



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

PROPOSED AMENDMENTS FOR THE REGULATION OF INVESTMENT EXCHANGES AND CLEARING HOUSES AND OTHER ADDITIONAL CHANGES TO THE INVESTMENT BUSINESS ACT 2003

September 2023

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I. BACKGROUND

1. In July 2021, the Bermuda Monetary Authority (BMA or Authority) began publicly consulting on proposals, including changes to the Investment Business Act (IBA or Act), to drive the modernisation of the framework for the supervision and regulation of Bermuda's investment business sector. Legislative changes emanating from those proposals, which included expansion of the scope of the Act and strengthening of several of the Authority's powers with respect to investment providers, took effect on 27 July 2022. Notably, no substantive updates were made to Part IV of the Act (hereafter referred to as Part IV) during that exercise because that portion of the legislation was slated for separate review.
2. The current legislative framework within Part IV of the Act is two decades old, and over that time, international standards and best practices have evolved considerably. After enhancements were passed and implemented for the remainder of the Act, the BMA developed proposals aimed at updating the legislative framework within Part IV. These were related to the recognition of investment exchanges and clearing houses (collectively referred to hereafter as Recognised Bodies).
3. In developing proposals to modernise its prudential oversight of Recognised Bodies, the Authority undertook a comparative review of the existing framework within Part IV, against international standards and principles (including those issued by the International Organisation of Securities Commissions (IOSCO))¹, as well as observations from peer jurisdictions. That review revealed opportunities to better align the current legislative framework and supervisory practices for Recognised Bodies with international standards and best practices. Given the evolutions in regulatory standards and industry practice, it has been determined that the prudential regulatory framework established within Part IV would benefit from enhancements that allow the Authority to establish and maintain more appropriate oversight of Recognised Bodies.
4. To address the gaps identified, the proposals aim to better align Part IV with international standards and best practices whilst also permitting more appropriate regulatory oversight of Recognised Bodies. Even though the revisions proposed primarily relate to amendments within Part IV itself, it has also been recommended that the framework be strengthened by operationalising specific rulemaking and

¹ The review focused primarily on two sets of principles promulgated by IOSCO in relation to regulation and supervision of investment exchanges and clearing houses, namely:

- i. [Objectives and Principles of Securities Regulation](#) (the IOSCO Principles); and
- ii. [Principles for Financial Market Infrastructures](#) (the FMI Principles).

regulation-making powers that already exist within Part IV, thereby improving the Authority's regulatory oversight.

5. The standards on which several of the proposals are based take account of the fact that investment exchanges and clearing houses typically operate as Self-Regulatory Organisations (SROs). Notwithstanding, these standards clearly articulate the need for effective (albeit proportionate) regulatory oversight of SROs, including having the ability to take enforcement action where necessary. The additional obligations for Recognised Bodies and the powers of the Authority now being incorporated are not intended to subvert the self-regulatory nature of any Recognised Body but should instead serve to both modernise the framework and render it more robust.
6. In addition to the abovementioned proposals related to the enhancement of Part IV, this paper also proposes refinements to other sections of the Act to further clarify and support the recent expansion in scope of the framework for the regulation of investment business in Bermuda.
7. Industry and other stakeholders are invited to provide feedback on the proposals outlined in this paper and its attachments by emailing their comments to policy@bma.bm by the close of business on 6 October 2023.

II. PROPOSED AMENDMENTS TO PART IV

A. Current framework for oversight

8. At present, Part IV provides that an investment exchange or clearing house that carries on any investment activity² may apply to the Authority to be a Recognised Body and therefore be exempt from the requirement to hold an investment business licence or registration under the Act. In order to be recognised, an applicant must make an application to the Authority and provide certain information required under Part IV. Following receipt of an application, the Authority may issue a recognition order to an investment exchange or clearing house that has met certain "recognition requirements", which may be provided for separately in regulations made by the Minister under Section 67).
9. In relation to its current powers over a Recognised Body, the Authority may, per the Act:

² As defined in section 2 of the Act

- a. Issue (and modify) rules requiring Recognised Bodies to notify the Authority following certain events and in specified circumstances and to provide any relevant information as specified by those rules (Sections 73 and 74);
 - b. Give directions if a Recognised Body has failed, or is likely to fail, to satisfy the “recognition requirements” or to comply with any other obligation set out under the Act in Section 75; and
 - c. Revoke a recognition order if a Recognised Body has failed, or is likely to fail, to satisfy the “recognition requirements” or to comply with any other obligation set out under the Act in Section 76. (Section 77 provides the parameters that the Authority must adhere to in deciding whether to revoke a recognition order.)
10. To date, the Minister has not exercised the powers available under Section 67 to issue regulations setting out recognition requirements, nor has the Authority exercised its administrative powers to issue notification rules as per Section 74 of the Act.

B. Issue

11. Principle 9 of the IOSCO Principles establishes an expectation for national regulators to provide sufficient oversight of self-regulatory organisations (such as investment exchanges and clearing houses). In meeting that objective, regulators must have comprehensive inspection, investigation and surveillance powers and their regulatory frameworks should ensure the effective and credible use of such powers. (Detailed expectations in relation to those powers are addressed under other IOSCO Principles, including Principles 10-12).
12. Relatedly, the Financial Market Infrastructures Principles require that regulators of Financial Market Infrastructures (FMI), among other things:
- a. Clearly define and publicly disclose the criteria used to identify FMIs that should be subject to regulation, supervision and oversight (Responsibility A);
 - b. Have powers or other authority that is consistent with their relevant responsibilities, including the ability to obtain timely information and to induce change or enforce corrective action (Responsibility B); and
 - c. Clearly define and publicly disclose their policies with respect to FMIs, including their objectives, roles, and regulations (Responsibility C).

