

**COMMONWEALTH OF DOMINICA****ARRANGEMENT OF SECTIONS**

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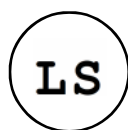
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**COMMONWEALTH OF DOMINICA**

ACT NO. 6 OF 2024.

*I assent***SYLVANIE BURTON***President*

24th December, 2024

**AN ACT TO PROVIDE FOR THE REGULATION OF  
INVESTMENT FUNDS AND THEIR ADMINIS-  
TRATORS, MANAGERS AND CUSTODIANS, OP-  
ERATING IN OR FROM WITHIN THE EAST-  
ERN CARIBBEAN CURRENCY UNION, AND  
FOR RELATED MATTERS.**

*(Gazetted 3rd January, 2025.)*

BE IT ENACTED by the Parliament of Commonwealth of  
Dominica, as follows-

**PRELIMINARY**

1. (1) This Act may be cited as the -

Short title and  
commencement.

**INVESTMENT FUNDS ACT, 2024.**

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation.

**2. (1) In this Act**

“accredited investor” means a person in any of the following categories, at the time of the sale of securities to that person —

(a) the Eastern Caribbean Central Bank;

Chap. 73:01.

(b) a bank licensed under the Banking Act, or licensed and operating under a similar law in a jurisdiction outside of the Currency Union, whether acting for its own accounts or in a fiduciary capacity;

(c) a licensed intermediary or securities firm operating in a jurisdiction outside of the Currency Union, acting for its own account or in a fiduciary capacity;

Chap.78:49.

(d) an insurance company registered under the Insurance Act, or licensed and operating under a similar legislation in a jurisdiction outside of the Currency Union, whether acting for its own account or in a fiduciary capacity;

(e) an investment fund licensed or registered under this Act or regulated and operating in a jurisdiction outside of the Currency Union;

(f) an employee benefit plan if the investment decision is made by a plan fiduciary, which is a bank or trust company licensed under the Banking Act, an insurance company



registered under the Insurance Act, or a licensed securities firm, or if the employee benefit plan has total assets in excess of the prescribed amount;

- (g) a senior officer or general partner of the issuer of securities being offered or sold;
- (h) an individual whose individual net worth at the time of the purchase exceeds five hundred thousand dollars and individual annual income is in excess of two hundred thousand dollars in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year;
- (i) an individual whose joint net worth with that individual's spouse, at the time of the purchase exceeds one million dollars or whose joint income with that individual's spouse is in excess of six hundred thousand dollars in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year;
- (j) a person, other than an individual, with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities;
- (k) an entity in which all of the equity owners are accredited investors;
- (l) the government of a member country or a public authority established in a member country;
- (m) the government of a foreign jurisdiction or an agency of that government;

(n) a person purchasing on behalf of an account that is managed on a fully discretionary basis by that person, if that person is registered or authorised to carry on business as an adviser managing securities on a discretionary basis under —

(i) the laws of a member country, or

(ii) foreign jurisdiction;

(o) a person residing outside of the Currency Union who qualifies as an accredited investor, under similar securities law of that person's country of residence, or an individual resident outside the Currency Union who meets the criteria specified in paragraph (h) or (i) and is otherwise lawfully entitled to purchase securities under similar securities law applicable to the purchase;

“affiliate” in relation to a relationship, means —

(a) one entity is affiliated with another entity if one entity is the subsidiary of the other or both are subsidiaries of the same entity, or each entity is controlled by the same person;

(b) if two entities are affiliated with the same entity at the same time, they are affiliated with each other;

(c) an entity is the holding entity of another if that other entity is its subsidiary; and

(d) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other person, provided that

a person is controlled by another person where —

- (i) in the case of a partnership, the second-mentioned person owns or holds more than fifty per cent of the voting interest in the partnership, and
- (ii) in the case of the first-mentioned person other than a body corporate, an individual, or a partnership, securities of the first-mentioned person carrying fifty per cent or more of the voting rights in such person, are held or owned, by or for the benefit of the second-mentioned person;

“Agreement” means the Agreement Establishing the Eastern Caribbean Regulatory Commission made on the 24th day of November, 2000 and any revision thereto, the text of which is in the Schedule of the Eastern Caribbean Securities Regulatory Commission Agreement Act, 2024;

“applicant” means a person who makes an application under this Act;

“associate” in relation to a relationship with a person, means —

- (a) an entity of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, and carries ten per cent or more of the voting rights;
- (b) within a partnership, the partner of the person who acts on behalf of the partnership;
- (c) a trust or estate, in which that person has significant beneficial interest or in respect of which he serves as a trustee, legal representative or in a similar capacity; or

(d) a relative of that person;

“approved auditor” means an auditor approved by the Commission;

“approved forms” means forms approved by the Commission and published under Rules;

“authorisation” means licensing or registration by the Commission;

“Commission” means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Agreement;

“company” includes a business entity which is incorporated, registered or otherwise established under the laws of a member country or a foreign jurisdiction;

“constitutive documents” —

(a) means the principal documents governing the formation of the investment fund;

(b) includes —

(i) in the case of a unit trust, the trust deed,

(ii) in the case of a company, the memorandum and articles of association,

(iii) in the case of an investment condominium, the governing regulations,

(iv) in the case of a partnership, the partnership agreement or articles of partnership, and

(v) other material agreements;

“Currency Union” means the Eastern Caribbean Currency Union and refers collectively to the countries of Anguilla, Antigua

and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as the official currency;

“custodian” means a person to whom the property of the investment fund is entrusted for safe keeping;

“distribution” means —

- (a) a trade in a security of an issuer that has not been previously issued;
- (b) a trade, by or on behalf of an issuer, in a previously issued security of that issuer that has been redeemed, purchased by or donated to that issuer;
- (c) a trade in a previously issued security of an issuer by a control block holder;
- (d) a trade within a prescribed class of trades; or
- (e) a trade described in an Order made by the Commission;

“document” includes —

- (a) information recorded in any form; and
- (b) in relation to information recorded otherwise than in hard copy, references to its production include references to producing a copy of the information in hard form;

“equity interest” means a share, a trust unit, a participation interest or a partnership interest that carries an entitlement to participate in the profits or gains of the issuer and that, except where the issuer is a closed-end fund, is redeemable or re-purchasable at the option of the investor;

“feeder fund” means an investment fund that conducts more than fifty-one per cent of its investing in a master fund directly or through an intermediary entity;

“foreign investment fund” means an investment fund that is incorporated, constituted, formed or organized in a foreign jurisdiction;

“foreign jurisdiction” means a jurisdiction outside of the Currency Union;

“foreign regulatory authority” —

(a) means an authority in a foreign jurisdiction that exercises regulatory, supervisory, enforcement or similar functions; and

(b) includes —

(i) authorities that regulate or supervise banks, insurance companies, or other prescribed institutions,

(ii) securities exchanges,

(iii) self-regulatory organizations,

(iv) law enforcement agencies,

(v) government or regulatory agencies not mentioned in subparagraphs (a) to (d), and

(vi) any other prescribed authority in a member country of the Currency Union;

“general partner” means —

(a) in respect of a limited partnership registered under the Companies Act, a partner as defined in that law;

Chap.78:04

(b) in respect of a partnership constituted under the laws of a foreign jurisdiction, a person who would be a partner of the partnership if the partnership were constituted under the laws of a member country;

“generally accepted accounting principles” means the standards promulgated by the International Accounting Standards Board or as prescribed;

“generally accepted auditing standards” means the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or as prescribed;

“independent” means a person which is not a subsidiary, affiliate or associate of another person and otherwise meets the prescribed conditions;

“interim period” means —

(a) a period commencing on the first day of the financial year and ending six months before the end of the financial year; or

