

CONSULTATION PAPER
FOR DISCUSSION PURPOSES ONLY
Reform of the Mutual Funds Act, CAP 320B



**FINANCIAL SERVICES
COMMISSION**

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EXECUTIVE SUMMARY

The Commission is proposing a complete modernisation of Barbados' investment funds framework, including replacing the existing Mutual Funds Act, CAP 320B with a new, more comprehensive model.

The reform is driven by core issues including:

- The scope of the current law is too narrow, only addressing “mutual funds” and excluding many modern fund structures;
- It lacks risk-based differentiation, treating all funds similarly regardless of complexity or investor type;
- It does not adequately provide for the full range of powers or requirements needed for supervision of key market participants or market activities; and
- Strengthening investor protection, enhancing regulatory oversight, and supporting innovation, including ESG and emerging asset classes.

In this context, priority recommendations are:

1. Replace the Mutual Funds Act with a modern Investment Funds / Collective Investment Schemes framework;
2. Adopt a differentiated regime for retail, professional, private, innovative and foreign funds;
3. Establish clear licensing / registration requirements for fund managers, administrators, custodians, placement agents and other service providers;
4. Strengthen disclosure, valuation, custody, redemption and reporting requirements; and
5. Introduce a more robust administrative enforcement regime and clearer FSC rule-making powers.

BACKGROUND & CONTEXT

Purpose of Reform

This reform initiative seeks to repeal and replace the Mutual Funds Act with a modern investment fund framework, expand the regulatory perimeter to include a broader range of fund structures. In doing so, the objective is to introduce risk-based and proportionate regulation, while strengthening governance, disclosure and investor protection. It is anticipated that collectively, the proposed reforms will also enhance Barbados' competitiveness as an international funds jurisdiction.

The existing Mutual Funds framework lacks the flexibility required to meet global investor expectations and support modern fund structures, including private, professional, and alternative investment vehicles. Key limitations include:

- Absence of clear differentiation between retail, professional, and private funds
- Limited provisions for cross-border fund recognition and migration
- Inadequate calibration of disclosure and governance requirements
- Lack of proportionality in regulatory obligations

Reform is, therefore, required to introduce a modern, more adaptive, risk-based regime capable of supporting both retail investor protection and institutional market growth.

Key Contextual Factors Impacting the Sector

In this context, key factors impacting the sector include:

- Narrow legislative scope limited to “mutual funds”
- Increased global regulatory scrutiny and cooperation
- Increasing global competition for fund domiciliation
- Growth in alternative and private investment structures
- Demand for cross-border fund mobility and recognition
- Emergence of digital and virtual asset products
- Emerging ESG and sustainable investment trends
- Need for regulatory flexibility and efficiency

Summary of Gap Analysis & Benchmarking

The Commission has conducted a comparative review of Barbados’ framework against leading jurisdictions and key findings include an over-reliance on entity-based licensing models; insufficiently differentiated regulatory treatment across activities; limited enforcement tools relative to peer jurisdictions; and gaps in cross-border cooperation mechanisms. More specifically, the key structural and regulatory deficiencies include:

- Limited scope excluding modern fund structures
- Lack of differentiation between fund types
- Weak regulation of service providers
- Inadequate disclosure and investor protection frameworks
- Lack of proportionality in regulatory obligations
- Limited enforcement tools and supervisory flexibility

On the other hand, leading jurisdictions generally demonstrate:

- Clear fund classification frameworks (retail, professional, private)
- Strong governance and service provider oversight

- Flexible, risk-based regulatory approaches
- Robust cross-border recognition mechanisms

Barbados must, therefore, modernize to remain competitive.

Core Directions for Legislative and Regulatory Reform

In this context, it is proposed that Barbados' legislative and regulatory reform for this sector include:

1. Replace the Mutual Funds Act with a comprehensive investment funds framework
2. Introduce tiered fund classification based on risk and investor type
3. Establish licensing and oversight for key service providers
4. Strengthen disclosure, governance, and operational requirements
5. Enhance enforcement and supervisory powers
6. Facilitate cross-border fund activity and recognition
7. Integrate ESG and sustainable finance considerations

For discussion purposes only, please find attached as **Appendix I**, a proposal for an Investment Funds Act prepared by a consulting firm and submitted to the Commission for consideration. It remains under active review and subject to fundamental change.

ESG & Sustainable Finance

ESG Vision Statement

Barbados is committed to strengthening the resilience, integrity, and inclusiveness of its financial system through the integration of Environmental, Social, and Governance (ESG) considerations into its legislative and regulatory framework.

Global developments, including guidance from the Financial Stability Board and the United Nations Environment Programme Finance Initiative, have highlighted the growing importance of incorporating climate-related and broader sustainability risks into financial decision-making, governance practices, and supervisory approaches. Barbados recognizes the need to align with these evolving expectations while ensuring that reforms are appropriately calibrated to the domestic context.

This consultation therefore proposes the adoption of ESG as a cross-cutting principle across the non-bank financial services sector, with the following objectives:

- Strengthening the identification and management of climate-related and other long-term risks to support financial stability;
- Promoting financial inclusion and fair treatment of consumers;

- Enhancing governance, transparency, and accountability across regulated entities; and
- Supporting, where appropriate, the mobilization of capital toward sustainable and climate-resilient economic activity.

The proposed approach is grounded in proportionality and practicality, recognizing the diversity of institutions within the Barbadian financial system. ESG integration will be implemented on a phased basis, supported by clear guidance and ongoing stakeholder engagement, to ensure that requirements are aligned with the size, complexity, and capacity of regulated entities.

Through this reform process, Barbados seeks to ensure that its financial sector remains resilient and well-regulated, while also positioning itself to respond effectively to emerging risks and opportunities in a rapidly evolving global environment.

ESG as a Cross-Cutting Theme

ESG considerations are increasingly central to financial sector development, shaping risk management, capital allocation, and regulatory expectations globally. For Barbados, ESG is not only a matter of international alignment but also a strategic national priority, given its vulnerability to climate change and its commitment to sustainable and inclusive growth. Global standards and guidance from bodies such as the Financial Stability Board (FSB), the International Association of Insurance Supervisors (IAIS), International Organisation of Securities Commissions (IOSCO), International Credit Union Regulators Network (ICURN) and the United Nations Environment Programme Finance Initiative are increasingly emphasizing:

- Integration of climate and broader ESG risks into financial decision-making;
- Enhanced disclosures, including climate-related and sustainability reporting; and
- Consideration of long-term systemic risks, particularly those related to climate change.

For Barbados, embedding ESG into legislative and regulatory reform supports multiple policy objectives:

- **Financial Stability:** Improving the identification and management of long-term and systemic risks, particularly climate-related risks
- **International Competitiveness:** Aligning with global expectations to maintain credibility and market access
- **Inclusive Growth:** Expanding access to financial services and supporting underserved communities
- **Climate Resilience:** Mobilizing capital toward adaptation and mitigation efforts

A key policy consideration is adopting a proportionate and phased approach, ensuring ESG requirements are:

- Commensurate with the size and complexity of regulated entities
- Operationally feasible for smaller institutions
- Supported by clear guidance and capacity-building initiatives

Sector-Specific ESG Calibration: ESG as a Strategic and Competitive Differentiator

In the investment funds sector, ESG integration represents both a regulatory priority and a strategic opportunity to enhance Barbados' competitiveness as a fund domiciliation jurisdiction.:

- **Environmental:** global investor demand for ESG-aligned and climate-resilient investment products continues to grow, creating opportunities for the development of sustainable and impact-oriented funds.
- **Social:** include supporting investor education and enabling informed investment decisions, as well as facilitating access to products that align with investor values and long-term objectives.
- **Governance:** strong emphasis is placed on disclosure, transparency, and the mitigation of greenwashing risks, particularly for funds marketed as sustainable or ESG-focused.