13. Following the review conducted, it is proposed that Part IV be updated to better satisfy the expectations expressed within both the IOSCO and FMI Principles. Specifically, the absence of explicit recognition and prudential requirements (owing to unexercised regulation- and rule-making powers under sections 67 and 74), and of enforcement capabilities for those entities, should be addressed for better alignment of the regime with the above-referenced Principles. It is therefore proposed for the framework to be augmented by inclusion of the following (*see paragraphs 17-20 below for further details*):

- i.* A set of criteria prescribing thresholds and requirements that an applicant must satisfy on an ongoing basis following recognition (i.e., the “recognition requirements”);
- ii.* More detailed prudential oversight of Recognised Bodies (to facilitate monitoring of material changes, including in respect of governance arrangements or financial condition);
- iii.* Comprehensive enforcement powers for the Authority over Recognised Bodies (spanning information-gathering, investigations, as well as disciplinary powers); and
- iv.* An appropriate fee structure (i.e., application and annual fees) that relates to the oversight of Recognised Bodies.

14. The Authority is of the view that updating the Act within Part IV (and elsewhere as relevant) to incorporate elements *i.-iv.* above, will enhance the effectiveness of its oversight of persons recognised under Part IV. Of note, the changes being proposed by the Authority at this time to enhance its oversight of Recognised Bodies pertain solely to prudential supervision.

C. Proposals for consultation

15. In the context of all the above, the Authority proposes to request updating of the Act, to achieve alignment with international standards and general best practices, as well as to enhance the overall regulatory framework for Recognised Bodies. In support of these improvements within the Act, the Authority also intends to issue new Rules and advise the Minister to issue Regulations to articulate the qualification criteria for recognition.

16. It bears strong emphasis that several of the changes intended within the Act and secondary instruments align with requirements already in force via private legislation and bye-laws governing the activities of Bermuda’s only Recognised Body at present;

however, more detailed codification of supervisory powers and recognition requirements within Part IV will serve to strengthen the Authority's ability to effectively regulate this, as well as any other entities that the Authority may recognise in the future.

Amendments to the Act

17. The proposed amendments to the Act are as follows:

- i. **Clarification of eligibility for recognition** – Section 4, as amended in July 2022, sets the scope of the overall Act by defining where a person is carrying on investment business in or from Bermuda, including where they are incorporated or formed in Bermuda and carrying on investment business; or incorporated or formed outside of Bermuda and carrying on investment business in or from Bermuda³. The Authority proposes to clarify and distinguish the limited scope of Part IV by specifying that foreign-domiciled investment exchanges and clearing houses are precluded from becoming Recognised Bodies. (Part IV does not currently specify that Recognised Bodies must be domiciled in and operate within Bermuda.)

Notably, as part of the review of Part IV, the Authority considered the merits of implementing a licensing regime for Recognised Bodies in favour of the current recognition regime. However, following the review of international standards, it was determined that a recognition regime for eligible investment exchanges and clearing houses remains appropriate for the jurisdiction.

- ii. **Change in form of recognition instrument** – At present, the Authority may issue a recognition order under Section 71 where an applicant satisfies the recognition requirements established by the Minister. It is proposed that Part IV be amended to provide for such a recognition order to be replaced by a recognition certificate to be issued by the Authority upon satisfaction of the recognition requirements established by the Minister. This is being proposed primarily to conform this instrument with others issued by the Authority under similar frameworks. Accordingly, references to a recognition order throughout the Act will be updated to reflect “recognition certificate”.
- iii. **Introduction of prudential requirements** – It is proposed that the Act be updated to permit the Authority to issue rules establishing minimum prudential standards for Recognised Bodies (relating to capital and liquid asset requirements).

³ Section 4 also provides that the Minister may, by Order, specify that a person is carrying on investment business.

Relatedly, the Authority also proposes to require half-yearly reporting to monitor compliance with those requirements.

- iv. **Introduction of enforcement powers** – Consistent with expectations established in international standards, it is proposed for the Authority’s enforcement capabilities to extend to Recognised Bodies, thereby allowing for enforcement of requirements under the Act. Specifically, it is intended for the Act to be updated to facilitate various information gathering, investigation and disciplinary capabilities (discussed below) of the Authority within this framework, where it is determined that a Recognised Body has breached, or is suspected of breaching, the requirements of the Act. The modified framework will also provide for a Recognised Body’s right to appeal enforcement actions commenced by the Authority.

Pursuant to this:

- v. **Power to gather information and investigate** – It is proposed that the Act be amended to extend the information gathering powers within the Act now in force in relation to investment providers and other persons to permit the Authority to gather information from and commence investigations in relation to a Recognised Body.
- vi. **Power to give directions** – It is proposed that the Act be amended to grant the Authority the power to give directions to a Recognised Body, even where it is compliant or likely to be compliant with its obligations under the Act if such directions are deemed to be in the interests of the jurisdiction (including for the preservation of financial stability).

Additionally:

- vii. **Power to approve a Recognised Body’s rules, regulations and/or bye-laws** – It is proposed that the Act be amended to require Recognised Bodies to seek explicit approval to make changes to their listing and market rules, regulations and/or bye-laws.
- viii. **Auditors and audits** – It is proposed that the Act be updated to require a Recognised Body to appoint an auditor to conduct financial audits in accordance with generally accepted auditing standards. Additionally, it is proposed that the Act be amended to establish the duty for auditors of Recognised Bodies to communicate certain matters to the Authority. In this connection, it is proposed that new regulations should be drafted modelling the Investment Business

(Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006 to establish the requirements of auditors with respect to Recognised Bodies.

- ix. **Filing of audited financial statements and periodic reports** – It is proposed that the Act be amended to require each Recognised Body to submit annual audited financial statements to the Authority no later than four months after its financial year-end. Financial statements must be prepared in accordance with accounting standards recognised by the Authority.
- x. **Modification or waiver of rules** – At present, the Authority may only waive or modify a requirement for a Recognised Body in respect of notification requirements (within Section 73). The Authority sees merit in introducing greater flexibility for Recognised Bodies than currently permitted under Section 73, and so it is proposed that the Act be amended to allow the Authority to grant a waiver or modification in relation to any rule or requirement (upon application by a Recognised Body, or as the Authority sees fit).
- xi. **Notification of change of controller or officer** – It is proposed that the Act be amended to include the requirement for a Recognised Body to provide the Authority with notification of changes of its controllers or officers within 14 days of the Recognised Body being made aware of such a change.
- xii. **Notification of new or increased control** – It is proposed that the Act also be amended to require a Recognised Body to provide written notification to the Authority regarding the proposed new or increased control for persons holding a ten per cent or greater majority shareholder controller of the Recognised Body. This requirement will prohibit the new or increased control of the proposed shareholder controller from becoming effective until such time as the Authority has provided a written no objection or the Authority, after ninety days, has not issued a written objection to the proposal.
- xiii. **Objection to new or increased control** – It is proposed that the Act be amended to permit the Authority to issue an objection to a Recognised Body’s proposed new or increased control if it cannot satisfy the criteria in Section 73.
- xiv. **Objection to existing controller** – It is proposed that the Act be amended to permit the Authority to issue a written notice of objection if it is determined that an existing controller of a Recognised Body is no longer deemed to be fit and proper. This amendment includes the requirement for the Authority to issue a preliminary written notice to the Recognised Body outlining the reasons for the issuance of the formal objection. A Recognised Body will have the ability to provide written representation to the Authority in response to the preliminary notification, which