(b) such other period as the Commission determines;

“investment fund” means —

(a) a company which —

(i) collects and pools investor funds for the purpose of collective investment,

(ii) issues equity interests that entitle the holder to

receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company or other body, partnership or unit trust, as the case may be; and

- (b) a company or other body, partnership or unit trust prescribed as an investment fund for the purposes of securities laws, including a closed end fund;
- (c) includes a public investment fund, a private investment fund, a professional investment fund, a self-managed investment fund or a foreign investment fund;
- (d) does not include an issuer of a type or description that has been prescribed as not being an investment fund;

“investment fund administration”

(a) means —

- (i) to administer the operations and administrative affairs of an investment fund,
- (ii) to provide the administrative services for an investment fund including the accounting, valuation or reporting services,
- (iii) to provide the principal office of an investment fund, or
- (iv) the provision of investment advice or investment management or trading execution services;



(b) does not include —

- (i) the provision of a registered office to an investment fund where the usual corporate secretarial and related services are provided,
- (ii) in relation to an investment fund, the maintenance of any register of equity interests or the registration and payment of fees;

“investment fund administrator” means the person who, provides investment fund administration;

“investment fund adviser” means a person not being an officer or employee of an investment fund who for valuable consideration, provides or is entitled to provide an investment fund with investment advice only, and who does not provide any investment management services to such investment fund;

“investment fund licence” means a licence granted to a fund under section 8;

“investment fund manager” means a person who —

- (a) controls or directs the assets of the investment fund; or
- (b) provides the investment fund with advice or information relating to investment opportunities;

“investor” means a person who holds or owns an interest in —

- (a) an investment fund;
- (b) a security issued by an investment fund; or
- (c) a security in which an invested fund invests;

“licensed investment fund administrator” means the holder of an investment fund administration licence;

“licensee” means a person licensed under this Act;

“master fund” means a company, partnership, unit trust or investment condominium that —

- (a) has as its investors other investment funds or feeder funds;
- (b) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the feeder funds; and
- (c) has as its investors one or more feeder funds directly or through an intermediary entity established to invest in the master fund, and for the purposes of this Act such master fund is deemed to be an investment fund;

“material change” in relation to an issuer —

- (a) means a change in the business, operations, assets or ownership of an issuer, the disclosure of which is considered important to a reasonable investor in making an investment decision;
- (b) includes a decision to implement a change made by the directors of the issuer or other persons acting in a similar capacity;

“misrepresentation” means —

- (a) an untrue statement of a material fact or material change;
- (b) an omission to state a material fact or material

change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made; or

(c) in any other circumstance, a statement about something that a reasonable investor considers important —

(i) in making a decision to trade a security, or

(ii) in relation to a trading or advising relationship with a person, if the statement is untrue or omits information necessary to prevent that statement from being false or misleading in the circumstances;

“member country” means a country that is a member of the Currency Union;

“Monetary Council” means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement signed at Port-of-Spain on the 5th day of July 1983 the text of which is set out in the Schedule of the Eastern Caribbean Central Bank Act;

Chap. 74:01

“offering document”, in relation to an investment fund —

(a) means a document or series of documents on the basis of which —

(i) equity interests in the investment fund are offered for sale, or

(ii) persons are invited to subscribe for or purchase equity interests in the investment fund;

(b) does not include —

(i) any other notice, advertisement, letter or

other communication used in connection with the offer for sale of any equity interest in the investment fund, or

- (ii) an invitation to a person to subscribe for or purchase any equity interest in the investment fund if before the offer or invitation is accepted or taken up the prospective investor is given the opportunity to consider an offering document containing the information under section 11;

“operator” —

- (a) means the person responsible for the day-to-day oversight of the operations of the investment fund;

(b) includes —

- (i) in relation to an investment fund that is a unit trust, the trustee of that trust,
- (ii) in relation to an investment fund that is a partnership, the general partner in that partnership, or
- (iii) in relation to an investment fund that is a body corporate, the directors of that body corporate;

“own funds” —

- (a) means assets that are set aside to cover risks;

(b) includes —

(i) paid-up share capital,

(ii) reserves, and

(iii) undistributed profits;

“partnership” —

(a) means a contractual relationship which subsists between persons carrying on a business in common with a view of making a profit;

(b) includes a partnership formed under the laws of a member country or a foreign jurisdiction;

“party related to an investment fund” means an investment fund administrator, operator, promoter, custodian, valuer, investment fund manager, investment fund advisor;

“participating government” means a government of a member country;

“person” includes —

(a) a company;

(b) a partnership;

(c) an association;

(d) an organized or incorporated group of persons;

(e) another legal entity; or

(f) a personal or other legal representative of a

person under paragraphs (a) to (e);

“prescribed” means made by Regulations or Rules;

“private investment fund” means a fund that —

(a) is lawfully incorporated, constituted, formed or organized under the laws of a member country or under the laws of a foreign jurisdiction;

(b) specifies in its constitutive documents that —

(i) it is not authorised to have more than fifty investors, or

(ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only;

“professional investment fund” means an investment fund that is only offered to persons who are professional investors at the time of issue of the equity interest;

“promoter”, in relation to an investment fund —

(a) means a person who, whether within or outside the Currency Union —

(i) is directly or indirectly responsible for the formation of an investment fund,

(ii) causes the preparation or distribution of an offering document;

(b) does not include a professional advisor or underwriter acting for or on behalf of a person under paragraph (a);

“professional investor” means —

- 
- (a) a bank or trust company licensed under the Banking Act, or any law relating to trusts of a member country or licensed under the laws of a foreign jurisdiction, whether acting in its individual or fiduciary capacity;
  - (b) a licensed entity under the Securities Act, 2024 or under the laws of a foreign jurisdiction;
  - (c) an insurance company licensed under the Insurance Act, of a member country or licensed under the laws of a foreign jurisdiction;
  - (d) an investment fund licensed or registered under this Act or regulated under the laws of a foreign jurisdiction;
  - (e) an individual whose individual net worth at the time of the purchase exceeds five hundred dollars or individual annual income has been in excess of two hundred thousand dollars in each of the two most recent years, and has reasonable expectation of reaching the same income level in the current year;
  - (f) an individual whose joint net worth with that individual's spouse, at the time of the purchase exceeds one million dollars or whose joint income with that individual's spouse has been in excess of six hundred thousand dollars in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year;
  - (g) a trust with total assets in excess of five million dollars;
  - (h) an entity where all the equity owners satisfy one

of the requirements under paragraphs (a) to (g);  
or

(i) an entity with net assets in excess of five million dollars;

“public investment fund” means an investment fund that distributes its equity interests to the public in or from within the Currency Union;

“record” means a method by which information may be stored;

“recognised country” means a country recognised by the Commission under section 70;

“register” means a register required to be maintained by the Commission under sections 8(2), 13(4) and 49;

“registered foreign investment fund” means a foreign investment fund that is registered by the Commission under section 15;

“registered office” means —

(a) in respect of a company formed under the Companies Act, the registered office of the company;

(b) in the case of an external company registered under the Companies Act, an office registered under that Act;

(c) in the case of a partnership registered under the Companies Act, the registered office of that partnership; or

(d) in the case of a trust, the place shown in the file maintained under any law relating to trusts as the address of the trustees of the trust;



“regulated investment fund” means an investment fund that is authorised to carry on business in or from the Currency Union;

“regulated person” includes a person authorised under this Act;

“Regulations” means Regulations made under section 72;

“Rules” means Rules made under section 71;

“securities laws” has the meaning assigned under the Securities Act;

“self-managed investment fund” means —

(a) an investment fund that has not appointed an investment fund manager authorised in accordance with this Act;

(b) the investment fund has been granted authorisation to act as such by the Commission;

“service-provider” means —

(a) an investment fund manager;

(b) an investment administrator;

(c) a custodian;

(d) in the case of a fund that is a unit trust, the trustee;

(e) a broker-dealer acting for, or in relation to, a fund;  
or

(f) a person undertaking prescribed functions with respect to the investment fund;

“significant security holder”, in relation to a person, means a security holder that —

(a) beneficially owns, directly or indirectly, or exercises control or direction over voting securities of the reporting issuer, or a combination of both, carrying more than ten percent of the votes attached to all voting securities of the reporting issuer outstanding; or

(b) is able to affect materially the control of the person, whether alone or by acting in concert with another person;

“trust deed” means the written instrument establishing a trust;

“trustee”, in relation to a unit trust, means the person holding the property of the fund on trust for the investors;

“unit trust” means a trust established by a trustee which, for valuable consideration, issues trust units in, or distributes profits or gains arising from the acquisition, holding, management or disposal of investments of the trust.