Barbados can leverage these dynamics by supporting the establishment of ESG-focused funds, aligning disclosure and reporting frameworks with international expectations, and promoting credibility in sustainable finance. Accordingly, the regulatory approach will prioritize clear disclosure standards, sound product governance, and robust investor protection, while maintaining sufficient flexibility to support innovation and market growth.

Unifying Policy Approach

Across all sectors regulated and supervised by the Commission, ESG integration would be anchored on three consistent principles:

1. **Proportionality:** requirements should reflect the size, complexity, and risk profile of entities.
2. **Phased Implementation:** the intention is to start with high-level principles and disclosures, with scope for gradual enhancement.
3. **Alignment with National Priorities:** ESG frameworks should support Barbados' broader goals, particularly:
 - (a) climate resilience
 - (b) financial inclusion
 - (c) sustainable economic development

PROPOSED LEGISLATIVE PILLARS

Pillar I: Expanded Regulatory Perimeter and Scope for Funds

The law focuses narrowly on “mutual funds”, excluding other structures used globally (e.g. partnerships, alternative funds). This creates uncertainty and limits Barbados’ attractiveness to international investors. It is proposed that the new primary legislation:

- a. Have a single, broad definition of investment funds to cover all structures; and
- b. Ensure all relevant fund structures are covered by explicitly defining multiple categories (greater clarity).

Pillar II: Fund Categorisation and Proportionality

The Commission is seeking to propose a new framework that remedies the challenge associated with the lack of distinction between investor types and fund structures. It should determine how Barbados differentiates between retail, professional, private, innovative and foreign funds. The Commission is looking to ensure that it incorporates the “same risk - same regulation” principles. It is therefore considering the following types of areas for differentiation – registration versus licensing, whereby funds that are registered have different obligations from those that are licensed as seen in other jurisdictions. This would result in the following:

A. Differentiation by Investor Type:

- Retail funds would be subject to the highest level of regulation
- Professional / institutional funds would be subject to lighter requirements
- Private / limited investor funds would be subject to minimal regulatory burden
- Innovative funds would be subject to flexible/experimental regime

B. Differentiation by Jurisdiction / Activity:

- Domestic funds (offered in Barbados)
- Foreign funds operating in Barbados
- Export funds (operating from Barbados but offered overseas)

Pillar III: Governance, Operations and Service Providers

Another significant area being proposed for reform includes the governance and operations of funds. There are many types of service providers and intermediaries within the fund space but the legislation requires licensing in respect of fund administrators/managers only and has limited regulatory

requirements related to custodians and other service providers. As such, this consultation is seeking to assess what licensing, conduct and operational requirements should apply to managers, administrators, custodians, placement agents, promoters and other service providers.

Consideration is currently being given to establishment of a licensing/ registration regime for:

- Fund managers / investment managers
- Administrators (as distinct from managers)
- Custodians/ Depositories
- Promoters / placement / marketing and distribution agents
- Other relevant operators/actors
 - Funds Advisers/ Researchers
 - Sub-managers/ advisers
 - Researchers
 - Trustee/nominees
 - Prime brokers (hedge funds)
 - Valuation agents
 - Registrar and transfer agents
 - Fund governance providers eg. Independent directors/ corporate service providers
 - Delegated/ outsourced providers

It is also proposed to clarify the roles and responsibilities of each participant through a definition of legal duties and areas of accountability.

Other areas for consideration include stronger rules on fund formation and structure governance frameworks, operational controls and outsourcing.

Pillar IV: Investor Protection and Market Conduct

In looking at the weakness related to investor protection and market conduct the Commission has to consider what disclosure, valuation, pricing, custody, redemption and conflict of interest-management safeguards are essential. The current reform direction would include:

- a. Enhanced disclosure frameworks, differentiated based on the type of fund
- b. Stronger protections for retail investors, including investment limits and enhanced regulatory reporting

- c. Greater flexibility for sophisticated/ institutional investors including prospectus/offering document exemptions or simplified requirements
- d. Improved conduct rules including rules for investor communications and a notification regime for fund marketing

Pillar V: Supervision, Enforcement and Regulatory Agility

The range of powers required for effective supervision of domestic and cross-border fund-related business needs to be robust to ensure adequate protection of investors and protect the integrity of the market. It is proposed that the powers of the Commission be expanded, including to support additional administrative penalties and to enable the Commission to become a full signatory to the IOSCO MMoU and a signatory to the EMMoU.

Relevant Amendments to the Financial Services Commission Act

Additionally, for completeness, please find attached as **Appendix II** a draft Financial Services Commission (Amendment) Bill, 2025 (the “FSCA Bill”), which among other things, seeks to support the Commission’s ability to satisfy the requirements for becoming a signatory to the IOSCO MMoU and EMMoU, strengthening the Commission’s cross-border supervisory cooperation. This FSCA Bill would potentially impact the Securities sector by:

1. Expanding the powers of the Commission as it relates to access to information in various forms and the ability to share that information;
2. Enhancing the framework for cooperation with other regulatory authorities; and
3. Strengthening the confidentiality framework. In particular, the obligations relating to protection and proper use of confidential information are extended to former members and former employees of the Commission. The Bill also expands the circumstances in which confidential information may be disclosed, including to foreign regulatory authorities.

Pillar VI: ESG and Sustainable Finance

ESG investing is becoming mainstream, with institutional investors requiring ESG disclosures and reporting frameworks and alignment with global standards (e.g., climate risk, sustainability metrics). Barbados has an opportunity to differentiate itself by promoting sustainable and climate-focused investment vehicles and leveraging its vulnerability to climate change as a platform for green finance innovation.

CONSULTATION QUESTIONS: Investment Funds Reform

Pillar I: Expanded Regulatory Perimeter and Scope for Funds

1. How should the scope of the new framework be defined to capture all relevant investment fund structures, and are there any key activities currently outside the regulatory perimeter that should be included?
2. Should Barbados adopt a broader “collective investment schemes” approach or retain a more defined “investment funds” framework, and what are the practical implications of each?
3. Where do you currently see the greatest risks of regulatory gaps or arbitrage in the existing framework?

Pillar II: Fund Categorisation and Proportionality

4. What is the most appropriate approach to fund categorisation in Barbados:
 - (a) by type (e.g. retail, professional, private, innovative, foreign);
 - (b) by jurisdiction/ activity (e.g. domestic, foreign, export); or
 - (c) a hybrid approach?
5. What characteristics including limits should be used to clearly distinguish these categories?
6. Aside from disclosure, governance, investor eligibility regulatory requirements, what other aspects of fund operations should be differentiated?