the Authority will take into consideration prior to the issuance (if any) of the formal objection notification.

- xv. **Restriction on and sale of shares** – It is proposed that the Act be amended to permit the Authority to restrict the sale of shares of the Recognised Body based on criteria to be established within Part IV to align with similar restrictions on the sale of shares in other frameworks administered by the Authority.
 - xvi. **Fees** – It is proposed that the Act be amended to provide ability for the Authority to charge a fee to persons applying for recognition, as well as an annual fee for the maintenance of that recognition status. The amounts of those fees will be determined at a later date however, following separate consultation.
7. In consideration of all the other changes being proposed, it is also intended that the Act be amended to afford a Recognised Body the right to appeal certain actions or decisions of the Authority, consistent with the appeals process that is applicable within other frameworks administered by the Authority. However, these changes are not captured within the illustrative Bill that is attached to this Paper, as the form of that appeals process is yet to be determined. The Authority anticipates that the Ministry of Finance will consult on these changes in short order, with implementation likely in 2023. Once the final proposals for appeals are determined, those proposals will be adopted within Part IV (as well as in the remainder of the IBA and other frameworks administered by the Authority), for use where a Recognised Body feels aggrieved by a decision made by the Authority.

Issuance of Regulations

18. It is proposed that the Minister exercise his powers to issue regulations, as permitted under Section 67 of the Act. These regulations should detail the recognition requirements that applicants must meet in order to be granted a recognition certificate by the Authority. It is intended for these requirements include but not be limited to the following:
- (a) Appropriate corporate governance arrangements;
 - (b) Adequate internal systems and controls;
 - (c) An appropriate risk management framework;
 - (d) Adequate rules and procedures;
 - (e) Adequate capital and liquidity;
 - (f) Evidence of adequate insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the Recognised Body's operations;
 - (g) Adequate record-keeping arrangements, including but not limited to recording of transactions; and

- (h) Where arrangements are outsourced, an appropriate framework to manage and monitor such arrangements.

Introduction of Rules

19. To further strengthen the framework, it is proposed that the Authority exercise its requested rule-making powers (discussed above under paragraph 17 iii) to establish minimum prudential standards for a Recognised Body and stipulate the nature and thresholds of a Recognised Body's minimum capital and liquid asset resources.

III. OTHER PROPOSED AMENDMENTS TO THE ACT

20. In addition to the changes proposed within Part IV to modernise the regulation of Recognised Bodies, the Authority recognises the need to make other changes to the remainder of the Act. These changes will serve either to support the changes being proposed within Part IV, or to clarify changes (unrelated to those supervision of Recognised Bodies) which came into force in mid-2022.

A. Amendment to the restriction on carrying on investment business

21. Prior to being updated in 2022, the Act prohibited the carrying on of investment business in or from Bermuda by persons who were not either licensed or exempt from its requirements. (Within those parameters, Recognised Bodies, per Section 66 of the Act, were not required to obtain a licence to carry on investment activities in conjunction with their exchange or clearing house activities.) Following the modernisation of other elements of the framework in 2022, including the introduction of new types of Registered and Non-Registrable Persons (NRPs), relevant provisions were updated to require that persons be licensed, registered or designated as non-registrable in order to carry on investment business in Bermuda.
22. With the planned changes to Part IV, it is intended for the Act to be modified to clarify the inclusion of Recognised Persons within Part IV among the set of persons who may carry on investment business in Bermuda without a requirement to be licensed or registered.

B. Designation of NRPs

23. Section 13(1)(b) of the Act currently permits the Minister, on the advice of the Authority, to make an order designating persons who meet criteria set out in the Act as non-registrable; while Section 13D(1) also provides that the Minister may by order

designate any person for whom there is no requirement to be licensed or registered, as a NRP. As such, there are two separate references to the same order-making ability of the Minister to designate NRPs.

24. It is therefore proposed for the provisions of both aforementioned sections to be consolidated within Section 13(1) to clarify and streamline references to the Minister's power to make an order designating NRPs. Consequently, the definition of NRP and other references to Section 13D in the Act will be updated to reflect Section 13(1).

C. Clarification of standards for auditing and preparation of financial statements

25. It is proposed that Section 41 of the Act be amended to clarify the accounting standards which may be used to present an investment provider's audited financial statements. To this effect, a new provision will be inserted to reflect that statements must be prepared in accordance with International Financial Reporting Standards (IFRS) or other Generally Accepted Accounting Standards (GAAP) in Bermuda, Canada, the United Kingdom, the United States of America or other GAAP that is approved for use by the Authority for this purpose.
26. Relatedly, Section 41(1A) is also being amended to remove reference to "International Financial Reporting Standards" and instead refer to "International Standards of Auditing" to reflect the intention of that subsection to address the standard of audits.

D. Consequential amendment of the Fourth Schedule of the Bermuda Monetary Authority Act 1969 (BMA Act)

27. Alongside these changes, it is also necessary that paragraphs 1(c) and (d) within the IBA section of the Fourth Schedule of the BMA Act be consequentially amended to refer to "*variation or deletion from limitations*" instead of *conditions*, to align with and reflect recent amendments to the IBA.

