority would reasonably expect notice. Where necessary information is not forthcoming or when concerns arise about the completeness or timeliness of information provided, the Authority may decide to utilise its formal powers to require information.
48. The Authority also uses thematic reviews to assess the control, oversight and monitoring activities of regulated entities over emerging and high-risk matters.
49. The Act also enables the Authority to commission reports on an investment provider from an accountant or other person with relevant professional skills. Such reports can assist with or, on occasion, substitute for part of the on-site element of regulation that is required. In practice, the Authority will conduct most systems and controls reviews directly. Accordingly, reports by auditors on systems and controls will be commissioned only exceptionally, where the Authority deems necessary. Nevertheless, the Authority may, from time to time, commission reports from auditors to obtain verification of prudential data submitted by investment providers, to provide assurance to the Authority of the accuracy and completeness of financial reporting.

### **4.1 Reporting requirements**

50. Every investment provider is required to submit an annual return to the Authority, inter alia, to provide an update on material changes in product offerings and corporate governance arrangements. Within this requirement, each person must also submit a certificate to the Authority confirming compliance with the minimum criteria or indicating any failure to do so and, where the licence or registration is subject to

limitations imposed pursuant to section 17(3) or 17B(2), that it has observed such limitations. The compliance certificate is available in electronic form on the Authority's website ([www.bma.bm](http://www.bma.bm)).

51. The Act and Rules further require that holders of standard licences, as well as Class A Registered Persons and Class B Registered Persons, must supply the Authority with financial statements or accounts on an annual basis, not later than four months after the end of their financial year. Where such persons hold client money, annual statements or accounts are required to be audited, and must be accompanied by an auditor's report prepared in relation to those statements or accounts. (In this connection, each person holding client money must also arrange on an annual basis for review of controls over client money to be conducted by a qualified person, and ensure that a report is prepared on those findings. The Authority may request a copy of such report as part of its routine off-site monitoring of an investment provider or during an on-site visit.)

**FAQ 4:** *Who can hold client money?*

**ANSWER:** *The Act permits any person other than a Class B Registered Person to hold client money. (This is subject to any limitations or conditions which the Authority may see fit to apply). The Investment Business (Client Money) Regulations (as amended), set out the various statutory obligations of persons holding client money, including regarding segregation of client money from the investment provider's funds. Those Regulations also delineate when funds being held by an investment provider for clients are not considered as being client money.*

**FAQ 5:** *Who is considered a "qualified person" to conduct reviews of client money controls?*

**ANSWER:** *For the purposes of testing and reporting on the robustness of client money controls, the Authority deems a "qualified person" to be:*

- (a) an investment provider's internal auditor;*
- (b) an investment provider's approved auditor; or*
- (c) such person approved by the Authority in writing to perform such function.*

52. For holders of standard licences, as well as any Class A Registered Person so directed by the Authority, the Act also requires submission of financial returns to the Authority at quarterly intervals. Quarterly returns typically comprise financial statements and a liquidity analysis; however, in instances where an investment provider is directed by the Authority to maintain additional capital determined by the Authority's published additional capital methodology, the applicable quarterly return is the Prudential Information Return (PIR). Additionally, investment providers who carry on investment business involving Contracts For Differences (CFD) or other leveraged products with retail clients are required to file an additional quarterly supplement. All investment providers required to submit quarterly returns must do so within 21



business days of each calendar quarter<sup>7</sup>. Sample financial statements and a liquidity analysis report, as well as the template for the PIR, are available in electronic form on the Authority's website ([www.bma.bm](http://www.bma.bm)).

53. In addition to the above-mentioned statutory reporting, the Authority expects to be notified immediately of any significant developments in relation to an investment provider. Matters that should be reported include, but are not limited to, the following:

- a) Any breach of minimum net assets<sup>8</sup> or liquidity requirements or expectation that a breach may be likely. Where the net assets of an investment provider fall below the minimum amount or below the amount specified by the Authority in Rules or in a directive, the investment provider shall inform the Authority of the event not later than the first business day after the day that the investment provider becomes aware of its occurrence;
- b) Instances of legal action against the investment provider involving the risk of material financial cost or reputational damage;
- c) Requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body;
- d) Material changes in the business undertaken, including any proposal to undertake non-investment-related business; and
- e) Any material cyber incidents (applicants should refer to the Operational Cyber Risk Management Code of Conduct for further details, available on the Authority's website).

54. The Authority would stress that it expects investment providers to be open and proactive in ensuring that the Authority is kept informed of material developments when, or before, they occur.

55. Where the Authority finds reason to doubt the completeness or accuracy of information provided to it in its routine supervision, it will consider the use of the statutory powers in the Act enabling it to require additional documents or information. Depending on the seriousness of its concerns, it may also have recourse to other information and intervention powers provided in the Act—for example, the appointment of persons to investigate under section 49.

***FAQ 6:** Where the Act or any regulations or rules stipulate, or the Authority requires submission of reports or information within a specified number of “days”, how will these be counted?*

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<sup>7</sup> Full details of reporting requirements are set out in the Act and in the Investment Business (Prudential Standards) (Statutory Returns) Rules 2022.

<sup>8</sup> The Investment Business (Prudential Standards) (Standard Licences, Test Licences, and Class A Registered Persons) (Capital, Net Assets and Liquidity) Rules 2022 prescribe minimum requirements for maintenance of net assets (including circumstances in which the Authority will require an investment provider to hold additional capital, above the prescribed minima).