(2) Other expressions and terms not specifically defined under this Act, have the meaning assigned under the Securities Act, unless the contrary intention appears.

## PART I INVESTMENT FUNDS

### *Division 1*

#### *Prohibitions and Exemptions of Investment Fund*

**3.** (1) A person shall not carry on the business of an investment fund in or from within the Currency Union as a —

Prohibition of  
unlicensed and  
unregistered investment  
funds.

- (a) public investment fund;
- (b) a self-managed investment fund;
- (c) private investment fund;
- (d) professional investment fund; or
- (e) foreign investment fund,

unless the investment fund is licensed under sections 8 and 19 or registered under sections 13 and 16 by the Commission.

(2) A person shall not act as a service-provider, or otherwise be concerned with the management or administration, of an investment fund that carries on business in or from within the Currency Union, unless the investment fund concerned is a licensed public investment fund, a licensed self-managed investment fund, a registered professional investment fund, a registered private investment fund or a registered foreign investment fund.

(3) For the purposes of this section —

- (a) an investment fund, whether incorporated, formed or organized within the Currency Union or in a foreign jurisdiction, is deemed to carry on business in the Currency Union, if —
  - (i) it operates from a place of business in the Currency Union,
  - (ii) it distributes its equity interests to a person within the Currency Union or in a foreign jurisdiction, or
  - (iii) it solicits to persons within the Currency Union or in a foreign jurisdiction;

(b) an investment fund that carries on business in a foreign jurisdiction, is deemed to carry on business from within the Currency Union, if it is —

(i) a company incorporated under the laws of a member country,

(ii) a partnership formed under the laws of a member country, or

(iii) a unit trust established and governed by the trust laws of a member country and is managed from within the Currency Union.

(4) A foreign investment fund does not carry on business in the Currency Union as an investment fund solely by reason of the appointment of a licensee as its fund administrator, fund manager, investment advisor or custodian.

Prohibition against  
promotion of investment  
funds.

4. (1) A person, including the investment fund, shall not, whether in or from within the Currency Union, promote an investment fund unless —

(a) the investment fund is —

(i) a licensed public investment fund,

(ii) a licensed self-managed investment fund,

(iii) a registered professional investment fund or private investment fund, or

(iv) a registered foreign investment fund, and

(v) the investment fund is promoted in accordance with this Act; or

(b) the person or investment fund is exempted under section 5(1).

(2) A person promotes an investment fund under subsection (1) if he or she communicates, or causes an invitation or inducement to be communicated to any other person, or advises or procures any other person, to become an investor, or to offer to become an investor, in an investment fund.

(3) A foreign investment fund does not promote the foreign investment fund if an individual subscribes for or purchases the interests of the foreign investment fund without solicitation made to that person by or on behalf of that foreign investment fund.

**5.** (1) The Commission may, by Rules published in the *Gazette*, exempt from the application of section 4(2) a communication or an advice —

General exemptions to promotion.

(a) of a specified category or description; or

(b) made or given in specified circumstances.

(2) Rules made under subsection (1) may specify circumstances in which section 4(1) or 4(2) does not apply with respect to certain specified categories or descriptions of investment funds or persons.

**6.** (1) An investment fund may carry on business in or from within the Currency Union, as a professional investment fund, for a continuous period not exceeding thirty days, without being registered if the investment fund —

Exemption period for registration as a professional investment fund.

(a) satisfies the criteria for a professional investment fund specified under section 13(2)(a), (c) and (d); and

(b) complies with, and is managed and administered in accordance with, the requirements of this Act

relating to professional investment funds, other than with respect to registration.

(2) An investment fund that commences business shall submit an application to the Commission for registration as a professional investment fund within twenty-one days after the commencement of its business.

(3) For the purposes of this Act, an investment fund that commences business under subsection (1) is deemed to have been registered as a professional investment fund for the period in which it carries on business.

(4) During the period in which an investment fund carries on business under subsection (1) —

- (a) the investment fund, a partner of the investment fund or, where the investment fund is a unit trust, the trustee, does not commit an offence under section 3(1); and
- (b) a person does not commit an offence under section 3(2) by acting as the service-provider of or being concerned with the management or administration of the investment fund.

### *Division 2*

#### *Public Investment Funds*

Licensing of investment fund as public investment fund.

**7.** An application may be made in the prescribed manner to the Commission for the licensing of an investment fund as a public investment fund —

- (a) in the case of an investment fund that is incorporated as a company in a member country, by the company; or

(b) in the case of a unit trust, by the trustee.

**8.** (1) The Commission may grant a licence on application for licensing under section 7, if it is satisfied that —

Grant of public  
investment fund licence.

(a) the fund is —

(i) a company incorporated in a member country, or

(ii) a unit trust that is governed by the trust laws of a member country and has a trustee that is based in the Currency Union;

(b) the investment fund satisfies the requirements of this Act;

(c) the investment fund on licensing, complies with this Act;

(d) the service-providers of the investment fund satisfy the fit and proper criteria of the Commission;

(e) the investment fund has, or on licensing would have, an independent custodian;

(f) the name of the investment fund is not undesirable or misleading; and

(g) it is appropriate to do so in the public interest; and

(h) the investment fund satisfies other prescribed requirements.

(2) Where the Commission grants a licence under subsection (1), it shall —

(a) record the public investment fund in the Register of Public Investment Funds; and

(b) issue a licence in the approved form to a public

investment fund.

(3) The Commission may grant a licence to a public investment fund subject to such conditions as it considers appropriate.

Prohibition on invitation to public to subscribe by public investment fund.

**9.** (1) A public investment fund shall not, whether within or outside the Currency Union, make an invitation to the public to subscribe for or purchase its fund interests, unless the invitation —

(a) is contained in an approved prospectus; and

(b) complies with the prescribed requirements.

(2) For the purposes of subsection (1), an invitation to more than fifty persons, in the Currency Union or in a foreign jurisdiction, to subscribe for or purchase investment fund interests, is an invitation to the public to subscribe for or purchase investment fund interests.

(3) Subsection (1) does not apply to an invitation that is deemed not to be an invitation to the public under section 10.

Circumstances in which invitation to subscribe not invitation to the public.

**10.** An invitation to a person to subscribe for or purchase investment fund interests is deemed not to constitute an invitation to the public if —

(a) the invitation is made to, or is directed exclusively at —

(i) an accredited investor,

(ii) a person having a close connection with the issuer, or

(iii) a participating government;



- (b) the minimum aggregate purchase price payable by a person for the fund interests acquired by him or her pursuant to the invitation —
  - (i) must be paid before the investment fund interests are issued, and
  - (ii) equals or exceeds the prescribed minimum or the equivalent in another currency; or
- (c) the invitation is made —
  - (i) to a prescribed person,
  - (ii) with respect to investment fund interests issued, or to be issued, by a person under paragraph (a), or
  - (iii) in prescribed circumstances.