Pillar III: Governance, Operations and Service Providers

7. What are your views on the proposed range of persons required to be licensed? Is it too wide, too narrow or appropriate? Should anyone in particular be excluded/ included? If so, why? What practical challenges may arise from expanding the scope of persons subject to licensing e.g. to include new types of licencees i.e. custodians etc; distinguishing between administrators and managers, and how can these challenges be mitigated?
8. What type and level of requirements related to custody of assets, asset segregation, valuation, marketing, distribution, conduct and operational risks should be applied to each type of proposed fund?

Valuation, Pricing and Redemption:

- (a) How should NAV calculation, pricing errors and redemption suspensions be handled?
- (b) What rules should be applied to closed-ended funds?
- (c) How should disputes, pricing errors and investor remediation be addressed within the framework?

- (d) Are additional safeguards needed for assets linked to emerging sectors such as carbon markets, biodiversity credits or blue economy investments?

Liquidity Risk Management

- (a) What liquidity framework is appropriate for open-ended funds?
- (b) Should the law expressly support stress testing and liquidity management tools?
- (c) Do ESG-focused or impact funds present distinct liquidity considerations that should be reflected in the regulatory framework?

Marketing, Distribution and Conduct

- (a) How should “marketing” and “private placement” be defined? How should “green”, “resilient” and “sustainability” be defined?
 - (b) What standards should apply to advertising/marketing and placement/distribution agents?
 - (c) How should we treat “influencers” and other media or popular figures who “promote” funds (informally)?
 - (d) What conduct standards should apply when selling to retail investors? How should the conduct standards for sophisticated or institutional investors differ?
 - (e) How should sophisticated investors be defined?
 - (f) How should reverse solicitation be defined and regulated?
 - (g) What standards should apply to ESG-related marketing and labelling of funds (eg. green, sustainable, climate-resilient, blue-economy etc)
9. When (under what conditions or at what threshold(s)) should marketing require authorisation vs notification?

Pillar IV: Investor Protection and Market Conduct

- 10. Should there be minimum requirements for independent oversight in some fund categories?
- 11. What improvements are most needed in respect of disclosure, and investor protection frameworks?
- 12. Should there be restrictions or guidance on the use of ESG terminology to prevent misrepresentation?
- 13. What local presence requirements are needed in respect of foreign funds?

Pillar V: Supervision, Enforcement and Regulatory Agility

14. What do you see as the most significant operational vulnerabilities in the current system?

Pillar VI: ESG and Sustainable Finance

15. What role should ESG play within the investment funds framework in Barbados—core requirement, disclosure-based approach, or market-driven feature?
16. Should fund operators be required to demonstrate governance frameworks for managing ESG risks where relevant to the fund's strategy?
17. How can the framework support sustainable investment products while preventing greenwashing and misleading claims?

Growth & Development including Cross-border Activity

18. What barriers currently limit Barbados' attractiveness as a fund domicile?
19. How should the framework support cross-border fund activity (including inbound and outbound structures) while managing associated risks? – Under what terms should passporting be facilitated?
20. What key features would enhance Barbados' attractiveness without compromising regulatory credibility?
21. Where are the greatest opportunities for Barbados in ESG, climate, or impact-oriented funds?
22. Do the potential reforms support the growth of the funds sector domestically and internationally? What else is needed for growth?

Investment Funds Legislation Refinement

(Driving Actionable Outcomes)

23. What are the top 2–3 reforms that should be prioritised within the next 12 months?
24. What is the single biggest implementation challenge, and how can it be addressed?
25. What practical guidance, transitional support, or regulatory clarity will industry need to successfully adapt to the new framework?

APPENDIX I

FOR DISCUSSION PURPOSES ONLY, THIS PROPOSAL REMAINS UNDER ACTIVE REVIEW AND SUBJECT TO FUNDAMENTAL CHANGE.

SUBJECT DRAFT INVESTMENT FUNDS ACT UNDER CONSIDERATION

DATE 27 MAY 2025

Methodological note and reader's guide

This document presents a proposal for an Investment Funds Act (the "Proposal") prepared by a consulting firm and submitted to the Commission for consideration. **It remains under active review and subject to fundamental change.** This Proposal was prepared as an indicative replacement of the existing Mutual Funds Act as the primary legislative framework governing investment funds and related operators in Barbados.

The drafting of this legislative proposal by the consulting firm followed a two-phase approach. The first phase involved a comprehensive legal and regulatory assessment, resulting in the preparation of a technical report outlining key areas for reform, regulatory benchmarks, and comparative analysis (the "**Report**"). Based on the findings and policy options discussed in the Report and taking into account the indications provided in the position paper prepared by the Commission (the "**Position Paper**"), the second phase of the consulting firm's activity focused on the full drafting of the proposed legislative text, presented here for further consideration.

For ease of interpretation and effective review of the Proposal, the consulting firm has prepared the following methodological clarifications and guidance for readers, which may guide in the analysis of the Proposal.

1. Highlighted provisions for targeted review

While all provisions of the Proposal are open to review and adjustment in light of broader policy considerations, certain sections have been specifically highlighted in square brackets to draw attention to areas that may warrant particular scrutiny or further consideration.

2. Coordination with existing domestic legislation

The provisions of the Proposal are designed as a comprehensive and standalone framework governing the establishment, operation, supervision and marketing of investment funds. However, it is important to highlight that the current drafting will need to be coordinated with all existing pieces of legislation in force in Barbados, to ensure a consistent and full alignment of the domestic legal framework. Accordingly, if adopted, a systematic reconciliation will have to be undertaken between the provisions of the Proposal and other statutes or regulatory instruments that may govern related subject matter, including but not limited to company law, trust law, partnership law, anti-money laundering legislation, and the broader financial regulatory framework.

Given this, certain provisions of the Proposal may require alignment, coordination or integration with other legislative instruments currently in force. In some cases, amendments to existing laws or regulations may be necessary to avoid overlaps, gaps or inconsistencies. Additionally, the implementation of the Proposal should take into consideration the potential interaction with other regimes - both general and sectoral - to ensure legal certainty and operational coherence across the regulatory system.

This document therefore should be read as being for discussion purposes only, and subject to further legal and institutional review, including input from relevant government departments, regulatory agencies, and legislative drafters. A comprehensive legal mapping exercise will need to be conducted before the finalization and formal adoption of the Proposal, to identify any necessary adjustments, cross-references or consequential amendments to other legislation.

3. Purpose and balance of regulatory approach

The provisions of the Proposal are designed to achieve a measured balance between two key objectives:

- (i) ensuring a flexible, market-oriented regulatory environment that enhances the attractiveness of Barbados as a domicile for investment funds; and
- (ii) upholding high standards of investor protection in line with international best practices and the guidance of global standard-setting bodies (*e.g.*, IOSCO).

Of course, this balance can be recalibrated - towards more flexibility or stricter safeguards - based on the policy direction determined by the competent authorities of Barbados.

3. Streamlined access for EU-based structures and possible extension to other jurisdictions

Certain provisions are intended to provide a streamlined registration and operational framework for EU-based investment fund operators, in line with comparable approaches adopted by other jurisdictions (*e.g.*, Cayman Islands, Bahamas).

This preferential treatment could be extended to other jurisdictions considered equivalent (*e.g.*, the United States, Canada, etc.), or restructured to adopt a more jurisdiction-neutral model, with simplified procedures to be detailed under second level regulations.

4. Grey-highlighted sections of a technical or procedural nature

Text highlighted in grey reflects more detailed or procedural provisions, which may be fully transferred to secondary legislation (*e.g.*, regulations issued by the Commission), depending on the preferred level of granularity in the primary Act. Such sections are intended to provide indications on matters which may be further detailed in second level provisions, in order to facilitate the drafting of such regulations.