A Bill

entitled

INVESTMENT BUSINESS AMENDMENT ACT 2023

- 1 Citation
- 2 Amends section 2
- 3 Amends section 12
- 4 Amends section 13
- 5 Repeals section 13D
- 6 Amends section 41
- 7 Amends section 49A
- 8 Amends section 52
- 9 Amends section 55A
- 10 Amends section 65
- 11 Amends section 66
- 12 Amends section 67
- 13 Amends section 68
- 14 Amends section 69
- 15 Inserts section 70A
- 16 Amends section 71
- 17 Amends section 73
- 18 Inserts section 73A
- 19 Inserts section 73B
- 20 Inserts section 73C
- 21 Inserts section 73D
- 22 Inserts section 73E
- 23 Amends section 74
- 24 Amends section 75
- 25 Inserts section 75A
- 26 Inserts section 75B
- 27 Inserts section 75C
- 28 Inserts section 75D
- 29 Inserts section 75E
- 30 Inserts section 75F
- 31 Inserts section 75G
- 32 Inserts section 75H
- 33 Inserts section 75I
- 34 Inserts section 75J
- 35 Amends section 76
- 36 Amends section 77
- 37 Inserts section 77A
- 38 Inserts section 77B
- 39 Inserts section 77C
- 40 Inserts section 77D

41	Inserts section 77E
42	Inserts section 78
43	Inserts section 79
44	Inserts section 80
45	Inserts section 81
46	Amends section 87
47	Transitional provisions
48	Consequential amendments

WHEREAS it is expedient to make provision for matters relating to the supervision and regulation of investment businesses and for connected matters: Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Investment Business Act 2003 (the “principal Act”), may be cited as the Investment Business Amendment Act 2023.

Amends section 2

2 Section 2 of the principal Act is amended in the definition “Non-registrable person” by deleting the reference “13D” and substituting “13(1)(b)”.

Amends section 12

3 Section 12 (1) of the principal Act is amended—

- (a) in subparagraph (b) by deleting “or”;
- (b) in subparagraph (c) by deleting the reference “13D” and substituting “13(1)(b)”;
- (c) in subparagraph (c) by removing “.” and inserting after “13(1)(b)” the word “; or”;
- (d) inserting a subparagraph (d) as follows—

“(d) designated as a recognised body under Part IV of the Act.”.

Amends section 13

4 Section 13(1)(b) of the principal Act is amended by inserting after “person” the words “for whom there is no requirement to be licensed or registered under this Act”.

Repeals section 13D

5 Section 13D of the principal Act is repealed.

Amends section 41

6 Section 41(1A) of the principal Act is amended by—

- (a) deleting “Financial Reporting” after the word “International”;
- (b) inserting “on Auditing” after the word “Standards”; and

(c) inserting a subparagraph (1D) as follows:

“(1D) The financial statements of an investment provider shall be prepared in accordance with any one of the following standards— International Financial Reporting Standards (“IFRS”); Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or any such other GAAP as the Authority may recognise.”

Amends section 49A

7 Section 49A of the principal Act is amended by inserting the following new section after subparagraph 49A(1)(b)—

“(ba) a recognised body has contravened any condition imposed by the Authority on it in relation to the manner in which it may conduct any investment activity;”.

Amends section 52

8 Section 52(1) of the principal Act is amended—

- (a) in subparagraph (a) by deleting the reference “13D” and substituting “13(1)(b)”;
- (b) in subparagraph (b) by inserting after “49” the words “and 75E”.

Amends section 55A

9 Section 55A of the principal Act is amended by inserting the following new section after subparagraph 55A(8)—

“(8A) This section applies to the performance of functions in relation to a recognised body as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.”.

Amends section 65

10 Section 65(1) of the principal Act is amended in the definition of—

- (a) “application” by deleting “order” and substituting “certificate”;
- (b) “applicant” by deleting “order” and substituting “certificate”;
- (c) “recognised body” by inserting after “house” the words, “incorporated in or domiciled in Bermuda”;
- (d) “recognised clearing house” by deleting “a recognition order is in force” and substituting the words “the Authority has issued a recognition certificate”;
- (e) “recognised investment exchange” by deleting “a recognition order is in force” and substituting the words “the Authority has issued a recognition certificate”;
- (f) “recognition order” by deleting “order” means an order made under” and substituting the words “certificate” has the meaning given in”;

- (g) “revocation order” by deleting “order”.

Amends section 66

- 11 Section 66 of the principal Act is amended—
- (a) by deleting the title of section 66 is deleted and substituting as follows—
- “No requirement for licence or registration for recognised investment exchanges and clearing”;**
- (b) in subparagraph (1) by deleting “is exempt from” and substituting the words “is able to carry on, or purport to carry on, investment business in or from Bermuda in accordance with section 12 of the Act without”;
- (c) in subparagraph (2) “is exempt from” and substituting the words “is able to carry on, or purport to carry on, investment business in or from Bermuda in accordance with section 12 of the Act without”.

Amends section 67

- 12 Section 67 (1) of the principal Act is amended—
- (a) in subparagraph (a) by deleting “make a recognition order” and substituting the words “issue a recognition certificate”;
- (b) in subparagraph (b) by deleting “order is made” and substituting the words “certificate is issued”.

Amends section 68

- 13 Section 68 (1) of the principal Act is amended by deleting “an order declaring” and substituting the words “a recognition certificate designating”.

Amends section 69

- 14 Section 69(1) of the principal Act) is amended by deleting “an order declaring” and substituting the words “a recognition certificate designating”.

Inserts section 70A

- 15 The principal Act is amended by inserting the following new section after section 70—

“Fees

70A (1) A recognised body shall pay such fees as may be prescribed under the Bermuda Monetary Authority Act 1969—

- (a) on the application for a recognition certificate; and
-

- (b) on or before 31 March in every year after the year in which the recognition certificate was issued.

(2) If a recognised body fails to pay the prescribed fee as provided in subsection (1), it shall pay in addition to such fee a late penalty fee of an amount equal to ten percent of the fee due for every month or part thereof during which the fee remains unpaid.”.