**11.** (1) An offering document intended to be submitted to the Commission for registration must —

Form and content of offering document.

- (a) be in writing, be dated and be signed by or on behalf of —
  - (i) in the case of a company of the Currency Union, the board of the company, or
  - (ii) in the case of a unit trust, the investment fund manager or the trustee of the trust;
- (b) provide full and accurate disclosure of all such information as investors reasonably require and expect to find for the purpose of making an informed investment decision;
- (c) be in the prescribed form, contain the prescribed information, statements, certifications and other prescribed material; and

(d) be accompanied by the prescribed documents.

(2) The Commission shall issue a receipt for an offering document within thirty days after the date of the filing of the prospectus that fulfills the prescribed requirements.

(3) A distribution commences on the date that the receipt for the prospectus is issued.

*Division 3*

*Private Investment Fund and Professional Investment Fund*

Registration of private investment fund and professional investment fund.

**12.** An application may be made in the prescribed manner to the Commission for the registration of an investment fund as a private investment fund or as a professional investment fund —

- (a) in the case of an investment fund that is a company, by the investment fund;
- (b) in the case of a unit trust, by the trustee;
- (c) in the case of an investment fund that is a partnership, by a partner;
- (d) in any other case, by the manager, or proposed manager of the investment fund.

Grant of registration of a private investment fund or professional investment fund.

**13. (1)** The Commission may register in the prescribed manner an investment fund as a private investment fund or a professional investment fund if it is satisfied that —

- (a) the investment fund is lawfully incorporated, constituted, formed or organized under the laws of a member country or a foreign jurisdiction;
- (b) in the case of a private investment fund, the constitutive documents of the investment fund

specify that —

- (i) the investment fund is not authorised to have more than fifty investors, or
- (ii) an invitation to subscribe for, or purchase investment fund interests issued by the investment fund is made to not more than fifty investors;
- (c) in the case of a professional investment fund, the constitutive documents of the investment fund specify that —
  - (i) the investment fund interests shall be issued only to professional investors,
  - (ii) the initial investment of each investor in the investment fund, other than exempted investors is not less than the prescribed sum;
- (d) the investment fund satisfies the prescribed criteria for registration of a private investment fund or professional investment fund;
- (e) the investment fund satisfies the requirements of this Act with respect to the application;
- (f) the investment fund, on being registered, complies with this Act;
- (g) it is appropriate in the public interest to register the investment fund as a private investment fund or professional investment fund.

(2) For the purposes of subsection (1)(b)(ii), an invitation to subscribe for, or purchase, investment fund interests issued by a private investment fund includes an invitation which is made —

- (a) to specified persons and is not calculated to result

in investment fund interests becoming available to other persons or to a large number of persons; or

(b) as a result of a private or business connection between the person making the invitation and the investor.

(3) For the purposes of subsection (2)(c), the minimum investment limit does not apply in respect of an investment made by a prescribed person as an exempted investor.

(4) Where the Commission grants an application for registration under subsection (1), the Commission shall —

(a) register the investment fund in the Register of Private Investment Funds or the Register of Professional Investment Funds, as appropriate; and

(b) issue the investment fund with a certificate of registration in the approved form.

(5) The registration of a private investment fund or professional investment fund is subject to such conditions as may be imposed by the Commission.

Obligation to act in accordance with constitutive documents.

**14.** (1) A registered private investment fund or professional investment fund shall not make an offer or invitation of its investment fund interests, issue any investment fund interests or carry on business in any manner that results in the investment fund—

(a) in the case of a private investment fund

(i) having more than fifty investors, or

(ii) making an invitation to subscribe for, or purchase, its investment fund interests otherwise than on a private basis; or

(b) in the case of a professional investment fund, issuing investment fund interests —

(i) to a person who is not a professional investor, or

(ii) where the initial investment, in respect of a professional investor who is not an exempted investor, is less than the prescribed sum.

(2) Without limiting the generality of subsection (1), a person shall not be accepted as an investor in a private investment fund or professional investment fund unless that person has provided —

(a) in the case of a professional investment fund, written confirmation that he or she is a professional investor; and

(b) in the case of a private investment fund or professional investment fund, a written acknowledgment that he or she has received, understood and accepted the prescribed investment warning.

#### *Division 4*

#### *Registration of a Foreign Investment Fund*

**15.** An application may be made in the prescribed manner to the Commission by a foreign investment fund or by its manager, for the investment fund to be a registered foreign investment fund.

Registration of a foreign investment fund.

**16.** The Commission may register in the prescribed manner an investment fund as a foreign investment fund if the Commission is satisfied that —

Grant of registration of a foreign investment fund.

(a) the investment fund complies with the requirements of this Act in respect of the application and, on registration, complies with the requirements of this Act in relation to registered foreign investment funds;

- (b) the investment fund is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Commission, provides to investors in the Currency Union protection at least equivalent to the protection provided under this Act for investors of public investment funds; and
- (c) the investment fund is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

Investment Fund  
Regulations may provide  
for registration of foreign  
investment funds.

**17.** The Regulations may make provisions with respect to the registration of foreign investment funds, including as to —

- (a) the submission to the Commission and the publication of the prescribed particulars as regards registered foreign investment funds;
- (b) the notifications to be provided to the Commission with respect to registered foreign investment funds, including as to the amendment of the constituting instruments of a registered foreign investment fund and changes of the service-providers of a registered foreign investment fund;
- (c) the maintenance in the Currency Union of deposits and property by and with respect to registered foreign investment funds.

*Division 5*

*Self-Managed Investment Fund*

Licensing of a self-  
managed investment  
fund.

**18.** An application may be made in the prescribed manner to the Commission for the licensing of an investment fund as a self-managed investment fund.

**19.** (1) The Commission may grant a licence on an application for licensing under section 18 if the Commission is satisfied that the investment fund —

Grant of licence for a self-managed investment fund.

- (a) is a company incorporated under the laws of a member country or under the laws of a recognised country and registered in a member country as an external company under the Companies Act;
- (b) has a board of directors, a majority of whom are independent of the investment fund, the service-providers of the investment fund and parties related to the investment fund;
- (c) maintains at all times minimum shareholders' equity of one million Eastern Caribbean Dollars, other than in redeemable securities, or satisfies such capital requirements as the Commission determines;
- (d) employs one individual who is licensed as a principal, one individual licensed as a compliance officer and one individual licensed as a representative in accordance with this Act, each with a minimum of three years investment fund-related work experience;
- (e) establishes and maintains risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to the investment fund;
- (f) has adequate human resources with the necessary qualifications, expertise and experience to manage the investment fund and carry out its obligations under this Act;

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- (g) has adequate and appropriate systems, procedures and processes to undertake the activities necessary to manage the investment fund in a proper and efficient manner;
- (h) has appropriate policies and procedures to —
  - (i) identify, mitigate and manage any conflicts of interest between the investment fund and any party related to the investment fund,
  - (ii) ensure best execution of trades for the investment fund, and
  - (iii) prevent churning;
  - (iv) meets such other requirements as the Commission determines.

(2) The constitutive documents of a self-managed fund licensed under subsection (1) shall contain provisions allowing the unitholders of the investment fund to require the investment fund to appoint a separate company as investment fund manager and such power shall be exercisable by a resolution passed by at least a majority of the votes cast, in person or by proxy, at a meeting of the unitholders of the investment fund called and held to consider the resolution.

(3) A self-managed investment fund shall perform all duties and meet all the other requirements for the investment fund imposed on operators and investment fund managers by this Act.