5. Revisions from the original Report and/or the Position Paper

Certain provisions outlined in the Report and/or in the Position Paper have been revised, adapted, or reformulated in this draft, in response to consistency needs identified during drafting or to address emerging technical considerations. Other provisions may also have not been included in the Act, given that they would be more appropriately addressed through secondary legislation or future regulatory guidance. Notable adjustments include the following:

- (i) the Position Paper proposed a relatively detailed definition of “investment fund”, identifying specific legal structures to be included or excluded, and distinguishing between different categories of funds. It also recommended introducing a broader category of “collective investment schemes” to capture other types of investment schemes, including unstructured funds. In the drafting of the Act, however, the consulting firm opted for a single, general definition of “investment fund” broad enough to encompass all relevant forms and types of collective investment vehicles. This approach was adopted to ensure flexibility and simplify the structure of the Act, avoiding the need to introduce overlapping or subsidiary definitions. As a result, the term “collective investment scheme” has not been included in the legislative text. For the same reason, no definition of “mutual fund” has been included in the Proposal;
- (ii) the Position Paper recommended dividing investment funds into two broad categories - Regulated Funds and Registered Funds - based on factors such as investor type, place of establishment, and level of regulatory scrutiny. While this approach aligns with the structure discussed in the Report, the consulting firm opted for a more streamlined drafting approach in the Proposal. Rather than introducing overarching categories such as “regulated” and “registered” funds, the Proposal separates the rules on fund establishment (licensing and registration) from those on fund marketing. More specifically:
 - Funds targeting retail investors must obtain a licence from the Commission;
 - Professional, private and innovative funds are subject to a lighter registration process;

- all funds, regardless of licence or registration status, are subject to a notification regime for marketing activities in or from Barbados.

Furthermore, with the aim of simplifying the fund structures envisaged under the Proposal, and in line with the comments of the Commission on the Report, the consulting firm removed the categorization of investment funds in separate “classes”.

The following table summarizes the proposed fund categories as envisaged in the Proposal:

Fund Category	Initial Licensing/ Registration Requirement	Eligibility	Marketing Regime
Retail Funds	Licensing	Locally domiciled; continuous offering; open to the public	Subject to prior authorisation for marketing in Barbados
Professional Funds	Registration	Locally domiciled; targeted to professional/sophisticated investors	Notification required for marketing in Barbados or abroad
Private Funds	Registration	Locally domiciled; targeted to Limited number of investors; closed offering	Notification required for marketing in Barbados or abroad
Innovative Funds	Registration	Subject to innovation-focused criteria	Notification required for marketing in Barbados or abroad
Foreign Funds (all types)	N/A (Marketing only)	Established outside Barbados	Notification required for marketing in Barbados

- (iii) the definition of “sponsor” originally suggested in the Position Paper was limited to certain categories of financial professionals or institutions. In the Proposal, the consulting firm opted for a broader and more functional definition, referring to any fund manager, AIFM, or third-country fund manager that has already successfully submitted one or more fund applications under the Proposal and has been registered as a sponsor by the Commission. This definition has been incorporated within the section dedicated to expedited licensing and registration procedures;
- (iv) as a result of the Commission’s comments on the regulatory powers addressed in the Report, the Proposal includes general provisions granting the Commission the authority to issue regulations, rules, and guidelines. These provisions are intended to ensure a coherent and layered regulatory framework, while acknowledging that the Commission already holds similar powers under the Financial Services Commission Act (FSCA), which is currently subject to a separate amendment process. In this respect, the relevant sections of the Proposal may need to be aligned with the forthcoming amendments to the FSCA. Accordingly, such provisions may be retained, amended, or removed based on the final institutional and legislative allocation of regulatory functions;
- (v) the Proposal does not include detailed provisions on international cooperation mechanisms or mutual recognition frameworks. It was noted that the legal basis for the Commission’s powers to enter into cooperation agreements - including the ability to exchange information, assess equivalence, and participate in international memoranda of understanding - is already addressed or expected to be enhanced within the FSCA, currently undergoing amendments. In this context, and in order to ensure legal clarity, avoid duplication, and preserve the internal consistency of the Barbadian legal framework, it was considered appropriate not to replicate such provisions in the Proposal. Instead, it is assumed that

all matters relating to international cooperation - including mutual recognition of foreign jurisdictions and the regulatory treatment of overseas fund operators - will be governed either under the FSCA or under other sector-specific legislation.

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INVESTMENT FUNDS ACT

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SCHEDULE 1

CHAPTER [•]

INVESTMENT FUNDS

An Act to provide for the regulation, authorization and control of investment funds and fund managers, fund administrators and other services providers carrying on business in or from within Barbados and for related matters [•]

[Date] Commencement.

PART I - PRELIMINARY

Citation

1. This Act may be cited as the *Investment Funds Act*.

Short title.

Interpretation

2. (1) In this Act,

Definitions.

“AIFM” means an investment fund manager authorized pursuant to the AIFMD and the relevant implementing measures thereto, whose regular business is managing one or more EU AIFs;

“AIFMD” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

“auditor” means a person referred to in section 153 of the *Companies Act*;

“carry on business in or from Barbados” and its derivatives, means to engage in any activity reserved to investment funds and/or regulated entities under this Act;

“close-ended fund” means any investment fund other than an open-ended fund;

“company” means a body corporate that is incorporated or registered under the *Companies Act* or the law of any other jurisdiction;

“Commission” means the Financial Services Commission established by section 3 of the *Financial Services Commission Act (2010)*;

“constitutive documents” means the principal documents governing the formation and operation of an entity and includes the trust deed in the case of a unit trust, articles of incorporation in the case of a company, partnership deed in the case of a partnership, articles of organization in the case of a society with restricted liability, [...], and all other material agreements;

“Court” means [the Court as established in section 26 and ff. and the related Third Schedule of the *Financial Services Commission Act (2010)*];

“custodian” means an entity carrying out the functions referred to under section [36] that has been granted an authorization pursuant to section [35];

“equity interest” means [a share, the beneficial interest in a trust unit or a partnership interest, a quota in a society with restricted liability or other security or note that

(a) carries an entitlement to participate in the profits or gains of the issuer thereof; and

(b) except where the issuer is a close-ended fund, is redeemable or repurchasable at the option of the holder before the commencement of winding-up or dissolution of the entity];

“EU” means the European Union established by the Treaty on European Union signed in Maastricht on 7th February 1992;

“EU AIF” means an investment fund, including compartments thereof, established in an EU Member State and authorized pursuant to the AIFMD and the relevant implementing measures thereto;

“EU Member State” means a member state of the European Union;

“feeder fund” means an investment fund that invests, directly or through intermediate vehicles, at least [85]% of its assets in equity interests of (i) a single master fund, or (ii) two or more master funds having identical investment strategies;

“financial instrument” means [any instrument listed in Schedule I, including instruments issued through distributed ledger technology];

“fund administration licence” means a licence granted under section [64].