*Answer: Unless otherwise specified, all references to “days” should be interpreted as “business days”, which will be “counted” in accordance with the provisions in Section 9(e) of the Interpretation Act 1951.*

#### **4.2 Prudential visits**

56. Regular prudential meetings provide an opportunity for the Authority to discuss with senior management the development of the investment provider's business, including past performance and future strategies for the business. Meetings are normally scheduled triennially but may be more frequent when the Authority judges it necessary. Ad hoc meetings will also take place to discuss important interim developments or concerns.

57. While the agenda of each prudential meeting is tailored to focus on the specific circumstances of each investment provider, in general, matters discussed at prudential meetings are likely to include:

- a) Business model and strategy, including:
  - i. Any planned changes to business strategies;
- b) Management and administration, including:
  - i. Matters relating to the fit and proper criterion;
- c) Corporate governance, including:
  - i. Material operational changes, changes in investment advisers, managers, custodians, administrators and key staff members;
- d) Internal controls, including:
  - i. Outcomes of periodic reviews of risk management and compliance frameworks;
  - ii. Staff training;
  - iii. Internal audit programme;
  - iv. Disaster recovery planning; and
  - v. Anti-money laundering procedures and compliance.
- e) Financial soundness, including:
  - i. Financial reporting and financial statements (audited, where applicable);
  - ii. Adequacy of net assets/capital and liquidity requirements; and
  - iii. Indebtedness between the investment provider and other members of the group to which it may belong.

58. Prudential discussions can take place at the Authority, at the investment provider's own premises or, in the case of a Class A Registered Person, at the office of its senior representative.

59. The Authority will not ordinarily include Class B Registered persons in scope for its prudential visit programme; and will only do so in exceptional cases (i.e., where the Authority has material concerns).

### **4.3 On-site supervision**

60. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures, as well as the processes that management has put into place to monitor and control key risks in the business. On-site supervision involves structured visits to an investment provider's offices where, typically, the Authority interviews a range of management and staff and reviews a sample of client files. On-site visits will usually be scheduled on a rolling basis; however, the frequency of on-site visits will also reflect the Authority's assessment of the degree of risk in the business and the effectiveness of the investment provider's personnel, systems and controls for monitoring risk. In exceptional cases (i.e., where the Authority has material concerns), the Authority may conduct a visit at short, or even without, notice. There will not usually be a need for a separate off-site prudential discussion in a year when an investment provider is scheduled for an on-site visit unless significant recommendations emanate from the on-site visit. Where possible, the Authority's prudential and AML/ATF supervision teams will conduct simultaneous on-site visits as opposed to stand-alone reviews.
61. The Authority will normally write to an investment provider approximately eight to ten weeks ahead of a visit, requesting pre-visit information and providing more details regarding how the Authority intends to structure the visit. The pre-visit information requested is specific to the scope of each on-site visit, but would generally include business plan, management reports, and policies and procedures relating to the investment provider's corporate governance, compliance and risk management practices.
62. While the Act provides powers for the Authority to formally require the production and submission of such information as it may reasonably require, on-site visits are normally conducted without recourse to formal powers.

### **4.4 Communication with auditors**

63. The provisions set out in the Act reflect the importance of ensuring proper dialogue between supervisors, auditors, and accountants to reinforce the effectiveness of regulation. It is inherent in the nature of the auditing task that the auditors must assess and make judgments about the quality of the internal control environment within the investment provider, including conducting detailed testing of systems and controls. The results of such work can also be highly relevant to the judgments which must be reached by the regulator. Contact between regulators and auditors, therefore, strengthens the regulatory framework.
64. Recognising that auditors and accountants perform functions that can assist regulators, the Act provides specifically for the Authority to be able to disclose information to them in certain circumstances and to be able to commission reports from them. It also provides for auditors and accountants to communicate in good faith

with the Authority, notwithstanding any duties of confidentiality that may be owed to clients. In addition, sections 42 and 45 of the Act specify circumstances in which auditors and accountants are obliged to give the Authority written notice of certain facts or matters.

#### **4.5 Disclosure of information**

65. The Act includes strict provisions governing the circumstances in which the Authority may disclose confidential information received by it in the course of its regulatory responsibilities. Certain "gateways" apply, including for the purpose of enabling or assisting the Authority to discharge its functions under the Act or under the BMA Act, or for the purpose of enabling or assisting the Minister of Finance, another authority in Bermuda or a foreign regulatory body exercising functions corresponding to those of the Authority to discharge its regulatory functions.

66. In fulfilment of established international norms and standards, the Authority is committed to ensuring effective liaison and cooperation with foreign regulatory bodies in circumstances in which there is a shared regulatory interest in an investment provider—for example, because it (or another member of its group) is licensed or otherwise subject to regulation in another jurisdiction. In order to disclose information to a foreign regulatory body, the Authority must first satisfy itself that the body is subject to restrictions on further disclosure at least equivalent to those imposed under the Act.

#### **4.6 Consolidated supervision**

67. Although the Authority supervises specific individuals or entities, it also needs to have regard to relationships with any wider group to which an entity may belong or with other persons closely linked to the investment provider, which may have implications for the investment business for which it has oversight responsibility. The Authority reviews these aspects in the course of its routine supervision. In this regard, it may seek relevant information in relation to other group companies from time to time. In particular cases, where relevant, the Authority may also take on a wider role of consolidated supervisor in relation to the investment provider and the group to which it belongs, involving a need for more regular information on the wider group. Where the Authority determines, in conjunction with relevant overseas regulators, that it is necessary for it to assume responsibility for consolidated supervision of the wider group to which an investment provider belongs, it will require for that investment provider to be licensed by the Authority.