(4) The initial requirements for licensing of a self-managed fund shall continue to be satisfied by the person throughout the period of license under this Act.



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## **PART II SERVICE-PROVIDERS**

### *Division 1*

#### *Authorisation of Investment Fund Service-Providers*

**20.** (1) Subject to this Part, a person shall not carry on business as a service-provider to an investment fund in or from within the Currency Union unless authorisation has been granted by the Commission.

Prohibition by service-provider.

(2) A service-provider authorised by a foreign regulatory authority shall apply in the prescribed manner for registration to carry on business as a service-provider to an authorised investment fund.

(3) A service-provider not authorised by a foreign regulatory authority shall apply in the prescribed manner for licensing to carry on business as a service-provider to an authorised investment fund.

### *Division 2*

#### *Operators*

**21.** (1) An operator of an investment fund shall ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to this Act.

Restriction on operator.

(2) A person shall not act as an operator of an investment fund unless, subject to section 19(2) and (3), it is authorized under this Act.

### *Division 3*

#### *Investment Fund Manager*

**22.** (1) Subject to subsection (3), an investment fund shall appoint an investment fund manager prior to commencement of operations as a regulated investment fund.

Appointment of investment fund manager.

(2) An investment fund manager appointed under subsection (1) shall provide or is entitled to provide an investment fund

with investment management services and such services may include providing investment advice for valuable consideration.

(3) The Commission may exempt an investment fund from the requirements of this Division where —

(a) the investors are affiliates of the investment fund, where each affiliate is not an investment fund; or

(b) it is a feeder fund that invests one hundred per cent of its assets in a master fund.

(4) An investment fund exempt from appointing an investment fund manager under subsection (3) shall meet the prescribed requirements.

Restriction on  
investment fund manager.

**23.** (1) A person shall not act as an investment fund manager of an investment fund unless, subject to section 20 (2) and (3), he or she is authorised under this Act.

(2) Subject to subsection (3), a person shall apply in the prescribed manner to the Commission for an authorisation to operate as an investment fund manager.

(3) The Commission may authorise a person as an investment fund manager where that investment fund manager —

(a) intends to manage a professional investment fund;

(b) intends to manage a public investment fund;

(c) intends to manage an investment fund in a jurisdiction, whose equity interests are offered to professional investors; or

(d) is licensed or registered in a recognised country; or

(e) meets any other prescribed requirements.

**24.** (1) The Commission may grant authorisation to an investment fund manager under this Part where —

Grant of authorisation to an investment fund manager.

- (a) the Commission is satisfied that the applicant meets the conditions of this Part;
- (b) the applicant has the prescribed capital, own funds and professional indemnity insurance under section 34;
- (c) the persons who effectively conduct the business of the applicant are of good repute and are experienced in relation to the investment strategies pursued by the investment funds to be managed by the applicant, and the conduct of the business of the applicant is decided by at least two persons meeting such conditions;
- (d) the shareholders or members of the applicant that are significant security holder, taking into account the need to ensure the sound and prudent management of the applicant; and
- (e) the principal office and the registered office of the applicant are located in the Currency Union; and
- (f) the applicant meets any other prescribed requirements.

(2) The names of the persons under subsection (1)(c) shall be communicated to the Commission prior to the grant of authorisation and the names of every person succeeding the person in office shall be communicated to the Commission.

**25.**(1) An investment fund manager shall —

General duties of an investment fund manager.

- (a) act honestly and fairly, with due skill, care and diligence in conducting its activities;

- (b) act in the best interests of each investment fund and the investors of each investment fund it manages and for the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage, monitor and, where applicable, disclose those conflicts of interest in order to prevent them from adversely affecting the interests of each investment fund and its investors and to ensure that each investment fund it manages is fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of each investment fund and the investors of each investment fund it manages and the integrity of the market; and
- (f) treat all investment fund investors fairly and ensure that no investor in an investment fund shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant constitutive documents of the investment fund; and
- (g) comply with other prescribed requirements.

(2) Where an investment fund is exempted from appointing a custodian under section 37(3) the investment fund manager shall ensure it complies with other prescribed requirements.

**26.** (1) An investment fund manager which is an authorised investment fund manager, shall meet the prescribed initial and on-going capital requirements in Eastern Caribbean Dollars or the equivalent in a currency that is acceptable to the Commission.

Minimum capital and professional indemnity insurance requirements.

(2) An investment fund manager shall —

- (a) have own funds or additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

**27.** (1) Subject to subsection (3), an investment fund manager shall appoint in the prescribed manner an individual as a Chief Executive Officer.

Chief Executive Officer of an investment fund manager.

(2) An investment fund manager shall not appoint an individual as a Chief Executive Officer under subsection (1) unless it is satisfied that the individual is fit and proper and has satisfied the prescribed requirements.

(3) A person shall not act as a Chief Executive Officer unless approved by the Commission.

(4) The Commission may, by notice in writing to the Chief Executive Officer, attach any necessary conditions to the approval under subsection (3).

**28.** (1) Subject to subsection (3), an investment fund manager shall appoint in the prescribed manner a person as a Compliance Officer, subject to prescribed conditions.

Compliance officer of an investment fund manager.

(2) A Compliance Officer is responsible for ensuring that an investment fund manager complies with the applicable laws.

(3) An investment fund manager shall not appoint a

person as Compliance Officer under subsection (1) unless it is satisfied that the person is fit and proper and has satisfied the prescribed requirements.

(4) A person shall not act as a Compliance Officer unless approved by the Commission.

(5) The Commission may, by notice in writing to the Compliance Officer attach any necessary conditions to the approval under subsection (4).

*Division 4*

*Investment Fund Administrator*

Appointment of  
investment fund  
administrator.

**29.** (1) Subject to subsection (2), an investment fund shall appoint in the prescribed manner an investment fund administrator.

(2) The Commission may exempt an investment fund from subsection (1).

Restriction on an  
investment fund  
administrator.

**30.** A person shall not act as an investment fund administrator unless, subject to section 20(2) and (3), it is authorised.

Name of investment fund  
administrator restricted.

**31.** Unless exempted or authorised by the Commission, a person other than an authorised investment fund administrator shall not —

- (a) carry on or attempt to carry on investment fund administration business in or from within the Currency Union with the words “fund administrator” in its name or title;
- (b) represent in any way that it is carrying on business in or from within the Currency Union as an investment fund administrator.

**32.** The Commission may grant authorisation to an investment fund administrator if it is satisfied that the applicant —

Grant of authorisation to an investment fund administrator.

- (a) is a company incorporated or registered under the Companies Act, or International Business Companies Act, of a member country;
- (b) has sufficient expertise to administer investment funds;
- (c) is of sound reputation;
- (d) administers investment funds in a proper manner;
- (e) has directors, officers, and senior management and significant security holders who meets the fit and proper requirements as prescribed by the Commission;
- (f) has a principal office in a member country;
- (g) complies with the prescribed requirements.

**33.** An investment fund administrator shall—

Obligations of an investment fund administrator.

- (a) provide the principal office for an investment fund that it administers in or from within the Currency Union;
- (b) pay the prescribed fees for each investment fund for which it provides a principal office in the Currency Union;
- (c) ensure that each party related to an investment fund is fit and proper as prescribed by the Commission;
- (d) make such reports to the Commission regarding the investment funds for which it acts as the

investment fund administrator, as the Commission requires;

(e) comply with other prescribed requirements.

Requirements for minimum capital and professional indemnity insurance.