Amends section 71

16 Section 71 of the principal Act is amended—

- (a) by deleting the title of section 71 and substituting as follows—

“Recognition Certificates”;

- (b) in subparagraph (1) is amended by deleting “make a recognition order declaring” and substituting the words “issue a recognition certificate designating”;

- (c) in subparagraph (4) by deleting “order” and substituting the word “certificate”;

- (d) in subparagraph (5) by deleting “order” and substituting “certificate”;

- (e) in subparagraph (5)(a) by deleting “order” and substituting “certificate” by deleting “an order” and substituting the words “a certificate”;

- (f) in subparagraph (6) by deleting—

- (i) “make a recognition order” and substituting the words “issue a recognition certificate”;
- (ii) “making of the order” and substituting the words “issuance of a recognition certificate”.

Amends section 73

17 Section 73 of the principal Act is amended—

- (a) in subparagraph (1)—

- (i) paragraph (a) by deleting “and”;
- (ii) paragraph (b) by deleting “.” and substituting “and”;
- (iii) by inserting a new subparagraph (c) as follows—

“(c) information relating to the financial soundness of the recognised body, including any material changes to capital and liquidity resources.”;

(b) by inserting a new subparagraph (1A) as follows—

(a) “(1A) The Authority may make Rules prescribing prudential and technical standards in relation to—

- (a) capital;
- (b) liquidity

which shall be complied with by recognised bodies as applicable.

(b) “(1B) The Authority may in such Rules prescribe standards that impose different requirements to be complied with by recognised bodies in different situations or in respect of different activities.”.

(c) by inserting a new subparagraph (9) as follows—

“(9) Not later than forty-five (45) days of the end of June and December in each year every recognised body shall file with the Authority any information or documents required in relation to any applicable rule or statutory return required to be prepared by it under the Investment Business (Prudential Standards) Recognised Bodies) Rules 2023”.

(d) by inserting a new subparagraph (10) as follows—

“(10) The Schedules to the rules made by the Authority under this section shall be published separately on the website of the Authority: www.bma.bm, and shall be available for inspection at the offices of the Authority.”.

(e) by inserting a new subparagraph (11) as follows—

“(11) Every operator of a recognised body that fails to file information or documents required by the Authority in accordance with rules made under this section, is liable to a late penalty fee not exceeding [\$5,000] for each week or part of a week that it is in default .”.

Inserts section 73A

18 The principal Act is amended by inserting the following new section after section 73—

“Notification of change of controller or officer

73A (1) A recognised body shall give written notice to the Authority of the fact that any person has become or ceased to be a controller or officer of the recognised body.

(2) A notice required to be given under subsection (1)

shall be given before the end of the period of fourteen days

beginning with the day on which the recognised body becomes aware of the relevant facts.

(3) A recognised body which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

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

Inserts section 73B

19 The principal Act is amended by inserting the following new section after section 73A—

“Duty to prepare annual audited financial statements and accounts

73B (1) Every recognised body shall prepare annual audited financial statements or accounts as required by this section in respect of all transactions and balances relating to its business.

(2) Financial statements must be audited by an approved auditor.

(3) Prior to the appointment of an auditor, a recognised body shall submit written particulars of such person to the Authority for approval.

(4) Financial statements of recognised bodies shall be audited by the approved auditor in accordance with generally accepted auditing standards for Canada, the United Kingdom, the United States of America, International Standards on Auditing or such standards as the Authority may recognise; and the approved auditor shall be required to provide an auditor’s report in respect thereof.

(5) Not later than four months after the close of its financial year every recognised body shall file a copy of its audited financial statements and auditor’s report or accounts with the Authority.

(6) A recognised body shall keep a copy of the most recent audited financial statements together with a copy of the auditor’s report thereon or accounts as the case may be, at its head office for a period of not less than five years beginning with its filing date under subsection (5).

(7) Notwithstanding subsection (1), the Authority may require a recognised body to prepare financial statements or accounts in such manner as it may direct.

(8) Every recognised body that fails to file audited financial statements, accounts, within the time specified by the Authority is liable to a penalty for each week or part of a week that it is in default.

(9) The financial statements of a recognised body shall be prepared in accordance with any one of the following standards— International Financial Reporting Standards (“IFRS”); Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the

United States of America; or any such other GAAP as the Authority may recognise.

Inserts section 73C

20 The principal Act is amended by inserting the following new section after section 73B—

“Appointment of auditors

73C (1) Every recognised body shall annually appoint an approved auditor to audit its financial statements.

(2) If a recognised body fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that recognised body to such auditor.

(3) A recognised body shall forthwith give written notice to the Authority if it—

(a) proposes to remove an auditor before the expiration of his term of office; or

(b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) A recognised body which fails to comply with this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(5) For the purposes of this Part, “approved auditor” means an auditor who is a person entitled to practise as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Act. (6) A recognised body shall keep a copy of the most recent audited financial statements together with a copy of the auditor’s report thereon or accounts as the case may be, at its head office for a period of not less than five years beginning with its filing date under subsection (5).

(6) No person having an interest in any recognised body otherwise than as a member, and no officer, servant or agent of any recognised body shall be eligible for appointment as an approved auditor for that recognised body; and any person appointed as such auditor to any recognised body who subsequently acquires such interest or becomes an officer, servant or agent of that recognised body shall cease to be an

approved auditor.”

Inserts section 73D

21 The principal Act is amended by inserting the following new section after section 73C—

“Auditor to communicate certain matters to Authority

73D (1) An auditor of a recognised body shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

- (2) The circumstances referred to in subsection (1) are—
- (a) his resignation before the expiration of his term of office;
 - (b) his intention not to seek to be re-appointed;
 - (c) a decision to include a modification of his report on the recognised body’s financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a recognised body shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the recognised body of which he is an auditor, of the Authority’s functions under Part IV of this Act.

(4) Without prejudice to the generality of section 86(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority’s functions under this Act.

(5) An auditor who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.”

Inserts section 73E

22 The principal Act is amended by inserting the following new section after section 73D—

“Notice of certain changes to be given to the Authority

73E (1) A recognised body shall give written notice to Authority of any proposal to amend its:

- (a) bye-laws; and

(b) market or listing rules.

(2) Effect is not to be given to any proposal of which notice has been given under subsection (1) unless the Authority shall have first approved such proposal by notice in writing issued to the recognised body.