“fund administrator” means an entity licensed under section [64] or registered under section [71] that carries out fund administration activities in or from Barbados in favour of one or more investment funds;

“fund administration activity” means the provision, in favour of an investment fund, of one or more of the following support services, carried out on a professional basis

- (a) providing the principal office of an investment fund in Barbados and ensuring that the principal office is maintained throughout the entire duration of the investment fund;
- (b) issuing and redeeming equity interests in the investment fund;
- (c) maintaining corporate and financial records of the investment fund;
- (d) distributing dividends, profits, capital gains and capital losses to investors in the investment fund;
- (e) paying the expenses of the investment fund;
- (f) maintaining a register of the investment fund’s investors;
- (g) calculating the value of the assets of the investment fund;
- (h) calculating the value of the equity interests of the investment fund;
- (i) preparing tax returns and providing audit support to the investment fund;
- (j) monitoring compliance with established policy (back-office functions);
- (k) coordinating with custodians and reconciling custody accounts and transactions;

“fund management activity” means the management of investment funds’ assets and related risks, carried out on a professional basis and organized to be exercised vis-à-vis an indeterminate number of investment funds. Fund management activity includes

- (a) investment strategy development,
- (b) management of the fund’s portfolio (making buy, sell and hold decisions),
- (c) research and analysis, including macroeconomic and company-specific research,
- (d) risk management, including hedging activity,
- (e) tracking performance against targets and benchmarks,
- (f) client relationship management,
- (g) performance monitoring; and

(h) trading and execution;

“fund management licence” means a licence granted under section [34];

“holding company” means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value;

“innovative fund” means an investment fund that is required to be registered with the Commission under this Act, and

(a) satisfies certain prescribed parameters and requirements of a category, class or type of investment fund previously approved by the Commission, and

(b) is exclusively offered to professional investors and/or sophisticated investors;

“investment fund” has the meaning assigned to it in section [7(1)]; and “fund” has a corresponding meaning;

“investment fund licence” means a licence granted under section [15];

“investment fund manager”, “fund manager” or “manager” means an entity with its registered office in Barbados, authorized to perform fund management activities and responsible for managing the assets of the fund and the associated risks, in accordance with the fund’s investment policy and offering documents;

“investor” means a person who holds or owns equity interests issued by an investment fund;

“leverage” means any method by which the investment fund manager increases the exposure of an investment fund it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;

“marketing” means any direct or indirect offering or placement, on the initiative or on behalf of a fund manager, AIFM, or third country fund manager of the equity interests of an investment fund to investors domiciled or resident in the territory of Barbados;

“marketing licence” means a licence granted under section [80];

“master-feeder structure” means an investment structure made of a master fund and one or more feeder funds investing in such master fund and authorized by the Commission pursuant to section [28];

“master fund” means an investment fund in which one or more feeder funds invest, directly or through intermediate vehicles, at least [85]% of their assets;

“Minister” means the Minister of Finance, Economic Affairs and Investment;

“offering document” means a document, other than a prospectus, containing all the information referred to under section [90];

“open-ended fund” means a fund whose investors are entitled to request the redemption or repurchase of equity interests from the fund’s assets, in accordance with the terms and frequency established in the fund’s governing documents, prospectuses and/or offering documents.

“operator” means an individual domiciled in Barbados or an entity established in Barbados acting on behalf of an investment fund in accordance with this Act, other than the fund manager of such investment fund;

“overseas regulatory authorities” means the national authorities of EU Member States and third countries which are empowered by the laws or regulations of such EU

Member States or third countries to exercise functions corresponding to any function of the Commission;

“own funds” means assets that are set aside to cover risks and includes paid-up share capital, reserves and undistributed profits;

“partnership” means

- (a) a limited partnership registered under the *Limited Partnerships Act* or a partnership under the *Partnership Act*; and
- (b) a partnership constituted under the laws of a jurisdiction other than Barbados;

“placement agent” means an entity licensed under section [80] or registered under section [81] that carries out marketing activities in or from Barbados;

“private fund” means an investment fund which is required to be registered with the Commission under this Act and is exclusively offered on a private placement basis to a limited number of professional investors and/or sophisticated investors, not exceeding [10] investors;

“professional fund” means an investment fund which is required to be registered with the Commission under this Act and is exclusively offered to professional investors and/or sophisticated investors;

“professional investor” means

- (a) any credit institution licensed in Barbados or under the laws of another jurisdiction and subject to regulatory supervision;
- (b) any investment firm licensed in Barbados or under the laws of another jurisdiction and subject to regulatory supervision;
- (c) any insurance or reinsurance company licensed in Barbados or under the laws of another jurisdiction and subject to regulatory supervision;
- (d) any investment fund licensed or registered under this Act or regulated under the laws of another jurisdiction, provided that the fund itself or its fund manager is subject to regulatory supervision;
- (e) any pension fund where a professional fund manager has been appointed to manage the fund's assets;
- (f) national, regional, international or supranational public bodies;

“prospectus” means a prospectus prepared in accordance with section [91] for the purposes of the offer of equity interests in retail funds;

“qualifying equity holdings” means a share of the voting rights or equity holding equal to at least 10 percent, 20 percent, 30 percent, and/or 50 percent, taking into account the equity interests already held, or any other percentage granting control or significant influence over the entity;

“record” means any method or device by which information may be stored;

“regulated entity” means an entity licensed or registered pursuant to Part III;

“relevant operating functions” means any function the failure or inadequate performance of which would seriously compromise

- (a) the ability of a regulated entity to comply with its obligations under this Act and any other applicable law;
- (b) the financial performance of the regulated entity; and/or
- (c) the soundness or continuity of the regulated entity's core services and activities;

“retail fund” means a fund which is required to be licensed with the Commission under this Act and

- (a) offers, or solicits offers, or proposes to issue, solicits, or issue, on a continuous basis, equity interests in the fund to the general public in Barbados or in another jurisdiction; and
- (b) the equity interests of which may be listed on or traded on a recognised exchange in Barbados or be cross listed or offered on a recognised exchange and marketed to the general public in Barbados;

“retail investor” means an investor who does not qualify as a professional investor or sophisticated investor;

“reverse solicitation” means a situation in which a professional investor domiciled or resident in Barbados autonomously initiates contact with a fund manager, without any form of prior solicitation or inducement directed at such investor by the fund manager not on behalf of the latter;

“securitisation” means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics

- (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;
- (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

“securitisation special purpose entities” means entities whose sole purpose is to carry on one or more securitisations and other activities which are appropriate to accomplish that purpose;

“significant influence” means the power to participate in the determination of the financial and management policies of the entity in which the participation is held, without having control, either on an exclusive basis or jointly with other persons, over such entity;

“sophisticated investor” means

- (a) any natural person whose individual net worth, or joint net worth with the person's spouse exceeds \$ 2,000,000 excluding his/her primary residence;
- (b) any trust with total assets in excess of \$ 10,000,000;
- (c) any entity with net assets in excess of \$ 10,000,000;

“third country” means a country other than Barbados and the EU Member States;

“third country fund” means an investment fund, other than an EU AIF, established in a third country.

“third country fund manager” means an investment fund manager established in a third country.

[...]

(2) A reference in this Act to the words “to file” means to file with the Commission.

(3) Unless provided otherwise, reference in this Act to an “investment fund”, a “fund manager”, a “fund administrator”, a “custodian”, a “placement agent”, an “auditor”, [...] shall be construed as a reference to an entity that is established in Barbados.