**34.** (1) An investment fund administrator which is an authorised investment fund administrator shall —

(a) meet the prescribed initial and on-going capital requirements in Eastern Caribbean Dollars or the equivalent in a currency that is acceptable to the Commission;

(b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(2) Where the investment fund administrator fails to comply with subsection (1) the Commission shall —

(a) request other financial guarantees, acceptable to the Commission, to be supplied by the investment fund administrator within ninety days; or

(b) where the investment fund administrator is unable to provide the guarantees under paragraph (a), revoke the authorisation.

Chief Executive Officer of an investment fund administrator.

**35.** (1) Subject to subsection (3), an investment fund administrator shall appoint in the prescribed manner an individual as a Chief Executive Officer.

(2) An investment fund administrator shall not appoint an individual as a Chief Executive Officer under subsection (1) unless it is satisfied that the individual is fit and proper and has satisfied the requirements as prescribed by the Commission.

(3) A person shall not act as the Chief Executive Officer unless approved by the Commission.



(4) The Commission may, by notice in writing to the Chief Executive Officer, attach any necessary conditions to the approval under subsection (3).

**36.** (1) Subject to subsection (4), an investment fund administrator shall appoint in the prescribed manner a person as a Compliance Officer, subject to such conditions that the Commission specifies.

Compliance officer of an investment fund administrator.

(2) A Compliance Officer is responsible for ensuring that an investment fund administrator complies with all applicable laws.

(3) An investment fund administrator shall not appoint a person as Compliance Officer under subsection (1) unless it is satisfied that the person is fit and proper and has satisfied the requirements as prescribed by the Commission.

(4) A person shall not act as a Compliance Officer unless approved by the Commission.

(5) The Commission may, by notice in writing to the Compliance Officer, attach any necessary conditions to the approval under subsection (4).

#### *Division 5* *Custodian*

**37.** (1) A regulated investment fund shall appoint in the prescribed manner one or more persons as custodian of the assets of the investment fund.

Appointment of custodian.

(2) A custodian shall not act on behalf of an investment fund unless it is —

(a) authorised under this Act; and

(b) established and operating in accordance with the laws of a member country or of a foreign jurisdiction.

(3) Notwithstanding subsection (1), the Commission may exempt an authorised investment fund from the requirement to appoint a custodian where —

(a) the investment fund's only investors are affiliates of the investment fund if none of those investors is itself an investment fund; or

(b) the assets of an investment fund are of a type that does not require the assets to be held in custody.

(4) An investment fund exempt from appointing a custodian under subsection (3) shall meet the other prescribed requirements.

(5) A custodian must satisfy the prescribed requirements.

Restriction on a  
custodian.

**38.** A person shall not act as a custodian of an investment fund unless, subject to section 20 (2) and (3), it is authorised by the Commission.

Independence of  
custodian.

**39.** An investment fund shall have a custodian that is independent of the investment fund administrator, the investment fund manager and the operator of the fund unless the fund is exempted by the Commission under section 37(3).

Segregation of  
investment fund assets—  
custodian appointed.

**40.** (1) A custodian that holds assets on behalf of an investment fund, including cheques and other similar instruments, shall hold the assets separate and apart from its own property or that any other person, and in trust for the investment fund.

(2) A custodian that holds cash on behalf of an investment fund shall hold the cash separate and apart from the property of the custodian and any other person in a designated trust account with a financial institution licensed under the Banking Act, or other licensed deposit-taking institution in a recognised country.

(3) A custodian may allow a licensed marketplace or clearing facility to hold or control cash belonging to an investment

fund for the purpose of —

- (a) a transaction for the investment fund with or through that marketplace or clearing facility; or
- (b) meeting the obligation of the investment fund to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

**41.** (1) Where an investment fund is exempt from appointing a custodian, any assets held on behalf of the investment fund, by a party related to the fund, including cheques and similar instruments, shall be held separate and apart from its own property and that of any other person, and in trust for the investment fund.

Segregation of investment fund assets – exempt from appointment of custodian.

(2) A party related to an investment fund that holds cash on behalf of the investment fund must hold the cash separate and apart from the property of the party related to the fund in a designated trust account with a bank holding a licence under the Banking Act, or other licensed deposit-taking institution in a recognised country.

(3) A party related to an investment fund may allow a licensed marketplace or clearing facility to hold or control cash belonging to an investment fund for the purpose of —

- (a) a transaction for the investment fund with or through that marketplace or clearing facility; or
- (b) meeting the obligation of the investment fund to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

### **PART III GENERAL REGULATORY MATTERS**

**42.** (1) An application to the Commission for authorization, shall

Application for authorization.

be made in the prescribed manner and shall be accompanied by —

(a) the prescribed information; and

(b) the prescribed fee.

(2) An authorisation is effective unless—

(a) it is revoked by the Commission;

(b) it expires;

(c) the conditions for continuing the authorisation of the investment fund have not been satisfied; or

(d) the Commission accepts a surrender of an authorisation of a regulated person under this Act.

Misrepresentation.

**43.** (1) A person who applies for an authorization of an investment fund or service-provider shall not supply the Commission with information that he or she knows or reasonably knows is false or misleading.

(2) Where a regulated investment fund becomes aware that a service-provider has provided it with false or misleading information, it shall immediately notify the Commission in writing

Restriction on  
authorisation to  
investment fund.

**44.** The Commission shall not authorise an investment fund until the applicant has satisfied the Commission that —

(a) each promoter, operator, investment fund advisor, investment fund manager, investment fund administrator, auditor, custodian, is fit and proper; and

(b) the business of the investment fund and any offering of equity interests in it will be carried out, in accordance with this Act, and any other applicable laws.

**45.** (1) The Commission may grant authorization to an investment fund or service-provider who applies in the prescribed manner and on payment of the prescribed fee.

Grant or refusal of authorization to an investment fund or service-provider.

(2) Where the Commission grants an authorization under subsection (1), the Commission shall issue —

- (a) in the case of licensing, a licence in the prescribed form;
- (b) in the case of registration, a certificate of registration in the prescribed form.

(3) The Commission shall not grant authorization to an investment fund or service-provider where —

- (a) the investment fund or service provider has not satisfied this Act;
- (b) for reasons of public interest, the Commission determines that the investment fund or service-provider must not be licensed or registered; or
- (c) the name of the investment fund or service-provider is —
  - (i) identical to that of any other investment fund or service-provider that is licensed or registered under this Act or which so nearly resembles the name of an investment fund or service-provider licensed or registered under this Act so as to be likely to deceive or cause confusion in the investment funds or service-provider industry,
  - (ii) likely to suggest, falsely, the patronage of or connection with some person or authority, whether within or outside the Currency Un-

ion or elsewhere, or

- (iii) likely to suggest falsely, that the investment fund has a special status in relation to or derived from the respective Governments of the member countries.

(4) Where the Commission refuses to grant an application under subsection (3), the Commission shall serve a notice of its decision, in writing, on the applicant.

Imposition, variation or revocation of terms and conditions of authorisation.

**46.** (1) The Commission may, if it thinks fit, by notice in writing served on the regulated person or party related to an investment fund, impose, vary or revoke a condition of an authorisation.

(2) An investment fund may request in writing that the Commission waive, vary or revoke any condition attached to its authorisation.

Renewal or reinstatement of authorisation.

**47.** (1) The Commission may renew or reinstate authorisation if the applicant —

(a) is considered by the Commission to be fit and proper for renewal or reinstatement;

(b) complies with the prescribed requirements; and

(c) pays the prescribed fee.

(2) A regulated person shall renew its authorisation as applicable, on an annual basis by submitting an application for renewal to the Commission on or by the 1st day of April of each year.

(3) An application for renewal or reinstatement of authorisation of an investment fund shall be made in the prescribed form and must be accompanied by the prescribed authorisation renewal or reinstatement fee.

(4) The Commission shall refuse to renew or reinstate an authorisation where the renewal or reinstatement is not in the public interest.