Amends section 74

23 Section 74 of the principal Act is amended in subparagraph (1)—

- (a) by inserting after “may,” the words “as it deems fit or”;
- (b) by inserting after “section 73” the words “or any requirement under the Act”.

Amends section 75

24 The principal Act is amended by inserting the following new sections after section 75(1)—

- (a) “(1A) The Authority may issue directions where it has made a determination that it is desirable to protect members or potential members or it is necessary to preserve financial stability”;
- (b) “(5) A direction made for the purposes of subsection 1(a) may be modified or revoked”;
- (c) “(6) A recognised body may make written representations to the Authority in respect of a direction made pursuant to subsection (1a) and where such representations have been made, the Authority shall take them into account in deciding whether to modify or revoke its direction”;
- (d) “(7) Notwithstanding section 77(1), no notice shall be given by the Authority in connection with a direction issued in accordance with subsection (1a).”.

Inserts section 75A

25 The principal Act is amended by inserting the following new section after section 75—

“Power to obtain information and reports

75A (1) The Authority may by notice in writing served on a recognised body—

- (a) require the recognised body to provide the Authority (or such person acting on behalf of the Authority as may be specified

in the notice), at such time or times or at such intervals or in

respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act and any code of conduct or practice, and for safeguarding the interests of members and potential members of the recognised body;

- (b) require the recognised body to provide the Authority with a report, in such form as may be specified in the notice, by the recognised body's auditor, or by an accountant, or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the recognised body to provide information under paragraph (a).
- (2) The person appointed by a recognised body to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the recognised body, of the Authority's functions under this Act.
 - (3) Without prejudice to the generality of section 86(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.?

Inserts section 75B

26 The principal Act is amended by inserting the following new section after section 75A—

“Power to require production of documents

- 75B (1) The Authority may—
- (a) by notice in writing served on a recognised body require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
 - (b) authorise an officer, servant or agent of the Authority on producing such evidence of his authority, to require a recognised body to provide him forthwith with such information, or to produce to him such documents, as he may specify;

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

- (2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a recognised body, the Authority or that officer, servant or agent shall have the like power

to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

- (3) The power under this section to require a recognised body or other person to produce any documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that recognised body or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the recognised body in question, to provide an explanation of any of them; and
 - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (4) If it appears to the Authority to be desirable in the interests of the members or potential members of a recognised body (“A”) to do so, it may also exercise the powers conferred by section 75(A) and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been—
- (a) a member of A’s group;
 - (b) a controller of A; or
 - (c) any other member of a partnership of which A is a member.
- (5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of a recognised body require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.
- (6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both. Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.
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Inserts section 75C

27 The principal Act is amended by inserting the following new section after section 75B—

“Right of entry to obtain information and documents

75C (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 75A(1) and 75B(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 75B(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 75A(1) and 75B(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

Inserts section 75D

28 The principal Act is amended by inserting the following new section after section 75C—

“Communication with Authority

75D (1) No duty to which—

- (a) an auditor of a recognised body;
- (b) an auditor, accountant or other person appointed to make a report under section 75A(1)(b);

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter

to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor of a recognised body this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the recognised body or any connected person.

(3) In relation to a person appointed to make a report under section 75A(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

- (a) relates to the business or affairs of the recognised body in relation to which his report is made or any connected person of that recognised body;
- (b) if by virtue of section 75B(4) the report relates to a connected person of a recognised body, to the business or affairs of that person.

(4) In this section “connected person”, in relation to a recognised body (“A”), means any such person as is mentioned in sections 75B(4)(a) to (c).

Inserts section 75E

29 The principal Act is amended by inserting the following new section after section 75D—

“Investigations on behalf of the Authority

75E (1) If it appears to the Authority desirable to do so in the interests of members or potential members of a recognised body the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the recognised body’s business or any particular aspect of it;
- (b) or the ownership or control of the recognised body;

and the Authority shall give written notice of any such appointment to the recognised body concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of a person who is or has at any relevant time been a member of the group of which the person under investigation (“A”) is part; or a partnership of which A is a member.

(3) Where a person appointed under subsection (1) decides to investigate the business of any person referred to in subsection (2) he shall give that person written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant or barrister and attorney of a recognised body which is under investigation by virtue of subsection (1) or a person who is under investigation under subsection (2) or any person appointed to make a report in respect of that recognised body under section 75A (1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they 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 persons so appointed at such time and place as they may require and such answer questions relevant to the investigation as such persons may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by a recognised body which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Unless the Authority otherwise directs, the recognised body under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a recognised body which is under investigation or a person who is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5); shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

Inserts section 75F

30 The principal Act is amended by inserting the following new section after section 75E—

“Power to impose civil penalties for breach of requirements

75F (1) A recognised body that 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 under subsection (1) 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.”

Inserts section 75G

31 The principal Act is amended by inserting the following new section after section 75F—

“Civil penalties procedures

75G (1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

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

Inserts section 75H

32 The principal Act is amended by inserting the following new section after section 75G—

“Public censure

75H (1) If the Authority considers that a recognised body has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the recognised body.”

Inserts section 75I

33 The principal Act is amended by inserting the following new section after section 75H—

“Proposal to censure publicly

75I (1) If the Authority proposes to publish a statement in respect of a recognised body under section 75H, it shall give the recognised body a warning notice.

(2) A warning notice about a proposal to publish a statement shall set out the terms of the statement.”

Inserts section 75J

34 The principal Act is amended by inserting the following new section after section 75I—

“Terms of statement

75J (1) If the Authority decides to publish a statement under section 75H (whether or not in the terms proposed), it shall without delay give the recognised body concerned a decision notice.

(2) The decision notice shall set out the terms of the statement.”

Amends section 76

35 Section 76 of the principal Act is amended—

- (a) in subparagraph (1) by deleting “order may be revoked by an order made” and substituting the words “certificate may be revoked” ;
- (b) in subparagraph (2) by deleting “make an order revoking the recognition for that body even though the body does not wish the order to be made” and substituting the words “revoke the recognition certificate for that body even though the body does not wish for the revocation”;
- (c) in subparagraph (3) by deleting “An order under this section (“a revocation order”) and substituting the words “A revocation”;
- (d) in subparagraph (4) by:
 - (i) deleting “order made” and substituting “done”;
 - (ii) deleting “order is made” and substituting “revocation is done”.
- (e) in subparagraph (5) by deleting “order”.