- (4) An entity shall be regarded as established in Barbados where
- (a) its constitutive documents are governed by the laws of Barbados, and/or
 - (b) it has a registered office or, in the appropriate case, a branch, in Barbados.

Collective asset management

3. (1) The professional exercise of fund management activities is reserved to fund managers, AIFMs, and third country fund managers holding a licence granted under section [34], or registered under section [52], [57]. Reserved and permitted activities.
- (2) The fund management activity is carried out with a professional character and is, therefore, organized to be exercised towards an indeterminate number of subjects in a systematic and not merely occasional manner. Fund management activity is characterized by the following elements
- (a) the management of a pool of assets;
 - (b) the management of the risks of such pool of assets;
 - (c) the collective nature of the activity, consisting in the management of an investment fund.
- (3) Fund managers referred to under subsection (1) are responsible for the administration and marketing of the investment funds under management. In addition to fund management activities, fund managers referred to under subsection (1) can be authorized to carry out further activities as
- (a) [providing portfolio management services;
 - (b) setting up and managing pension funds;
 - (c) carrying out connected or instrumental activities;
 - (d) providing investment advisory services;
 - (e) marketing equity interests of investment funds managed by third parties, in compliance with the rules of conduct established by the Commission.]
- (4) The provisions of this Act do not apply
- (a) to supranational institutions such as the World Bank, the International Monetary Fund, and other supranational institutions and similar international organizations, when such institutions or organizations manage investment funds for purposes of public interest;
 - (b) to the Central Bank of Barbados and any other national central bank;
 - (c) employee participation schemes or employee savings schemes;
 - (d) holding companies;
 - (e) securitisation special purpose entities;
 - (f) [club deal transactions carried out by a predetermined group of professional or sophisticated investors, jointly deciding to perform a specific investment in their own interest and without offering equity interests to the general public].
- (5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this Section 3.

4. (1) In the provision of fund management activity, the assets of an investment fund shall be held separately from the assets of its fund manager, custodian, fund administrator, and any other service provider. Such assets shall be segregated for all legal purposes and shall not be subject to any claim by creditors of such third parties, nor shall they form part of their estate in the event of liquidation, bankruptcy, or similar proceedings. Asset segregation.
- (2) No creditor of the fund manager, custodian, or any other party involved in the management, custody or administration of an investment fund shall have any right or claim over the assets of the investment fund, and such assets shall not be available to satisfy the debts of such parties.
- (3) Legal and judicial set-off shall not apply to accounts relating to financial instruments or sums of money belonging to an investment fund and deposited with third parties, nor may contractual set-off be agreed in respect of claims held by the investment fund's custodian or sub-custodian against the investment fund or the custodian.
- (4) (3) Unless expressly authorized by the constitutive documents of an investment fund or by written agreement with the fund, no party shall be permitted to use, for its own benefit or that of any third party, any financial instruments, cash, or other assets belonging to the investment fund or held on its behalf.

Fit and proper requirements

5. (1) Individuals performing administration, management, and/or control functions at fund managers, [fund administrators], custodians, [placement agents], and [operators] must be fit to perform their duties. Management bodies.
- (2) For the purposes of subsection (1), the individuals referred therein must meet requirements of professionalism, integrity, and independence, satisfy criteria of competence and fairness, and dedicate the necessary time to effectively carry out their duties.
- (3) The Commission shall establish, by regulation adopted after consultation with the Minister
- (a) homogeneous integrity requirements for all individuals in key positions;
 - (b) professionalism and independence requirements, tailored according to proportionality principles;
 - (c) competence criteria, consistent with the position held and the nature and features of the authorized entity, as well as the appropriate composition of the governing body;
 - (d) fairness criteria, taking into account, among other factors, the individual's business relationships, their conduct towards supervisory authorities, sanctions or corrective measures imposed by such authorities, restrictive actions related to professional activities, and any other factors that may affect the individual's integrity;
 - (e) limits on the simultaneous holding of roles for individuals in key positions at fund managers and custodians, determined according to proportionality principles and taking into account the size of the relevant intermediary;
 - (f) causes for temporary suspension from office and the duration of such suspension.

(4) The administrative and control bodies of the entities referred to in subsection (1) assess the suitability of their members and the overall adequacy of the body itself, documenting the analysis process and duly justifying the outcome of the assessment. In the event of specific and limited shortcomings concerning the criteria set out in subsection (3)(c), the same bodies may adopt the necessary measures to address them. In all other cases, a lack of suitability or a violation of the limits on the simultaneous holding of roles results in removal from office; this is declared by the relevant body within [30] days of the appointment or of becoming aware of the deficiency or subsequent violation. For individuals who are not members of a body, the assessment and declaration of removal are carried out by the body that appointed them.

(5) The Commission, also with the aim of minimizing the burdens on authorized entities, assess the suitability of representatives and compliance with the limits on simultaneous holding of roles, taking into account the assessment carried out and the measures adopted pursuant to subsection (4), if any; in the event of a deficiency or violation, the Commission declares the removal of representatives from office.

6. (1) Holders of qualifying equity holdings in investment fund managers must meet requirements of integrity and satisfy criteria of competence and fairness in order to ensure the sound and prudent management of the entity in which the participation is held. Equity holders.

(2) The Commission, with the regulation referred to under section 5(3) above, defines

(a) integrity requirements;

(b) competence criteria, based on the level of influence that the equity holder can exert over the management of the entity;

(c) fairness criteria, taking into account, among other factors, the business relationships of the equity holder, their conduct towards supervisory authorities, sanctions or corrective measures imposed by such authorities, restrictive actions related to professional activities, and any other factors that may affect the equity holder's integrity.

(3) For the purposes of subsections (1) and (2), the following are also taken into account

(a) equity holdings held through subsidiaries, trusts, or intermediaries;

(b) cases where the rights attached to the equity holdings belong to or are assigned to a party other than the equity holder, or where agreements exist regarding the exercise of voting rights.

(4) in case the requirements and criteria set out in subsections (1) and (2) are not met, (i) the voting rights and any other administrative rights associated with equity holdings exceeding 10 percent or any other percentage granting control or significant influence over the entity, shall not be exercisable, and (ii) the equity holdings exceeding the percentages referred to under (i) must be disposed within the deadlines set forth by the Commission in the regulations referred to under section 5(3) above.

PART II INVESTMENT FUNDS

General provisions

7. (1) “investment fund” means any arrangement which, regardless of its form of establishment
- General features of investment funds and audit of accounts.
- (a) pools capital or assets from investors through the issuance of equity interests;
 - (b) invests such capital or assets on the basis of a defined investment policy;
 - (c) enables investors to participate in or receive profits or income arising from the acquisition, holding, management or disposal of assets of any kind provided that such assets may be subject to a periodical valuation;
 - (d) is managed independently from and in the interest of its investors, that shall not have day-to-day control over the management of the investment fund.
- (2) investment funds may be established in Barbados in the form of
- (a) a registered unit trust;
 - (b) a company;
 - (c) a partnership; or
 - (d) a society,
- that has been granted a licence or has been registered under this Act for the purpose of carrying on business in or from Barbados in compliance with this Act.
- (3) Investment funds cannot pursue a business strategy which includes characteristics such as running predominantly
- (a) a commercial activity, involving the purchase, sale, and/or exchange of goods or commodities and/or the supply of non-financial services;
 - (b) an industrial activity, involving the production of goods or construction of properties; or
 - (c) a combination thereof.
- (4) The financial statements of an investment funds shall be audited annually by an auditor approved by the Commission.
- (5) The auditor under subsection (4) shall
- (a) conduct the audit in accordance with generally accepted auditing standards and prepare an audit report in accordance with internationally recognised accounting principles;
 - (b) when requested to do so by the Commission, provide a report on any matter relating to the financial affairs of the investment fund; and
 - (c) promptly notify the Commission in writing where, in the course of the audit, the auditor becomes aware of any matter that may result in a qualified audit opinion or that reveals a material weakness, deficiency, or non-compliance with the provisions of this Act or with applicable regulations or rules.
- (6) Where the audit report expresses a qualified opinion or highlights material weaknesses, deficiencies, or non-compliance, the Commission may take any

supervisory, corrective, or enforcement action it deems necessary to protect the interests of investors and the integrity of the financial market.