**48.** (1) An investment fund or service-provider shall notify the Commission in the prescribed manner, of its intention to surrender the authorisation granted by the Commission, at least fourteen days prior to the effective date of the surrender.

Voluntary surrender of  
licence by investment  
fund or service-provider.

(2) The Commission may, on receiving notification by an investment fund or service-provider under subsection (1) —

(a) accept, subject to such terms and conditions as it may impose, the voluntary surrender of the licence or certificate of registration of the investment fund if the Commission is satisfied that the surrender of the licence or certificate of registration would not be prejudicial to the public interest; or

(b) suspend the authorisation or impose any condition or restriction on the authorisation that the Commission considers appropriate.

(3) On the effective date of the surrender, where the Commission has accepted the voluntary surrender of a licence or certificate of registration, the investment fund or service-provider shall —

(a) surrender to the Commission the original licence or certificate of registration issued as evidence of its being authorised in the Currency Union; or

(b) in the event the original licence or certificate of registration is lost, submit to the Commission an affidavit attesting to the fact of such loss.

(4) The Commission shall within fourteen days of acceptance of the voluntary surrender of an authorisation by an investment fund or service-provider under subsection (2)(a), cause a

public notice to be issued, that the investment fund or service-provider is no longer authorised in the Currency Union, by publication in —

- (a) in the *Official Gazette* of each member country;
- (b) publishing in a newspaper of general circulation in each member country; and
- (c) on the website of the Commission.

Commission to maintain register.

**49.** (1) The Commission shall maintain an up-to-date register to show details of investment funds and service-providers that are authorised or exempted under this Act.

(2) The register under subsection (1) must contain information to include —

- (a) the name of the regulated person;
- (b) the contact information for all parties related to an investment fund;
- (c) any conditions, under which the authorisation is granted;
- (d) any other prescribed information.

(3) A person may, on payment of the prescribed fee, inspect and make copies of or take extracts from the register.

Offence.

**50.** (1) A person who carries on business requiring authorisation under Part I or II without holding an authorisation, or other than in accordance with the authorisation, commits an offence and is liable on summary conviction —

- (a) in the case of an individual, to a fine not exceeding five hundred thousand dollars or to imprisonment



for a term not exceeding two years or to both;

(b) in the case of a company, to a fine of up to one million dollars.

(2) Where the offence is a continuing offence, the individual or company is liable to a further fine not exceeding ten per cent of the maximum fine under subsection (1) for every day that the offence continues after conviction.

**51.** (1) Unless exempted by the Commission, a person other than a regulated investment fund, shall not carry on or attempt to carry on business as an investment fund with the words “fund” or “investment fund” in its name.

Restricted names.

(2) Where the Commission considers that an investment fund is carrying on business in a name that the Commission refuses under section 21(1)(c), the Commission may direct the investment fund to change its name to a name approved by the Commission.

**52.** (1) A regulated investment fund or service-provider may transfer the business of an investment fund or service-provider from the Currency Union to a foreign jurisdiction and shall notify the Commission of such transfer in the prescribed form within fourteen days of the issue of the licence or notification of approval of registration with the foreign jurisdiction.

Transfer to another jurisdiction.

(2) Where notification is given under subsection (1) the regulated investment fund or service-provider shall at the same time —

(a) surrender to the Commission the original licence or certificate of registration issued as evidence of being licensed or registered in the Currency Union; or

(b) in the event the original licence or certificate of registration is lost, submit to the Commission an

affidavit attesting to the fact of such loss.

(3) The Commission shall, on being satisfied that this section has been met, issue a public notice that the regulated investment fund or service-provider is no longer authorised in the Currency Union by publication —

- (a) in the *Official Gazette* in each member country of the Currency Union;
- (b) in a newspaper of general circulation in each member country; and
- (c) on the website of the Commission.

Transfer from another jurisdiction.

**53.** (1) An investment fund or service-provider that intends to transfer the business of the investment fund or service-provider to the Currency Union from a foreign jurisdiction shall notify the Commission of such transfer, in the prescribed form and shall make an application to the Commission for an authorisation not later than twenty-one days prior to the transfer of the business of the investment fund or service-provider to the Currency Union.

(2) An investment fund under subsection (1) shall submit to the Commission, the following information in support of an application under subsection (1) —

- (a) the name of the investment fund or service-provider;
- (b) the name of investment fund administrator;
- (c) the name of the investment fundmanager;
- (d) the address of the registered office or principal office in the Currency Union;
- (e) the name and address of the operators;

(f) the current offering document;

(g) evidence that the investment fund or service-provider has complied with the laws of the foreign jurisdiction from which it is transferring; and

(h) any other prescribed information.

(3) An investment fund or service-provider transferring to the Currency Union shall provide evidence of the surrender of the licence in the foreign jurisdiction.

(4) The Commission may on the written application in the prescribed manner of the investment fund or service-provider transferring to the Currency Union, extend the period within which the investment fund or service-provider must obtain an investment fund authorisation under this Act.

**54.** (1) An investment fund or service-provider that has not commenced operations within one year of authorisation, or that ceases trading and liquidates and distributes its assets without formally liquidating its structure, shall inform the Commission of the voluntary suspension of its activity.

Voluntary suspension of investment fund activity or service-provider.

(2) An investment fund or service-provider shall inform the Commission, in writing, within fourteen days of suspending its activity.

(3) On being notified that an investment fund or service-provider has suspended its activity under subsection (1), the Commission shall suspend the authorisation of the investment fund or service-provider and cause a public notice to be issued, that the licence or certificate of registration of the investment fund or service-provider has been suspended, by publication —

(a) in the *Official Gazette* in each member country;

(b) in a newspaper of general circulation in each member country; or

(c) on the website of the Commission.

(4) Where an authorisation of an investment fund or service-provider is suspended under subsection (3), the investment fund or service-provider may resume operation within one year from the date of suspension failing which the Commission may revoke the licence or certificate of registration of the suspended investment fund or service-provider.

(5) Where an authorisation of an investment fund or service-provider is suspended under subsection (3), the investment fund or service-provider that intends to resume operation shall apply to the Commission to have the suspension of the authorisation lifted, and such application shall be made in the prescribed manner, and the investment fund or service-provider shall pay the prescribed fee.

(6) The Commission may on the written application of the investment fund or service-provider extend the period of suspension of an authorisation by a period not exceeding eighteen months.

(7) On being satisfied that the investment fund or service-provider is in compliance with this Act, the Commission shall lift the suspension of the authorisation of the investment fund or service-provider imposed under subsection (3) and issue a public notice that the investment fund or service-provider has been re-launched, to be published —

(a) in the *Official Gazette* in each member country;

(b) in a newspaper of general circulation in each member country; and

(c) on the website of the Commission.

## PART IV

### ADMINISTRATIVE AND FINANCIAL MATTERS

**55.** (1) A service-provider shall not undertake to provide services to an investment fund unless the service-provider has satisfied itself that it may carry out its tasks and responsibilities to that fund in accordance with the securities laws and all other legislation applicable to that fund.

Due diligence by authorised service-provider.

(2) Subsection (1) is a condition of each service-provider authorisation.

**56.** (1) A service-provider shall not appoint or charge a third-party service-provider to assist it with the provision of services for which a service-provider authorization has been granted, unless —

Delegation of tasks.

- (a) the prior written approval of the Commission has been obtained for the appointment or change; or
- (b) the third-party provider complies with such conditions imposed by the Commission; and
- (c) the prescribed fee has been paid; or
- (d) the Commission has exempted the service-provider from the obligation to obtain the approval of the Commission.

(2) Notwithstanding subsection (1)(a), the Commission may exempt a service-provider from the requirement to obtain written approval for an appointment or change of a third party service-provider.