Amends section 77

36 Section 77 of the principal Act is amended—

- (a) in subparagraph (1) by deleting “making a revocation order” and substituting the words “issuing a revocation”;
 - (b) in subparagraph (2)(a) by deleting “make the order” and substituting the words “issue the revocation”;
 - (c) in subparagraph (3)(c) by deleting “order”;
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- (d) in subparagraph (5)(b) by deleting “make a revocation order” and substituting the words “revoke a recognition”;
- (e) in subparagraph (6) by deleting “make the proposed revocation order” and substituting the words “issue the proposed revocation”;
- (f) in subparagraph (6)(b) by deleting “make the order” and substituting the words “issue a revocation”.

Inserts section 77A

- 37 The principal Act is amended by inserting the following new section after section 77 —

“Notification of new or increased control

- 77A (1) No person shall become a ten per cent or majority shareholder controller of a recognised body unless—
- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the recognised body; and
 - (b) either the Authority has, before the end of the period of ninety days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the recognised body, or that period has elapsed without the Authority having served him under section 77B a written notice of objection to his becoming such a controller of the recognised body.
- (2) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

Inserts section 77B

- 38 The principal Act is amended by inserting the following new section after section 77A —

“Objection to new or increased control

- 77B (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 28 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the recognised body;
 - (b) that the interests of clients or potential clients of the recognised body would not be in any other manner threatened by that person becoming a controller of that description of the recognised body; and
 - (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the recognised body as a controller of the description in question the minimum criteria would continue to be fulfilled in the case of the recognised body or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.
- (2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—
- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
 - (b) shall give particulars of the rights conferred by subsection (3).
- (3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied.
- (4) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.
- (5) Where a person required to give a notice under section 77A in relation to becoming a controller of any description becomes a controller of that description without having
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given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

- (6) The period mentioned in section 77A(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3).”

Inserts section 77C

- 39 The principal Act is amended by inserting the following new section after section 77B—

“Objection to existing controller

77C (1) Where it appears to the Authority that a person who is a controller of any description of a recognised body is not or is no longer a fit and proper person to be such a controller of the recognised body it may serve him with a written notice of objection to his being such a controller of the recognised body.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall

take them into account in deciding whether to serve a notice of objection.

- (4) A notice of objection under this section shall—
- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.”

Inserts section 77D

40 The principal Act is amended by inserting the following new section after section 77C —

“Contraventions by controller

77D (1) Subject to subsection (2), any person who contravenes section 77A by—

- (a) failing to give the notice required by subsection (1)(a) of that section; or
- (b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 77B(2);

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who—

- (a) before the end of the period mentioned in section 77A (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 77B(2);
- (b) contravenes section 77A by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him;

shall be guilty of an offence.

- (4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.
- (5) A person guilty of an offence under subsection (3) shall be liable—
 - (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
 - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.”

Inserts section 77E

41 The principal Act is amended by inserting the following new section after section 77D —

“Restriction on and sale of shares

77E (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 77B by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;

- (b) having become a controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
 - (c) continues to be a controller of any description after being served under section 77C with notice of objection to his being a controller of that description.
- (2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;
 - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
 - (d) except in liquidation, no payment shall be made of any sums due from the recognised body on the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.
- (4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 77B or 77C—
- (a) until the end of the period within which an appeal can be brought against the notice of objection;
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
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- (7) This section applies—
- (a) to all the shares in the recognised body of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the recognised body; and
 - (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that recognised body.
- (8) A copy of the notice served on the person concerned under subsection (2) shall be served on the recognised body or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.”

Inserts section 78

42 The principal Act is amended by inserting the following new section after section 77 —

“Warning notices

- 78 (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 about public censure given under section 75H must set out the terms of the statement.

Inserts section 79

43 The principal Act is amended by inserting the following new section after section 78 —

“Decision notices

79 (1) A decision notice must—

- (a) be in writing;
 - (b) give the Authority’s reasons for the decision to take the action to which the notice relates; and
 - (c) give its decision.
- (2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 78 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 80.
- (3) A decision notice about the imposition of a civil penalty under section 75F must state the date of payment.
- (4) A decision notice about public censure under section 75H 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.
- (5) A decision notice shall state the day on which it is to take effect.
- (6) 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.”

Inserts section 80

44 The principal Act is amended by inserting the following new section after section 79 —

“Notices of discontinuance

80 (1) Subject to section 79(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.

(2) A notice of discontinuance must identify the action which is being discontinued.”

Inserts section 81

45 The principal Act is amended by inserting the following new section after section 80 —

“Publication

81 (1) Subject to section 75H, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.”.

Amends section 87

46 The principal Act is amended by repealing subsection (5) and (6) of section 87.

Transitional provisions

47 (1) On the commencement of this Act, the Authority shall issue a recognition certificate to the Bermuda Stock Exchange Company, a body corporate established by the Bermuda Stock Exchange Act 1992 and the Bermuda Stock Exchange Company shall be deemed to satisfy the recognition requirements to be deemed a recognised investment exchange.

(2) There shall be no application required to be submitted to the Authority by the Bermuda Stock Exchange Company under subsection (1), in connection with the issuance of a recognition certificate.

Consequential amendments

48 The Schedule, which makes consequential amendments to The Bermuda Monetary Authority Act 1969.

THE SCHEDULE

(Section xxx)

THE BERMUDA MONETARY AUTHORITY ACT 1969

1. Amends Fourth Schedule

The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended under Part C of the heading “Investment Business Act 2003” by —

- (a) in paragraph 1(c) deleting “conditions” and substituting “limitations”;
- (b) in paragraph 1(d) deleting “conditions” and substituting “limitations”.

DRAFT

**INVESTMENT BUSINESS (PRUDENTIAL STANDARDS) (RECOGNISED BODIES)
RULES 2023**

BERMUDA

**INVESTMENT BUSINESS (PRUDENTIAL STANDARDS)
(RECOGNISED BODIES) RULES 2023**

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The Bermuda Monetary Authority makes the following Rules, in exercise of the power conferred under the Investment Business Act 2003 by section 73 (1A) of the Act.