(7) The Commission may require the auditor of an investment fund to

- (a) submit such additional information in relation to the audit as the Commission considers necessary;
- (b) enlarge or extend the scope of the audit to cover specific aspects of the investment fund's business and operations;
- (c) carry out any other examination or establish any additional procedure in any particular case;
- (d) submit a specific report on the matters referred to in paragraph (b) or on any other matter determined by the Commission.

(8) The investment fund shall submit its audited financial statements to the Commission within [4] months after the end of each financial year, or within such further period as the Commission may allow in justified circumstances.

8. (1) Investment funds are managed, at any time, by investment fund managers, AIFMs or third country fund managers duly licensed or registered under this Act, and appointed in accordance with subsection (3). In case of voluntary withdrawal of the fund manager, AIFM, or third country fund manager, or of its removal by the investment fund, or in case the fund manager, AIFM, or third country fund manager is no longer licensed or registered under this Act, the operators of the investment fund must take all necessary measures in order to replace the fund manager, AIFM, or third country fund manager with another fund manager, AIFM, or third country fund manager duly licensed or registered under this Act. Management of investment funds and appointment of managers.
- (2) If the fund manager, AIFM, or third country fund manager has not been replaced within [3] months as from the date of occurrence of any of the events referred to in subsection (1), the operators of the investment fund shall, within the following [3] months, request the competent authorities to pronounce the dissolution and liquidation of the investment fund pursuant to section [137].
- (3) The investment fund shall appoint its fund manager, AIFM, or third country fund manager within [30] days from the date of its establishment.
- (4) The appointment of the fund manager, AIFM, or third country fund manager shall be evidenced by written contract. The contract shall set out at least the essential terms and conditions governing the management of the fund, including the scope of the manager's functions, reporting obligations, duration of the engagement, and provisions on termination.
9. (1) The assets of an investment fund must be entrusted for safekeeping, at any time, to a single custodian duly authorized pursuant to section [75], and appointed in accordance with section [78]. In the case of voluntary withdrawal of the custodian or of its removal by the investment fund or in case the custodian is no longer licensed under this Act [or in the case of insolvency of the custodian], the operators of the investment fund must take all necessary measures in order to replace the custodian with another custodian duly licensed under this Act. Appointment of custodians.
- (2) If the custodian has not been replaced within [3] months as from the date of occurrence of any of the events referred to in subsection (1), the operators of the investment fund shall, within the following [3] months, request the

competent authorities to pronounce the dissolution and liquidation of the investment fund pursuant to section [137].

(3) The duties and responsibilities of the custodian are defined in accordance with section [76]. In the performance of its duties, the custodian must act independently from the fund manager and solely in the interests of the fund's investors.

10. (1) An investment fund shall not carry on or attempt to carry on business in or from Barbados unless it is licensed as a retail fund pursuant to section [15] or registered as a professional fund, private fund, or innovative fund pursuant to sections [18], [21], and [24], respectively. Licensing and registration requirements
- (2) The Commission may grant a licence or a registration in accordance with the provisions of this Act, as implemented with regulations made by the Commission after consultation with the Minister.
11. (1) The constitutive documents of each investment fund must provide that the fund is subject to the provisions of this Act and define the features of the fund, discipline the functioning of the same, identify the fund manager and the custodian, and regulate the relationships between these latter and the fund investors. Constitutive documents of investment funds.
- (2) The constitutive documents of an investment fund
- (a) shall contain the information prescribed by regulations made by the Commission after consultation with the Minister;
- (b) subject to subsection (3), shall not be altered in a manner that has the effect of altering materially the interests of holders of equity interests unless such alteration is made by a special or extraordinary resolution of the holders of equity interests carrying voting rights.
- (3) An alteration may be made by the operators of an investment fund where
- (a) such alteration is necessary in order to enable compliance by the fund with statutory or prudent fiscal management; and
- (b) the operators, certify, in writing, that they are satisfied that the alteration is necessary for the purpose referred to in paragraph (a).
- (3) Nothing in a constitutive document shall provide that the operator of an investment fund may be exempted from liability to holders of equity interests, imposed by law or the law of the fund's domicile, in the case of willful default or negligence in the discharge of any duty or obligation.
12. (1) Investment funds licensed or registered pursuant to this Act are enrolled in a dedicated register kept by the Commission, which is divided into separate sections for licensed and registered investment funds. Investment fund's Register.
- (2) Upon enrolment in the register referred to under subsection (1), the Commission assigns to each investment fund a unique identification code which must be indicated, together with the reference to the fund's enrolment in the register, in all documents and correspondence of the investment fund.
- (3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section 12.
13. (1) No investment fund shall make use of a name or of a description giving the impression that its activities are subject to this Act unless it has been enrolled in the register provided for in section 12. Restriction on choice of name.

(2) The Commission may refuse to grant an investment fund a licence under section [15] or register an investment fund under sections [18], [21] or [24], in respect of an investment fund making use of a name or of a description that

- (a) is identical to that of any company, firm, business or other entity, whether or not within Barbados, or which so nearly resembles the name of such company, firm, business or entity as to be likely to deceive;
- (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within Barbados or elsewhere; or
- (c) is likely to suggest, falsely, that the fund
 - (i) has a special status in relation to or derived from the Government; or
 - (ii) has a connection with a department of Government or activity of the Government.

(3) Where, in the opinion of the Commission, an investment fund is carrying on business in or from Barbados making use of a name or of a description that the Commission would have refused by virtue of subsection (2), the Commission may direct the investment fund to change its name and/or its description to a name and a description approved by the Commission.

(4) The operators of any investment fund shall ensure that the fund complies with a direction given to it in accordance with subsection (3).

14. The provisions of this [Act] do not apply to

[Exclusions]

- (a) a person licensed under
 - (i) Part II of the *Financial Institutions Act*, other than a finance company;
 - (ii) the *Insurance Act*;
 - (iii) the *Exempt Insurance Act*;
- (b) a friendly society within the meaning of the *Friendly Societies Act*;
- (c) a society, credit union or association within the meaning of the *Co-operative Societies Act*;
- (d) any company or partnership, whether Barbadian or foreign, that is primarily engaged in any industrial, commercial or charitable enterprise;
- (e) [...].

Licensing and registration of investment funds

15. (1) An investment fund shall not carry on business in or from Barbados as a retail fund unless it has been granted a licence by the Commission pursuant to this section [15].

Licensing of retail funds.