(3) A service-provider with a valid service-provider authorisation may delegate tasks to a third-party service-provider except its responsibilities.

Service-provider to give notice of certain matters.

**57.** Where a service-provider knows or has reason to believe that an investment fund for which it provides services, or an operator, auditor, or a promoter of such investment fund —

- (a) is, or is likely to become unable to meet its obligations as each falls due;
- (b) is carrying on business otherwise than in accordance with this Act or any other law; or
- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund,

the service-provider shall immediately give the Commission written notice of its knowledge or belief giving its reason for that knowledge or belief.

Auditor to be appointed

**58.** (1) Each regulated person shall appoint in the prescribed manner an approved auditor who shall conduct an audit of the annual financial statements of the regulated person.

(2) The audit of the financial statements of a regulated person shall be performed in accordance with generally accepted auditing standards and the auditor shall provide the Commission with the prescribed reports on the financial affairs of the regulated person within the prescribed period.

(3) The Commission may impose all or any of the following duties on the auditor of a regulated person—

- (a) a duty to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
- (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the person authorised under this Act;

- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Commission on any matters under paragraphs (b) and (c); and
- (e) additional duties assigned by the Commission.

(4) Each regulated person shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission imposes under subsection (2).

**59.** Where, during the performance of his or her duties as auditor for a regulated person under this Act, an approved auditor —

Obligations of auditors.

(a) becomes aware of any matter which in his or her opinion adversely affects the financial position of the entity being audited to a material extent; or

(b) discovers evidence of a contravention of this Act, the auditor shall as soon as is practicable, and in any event within seven days, report the matter in writing to the Commission and the regulated person.

**60.** (1) The Commission may at any time instruct a regulated person —

Instructions to audit accounts.

(a) to have its accounts audited; and

(b) to submit the audited financial statements to the Commission, within such time as the Commission specifies.

(2) The audited financial statements under subsection (1) must be prepared in accordance with international auditing standards and must be at the expense of the regulated person.

**61.** (1) Within the prescribed periods, a regulated person shall deliver to the Commission —

Reporting to the Commission.

- (a) annual financial statements in respect of the regulated person's financial year along with the report of the auditor;
- (b) interim financial statements and other information as may be prescribed; and
- (c) all other reports, information or documents that the Commission considers necessary.

(2) A public investment fund shall disseminate to the public any report filed with the Commission under subsection (1) within the prescribed period.

(3) The audit of the financial statements of a regulated person shall be performed in accordance with generally accepted auditing accounting principles and the auditor shall provide the Commission with the prescribed reports on the financial affairs of the regulated person within the prescribed period.

Compliance with  
directions.

**62.** A regulated person shall use reasonable efforts to ensure compliance with any direction given by the Commission in accordance with this Act.

Approval by the  
Commission.

**63.** A regulated person shall not appoint or change a director, operator, chief executive officer or a person holding an equivalent position as the case may be, or any other person for whom initial approval by the Commission was required, unless —

- (a) the prior written approval of the Commission has been obtained, for the appointment or change; or
- (b) the Commission has exempted the regulated person from the obligation to obtain the approval of the Commission; and
- (c) the prescribed fee has been paid.



**64.** A regulated person must satisfy the requirements imposed under this Act for the period of the validity of the authorisation.

Initial requirements must be maintained.

**65.** (1) The Commission shall administer this Act.

Commission to administer this Act.

(2) The Commission shall —

- (a) maintain a general review of investment fund business in the Currency Union and submit an annual report to the Monetary Council;
- (b) be responsible for supervision and enforcement in respect of persons to whom this Act applies; and
- (c) conduct an investigation of a person where the Commission reasonably believes that the person is or has been in breach of this Act.

(3) Where the Commission considers it necessary or expedient, the Commission may —

- (a) conduct onsite or offsite inspections;
- (b) examine prescribed regular returns, auditors' reports or ad hoc reports requested by the Commission;
- (c) engage in such other activity as the Commission may determine,

to regulate the affairs or business of any regulated person for the purpose of a general review or for the purpose of satisfying itself that this Act and Regulations made under this Act are being complied with.

(4) The Commission may charge a prescribed fee for an inspection conducted under this Part.

(5) On application, the Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

(6) In carrying out its responsibilities, the Commission may, in addition to any powers granted under this Act, exercise any of the powers and responsibilities granted to it under Parts IV, V, VI, VII, VIII, IX, XI, XII, XIII and XIV of the Securities Act, 2024 and the Eastern Caribbean Securities Regulatory Commission Agreement Act, 2024.

(7) If the Commission considers it not prejudicial to the public interest to do so, the Commission may exempt an investment fund, service-provider or party related to an investment fund from Parts I, II, III, IV and V.

(8) Exemptions granted under subsection (1) shall be published by the Commission in the *Gazette* and on its website.

## **PART V MISCELLANEOUS**

General offence.

**66.** (1) A person who contravenes this Act, for which a penalty is not otherwise provided for in this Act, commits an offence and is liable on conviction on indictment to a fine not exceeding one million dollars or to imprisonment for a term not exceeding ten years or to both.

(2) Notwithstanding subsection (1), where an offence is committed by a company, a director or a senior officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence, he or she also commits an offence and is liable on conviction on indictment to a fine not exceeding one million dollars or to imprisonment for a term not exceeding ten years or to both.

Filing and delivery of documents.

**67.** (1) Unless otherwise required by the Commission, a document required to be filed with or delivered to the Commission

under this Act, must be filed or delivered by post or electronic means to the address of the Commission, unless the Commission otherwise requires.

(2) A document filed with or delivered to the Commission under subsection (1) is deemed to be filed or delivered on the day of its actual receipt by post or electronic means at the address of the Commission.

**68.** A document filed or delivered under section 67, also requires submission to the public, and such document will be made available to members of the public, via the electronic filing portal of the Commission.

Publication of documents.

**69.** A regulated investment fund, investment fund manager, or investment fund administrator shall inform the Commission of its intent to wind up, dissolve or terminate within thirty days or such other time period as may be prescribed by the Commission before the formal winding up, dissolution or other termination procedure has commenced.

Winding up, dissolution and termination.

**70.** The Commission may, by Notice published in the *Gazette*, recognise a country for the purposes of this Act.

Recognised country.

**71.** (1) The Commission may make Rules to give effect to the functions of the Commission under this Act.

Rules.

(2) Without limiting the generality of subsection (1), the Commission may make Rules to prescribe—

- (a) the fee for filing or delivering a document, the making of an application, taking of an action or a request;
- (b) the late fee if a person files or delivers a document after the date on which the filing or document is required;
- (c) the additional fee if a person is late in paying an

annual renewal fee;

(d) an exemption from the authorisation requirements;

(e) the forms required under this Act.

(3) Rules made under this section shall be published in the *Gazette*.

Regulations.

**72.** (1) The Minister may, on the recommendation of the Commission, make Regulations that are necessary or expedient for carrying out the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may, on the recommendation of the Commission, make Regulations to prescribe —

(a) the criteria for fit and proper;

(b) the procedure for applications made under this Act;

(c) the process for change in service-providers;

(d) outsourcing of functions of a service-provider;

(e) business conduct and conflict of interest;

(f) supervision compliance and risk management systems of service-providers;

(g) independence of service-providers;

(h) the appointment of an operator, investment fund manager, investment fund administrator and custodian;

- (i) the penalties to be imposed for violation of the Regulations that does not exceed one hundred thousand dollars;
- (j) any other matter required for giving effect to this Act.

Passed in the House of Assembly this 16th day of December, 2024.

**DANIEL JAMES**

*Clerk of the House of Assembly.*

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