Citation

1 These Rules may be cited as the Investment Business (Prudential Standards) (Recognised Bodies) Rules 2023.

Interpretation

2 In these Rules—

“the Act” means the Investment Business Act 2003;

Minimum capital to be maintained

3 For the purposes of section 73(1A) of the Act, in each case, a recognised body shall be regarded as maintaining its recognition certificate if it maintains or, as the case may be, will maintain the minimum amount of capital prescribed by the Authority.

4 For the purposes of this rule, capital shall take the form of equity and comprise:

(i) common stock or share capital;

**INVESTMENT BUSINESS (PRUDENTIAL STANDARDS) (RECOGNISED BODIES)
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- (ii) contributed surplus;
- (iii) retained earnings or deficits; or
- (iv) any other reserves deemed eligible by the Authority for the purposes of this rule.

Liquid asset requirement

- 5 (1) For the purposes of section 73(1A) of the Act, a recognised body shall maintain a minimum of liquid assets of three months of the recognised body's annual expenditure;
- (2) For the purposes of this rule, a recognised body's "annual expenditure" shall be-
- (a) based on the most recent annual or annualised financial statement or accounts filed by the recognised body with the Authority under section 73B (5) of the Act; and
 - (b) calculated where the recognised body made—
 - (i) a profit in the previous year, as total revenue less profit before appropriations; or
 - (ii) a loss in the previous year, as total revenue plus loss before appropriations.
- (3) For the purposes of this rule, "liquid assets" shall include but not be limited to—
- (a) cash and cash equivalents (i.e. cash, term deposits and marketable securities);
 - (b) prepayments, where the period of prepayment is less than three months; and
 - (c) unsecured receivables, where these are outstanding for less than 30 days.

Notifying the Authority

- 6 A recognised body shall notify the Authority forthwith, where—
- (a) it has breached any capital or liquidity requirement applicable to it;
 - (b) it has reason to believe that it will breach any capital or liquidity requirement applicable to it.

**INVESTMENT BUSINESS (PRUDENTIAL STANDARDS) (RECOGNISED BODIES)
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SCHEDULES

(rule 7)

MATTERS TO BE INCLUDED IN HALF YEARLY RETURNS

The Schedules to these Rules (listed below) are published separately on the Authority's website, www.bma.bm, in accordance with section 73(10) of the Investment Business Act 2003—

Schedule I

Half-yearly Return

Made this [] day of [] 2023

**Chairman
Bermuda Monetary Authority**

INVESTMENT BUSINESS ACT 2003

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INVESTMENT BUSINESS (RECOGNISED BODIES QUALIFICATION REQUIREMENTS) REGULATIONS 2023

In exercise of the powers conferred upon the Minister of Finance by section 67 (1) of the Investment Business Act 2003, the following Regulations are hereby made—

Citation

1 These Regulations (the “Regulations”), may be cited as the Investment Business (Recognised Bodies Qualification Requirements) Regulations 2023.

Qualification requirements – recognised bodies

2 (1) Every applicant shall be required to satisfy the Authority of the following recognition requirements prior to the Authority designating that such exchange or clearing house qualifies as a recognised body by providing the Authority with information that demonstrates that the investment exchange or clearing house has—

- (a) appropriate corporate governance arrangements;
- (b) adequate internal systems and controls;
- (c) an appropriate risk management framework;
- (d) adequate rules and procedures;
- (e) adequate capital and liquidity;
- (f) evidence of adequate insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the recognised body's operations;
- (g) adequate record keeping arrangements, including but not limited to recording of transactions; and
- (h) where arrangements are outsourced, an appropriate framework to manage and monitor such arrangements.

(3) The Authority may request additional information in order to determine that an applicant has met or can meet all of the recognition requirements under subparagraph (1).

Dated this day of 2023

Minister of Finance

INVESTMENT BUSINESS ACT 2003

BR /2023**INVESTMENT BUSINESS (RECOGNISED BODIES) REPORTING
ACCOUNTANTS) (FACTS AND MATTERS OF MATERIAL
SIGNIFICANCE) REGULATIONS 2023**

In exercise of the powers conferred upon the Minister of Finance by section 86(1) of the Investment Business Act 2003, the following Regulations are hereby made—

Citation

1 These Regulations (the “principal Regulations”), may be cited as the Investment Business (Recognised Bodies) (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2023.

Interpretation

2 In these Regulations—

"Act" means the Investment Business Act 2003;

“reporting accountant” means an auditor or an accountant who under section 73D(3) and 75A(2) of the Act, is under a duty to give notice to the Authority of specified facts or matters.

Facts and matters of material significance

3 For the purposes of sections 73D(3) and 75A(2) of the Act, where a reporting accountant —

- (a) identifies a material misstatement in the financial statements resulting from fraud, error or illegal acts or the consequences of them;
- (b) concludes that there is substantial doubt as to the ability of the recognised body to continue as a going concern for a period of one year from the balance sheet date;
- (c) identifies adjustments to the financial statements which individually or in aggregate indicate to him that the

previous year's audited annual financial statements or the current year's unaudited interim financial statements, prepared according to generally accepted accounting principles issued to the shareholders were materially misstated;

- (d) identifies a material weakness in internal control;
- (e) has unresolved disagreements with management pertaining to the application of generally accepted accounting principles that could reasonably be expected to lead in the future to material misstatements of the annual or interim financial statements, prepared according to generally accepted accounting principles to be issued to the shareholders in the ensuing financial year;
- (f) identifies any evidence of deliberate attempts by a chief executive or other senior executive to mislead the Authority through the provision of materially false or misleading information; or
- (g) identifies evidence of fraud or attempted fraud by a chief executive or other senior executive, or has concerns of such a serious nature as to damage materially his confidence in the integrity of the senior management of the institution,

then those facts and matters are of material significance for the discharge, in relation to the recognised body, of the Authority's functions under the Act.

4 For the purposes of paragraph (3)(d), "material weakness in internal control" means a deficiency in which the design or operation of one or more of the internal control components of the institution does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and fail to be detected within a timely period by employees in the normal course of performing their assigned functions.

Made this [] day of []

Minister of Finance