(2) The Commission shall grant a licence to a retail fund where it is satisfied that

- (a) the fund is established in one of the forms prescribed under section [7], subsection (2);
- (b) the fund is established in Barbados;

- (c) the stated equity capital is not less than the minimum amount established by the Commission with regulations;
 - (d) the fund has appointed an investment fund manager and a custodian licensed or registered under this Act;
 - (e) the constitutive documents, prospectuses, and offering documents of the fund
 - (i) provide that the exclusive purpose of the fund is the collective investment of the assets raised through the offering of its equity interests; and
 - (ii) comply with the provisions of this Act and the regulations made thereunder; and
 - (f) the fund satisfies any other requirements prescribed by the Commission with regulations.
- (3) The Commission may refuse to grant a licence where it considers that the conditions under subsection (2) are not met or where the protection of investors or the market stability may otherwise be compromised.
- 16.** An application for an investment fund license as a retail fund shall be made to the Commission in the prescribed form and shall be accompanied by **Application for licence.**
- (a) a certified copy of the constitutive documents of the investment fund;
 - (b) a copy of the prospectus of the fund;
 - (c) information and documents necessary to satisfy the Commission that the applicant meets the requirements under sections 15, as prescribed by the Commission;
 - (d) such other information and documentation as the Commission may reasonably require for the purpose of determining the application; and
 - (e) the prescribed fee.
- 17.** (1) The Commission may, at any time, revoke the licence of a retail fund where **Revocation of licence.**
- (a) the Commission is satisfied that the retail fund has not commenced its operations within **[12]** months from the date of granting of the licence;
 - (b) the conditions under which the licence was granted are no longer satisfied;
 - (c) the licence was obtained by means of false statements, or any other unlawful conduct; or
 - (d) upon request of the investment fund manager of the retail fund.
- (2) Upon revocation of the licence, the retail fund shall cease all fund activities and shall comply with any instructions issued by the Commission.
- 18.** (1) An investment fund shall not carry on business in or from Barbados as a professional fund unless it has been registered with the Commission pursuant to this section **[18]**. **Registration of professional funds.**
- (2) The Commission shall register a professional fund where it is satisfied that

- (a) the fund is established in one of the forms prescribed under section [7], subsection (2);
 - (b) the fund is established in Barbados;
 - (c) the fund has appointed an investment fund manager and a custodian licensed or registered under this Act;
 - (d) the fund is targeted exclusively at professional investors and/or sophisticated investors;
 - (e) the fund's constitutive documents and offering document comply with the requirements prescribed by regulations, including disclosure of the minimum investment amount per investor which shall not be less than \$ [250,000]; and
 - (f) the fund satisfies any other requirements prescribed by the Commission with regulations.
- 19.** An application for registration as a professional fund shall be made to the Commission in the prescribed form and accompanied by Application for registration.
- (a) a certified copy of the constitutive documents of the investment fund;
 - (b) a copy of the fund's offering document;
 - (c) a statement confirming that the fund is targeted exclusively at professional investors and/or sophisticated investors;
 - (d) any other information reasonably required by the Commission; and
 - (e) the prescribed fee.
- 20.** (1) The Commission may, at any time, revoke the registration of a professional fund where Revocation of registration.
- (a) the fund has not commenced its operations within [12] months from the date of registration;
 - (b) the requirements to which the registration is subject are no longer met;
 - (c) the registration was obtained by means of false statements or other unlawful conduct; or
 - (d) upon request of the investment fund manager of the professional fund.
- (2) Upon revocation of registration, the professional fund shall cease its activities and comply with the instructions issued by the Commission.
- 21.** (1) An investment fund shall not carry on business in or from Barbados as a private fund unless it has been registered with the Commission pursuant to this section [21]. Registration of private funds.
- (2) The Commission shall register a private fund where it is satisfied that
- (a) the fund is established in one of the forms prescribed under section [7], subsection (2);
 - (b) the fund is established in Barbados;
 - (c) the fund has appointed an investment fund manager and a custodian licensed or registered under this Act;

- (d) the fund is offered on a private placement basis to a limited number of professional investors and/or sophisticated investors, not exceeding [10] investors;
- (e) the fund's constitutive documents clearly reflect its private nature and limit the transferability of interests accordingly; and
- (f) the fund satisfies any other requirements prescribed by regulations.
22. An application for registration as a private fund shall be made to the Commission in the prescribed form and accompanied by Application for registration.
- (a) a certified copy of the constitutive documents of the investment fund;
- (b) a copy of the offering documents;
- (c) a statement confirming that the fund is offered only on a private placement basis and to a limited number of investors;
- (d) any other information reasonably required by the Commission; and
- (e) the prescribed fee.
23. (1) The Commission may, at any time, revoke the registration of a private fund where Revocation of registration.
- (a) the fund has not commenced its operations within [6] months from the date of registration;
- (b) the requirements to which the registration is subject are no longer met;
- (c) the registration was obtained by means of false statements or other unlawful conduct; or
- (d) upon request of the investment fund manager of the private fund.
- (2) Upon revocation of registration, the private fund shall cease its activities and comply with the instructions issued by the Commission.
24. (1) An investment fund shall not carry on business in or from Barbados as an innovative fund unless it has been registered with the Commission pursuant to this section [24]. Registration of innovative funds.
- (2) The Commission shall register an innovative fund provided that
- (a) the fund satisfies any minimum parameters or requirements in respect of the category, class or type of investment fund as prescribed by the Commission with regulations; and
- (b) the prescribed fee has been paid.
25. An application for registration as an innovative fund shall be made to the Commission in the prescribed form and accompanied by Application for registration.
- (a) a general description of the fund's structure and features;
- (b) all documents as required by the Commission for the relevant type of innovative fund;
- (c) any other information reasonably required by the Commission; and
- (d) the prescribed fee.
26. (1) The Commission may, at any time, revoke the registration of an innovative fund where Revocation of registration.

- (a) the requirements and conditions to which the registration is subject are no longer met;
- (b) the registration was obtained by means of false statements or other unlawful conduct; or
- (c) upon request of the investment fund manager of the innovative fund.
- (2) Upon revocation of registration, the innovative fund shall cease its activities and comply with the instructions issued by the Commission.
27. The Commission, after consultation with the Minister, shall make regulations implementing the provisions under sections [15] through [26], specifying, among other things
- (a) the procedures and requirements for licensing and registration of investment funds;
- (b) the relevant application forms, fees, and supporting documentation;
- (c) the procedures for revocation of licences and registrations and relevant consequences on the investment funds;
- (d) the features of each category of investment fund, including the applicable investment policies, investment limits, eligibility requirements for investors, organizational and operational requirements, and any other specific parameter and/or requirement to which the different categories of investment funds are subject; and
- (e) any other measure necessary for the proper administration of the licensing and registration system under this Act.
- Regulations implementing licensing and registration procedures.

Master-Feeder structures

28. (1) The establishment and operation of a master-feeder structure by an investment fund manager licensed or registered under this Act shall be subject to prior authorization by the Commission.
- Authorization of master-feeder structures.
- (2) For the purposes of subsection (1), the Commission shall grant authorization where the following conditions are met
- (a) appropriate agreements are in place between the fund managers, custodians, and auditors of the master fund and the feeder fund ensuring the availability of all documents and information necessary for the performance of their respective duties;
- (b) where the master fund and the feeder fund are managed by the same fund manager, the manager has adopted internal rules of conduct ensuring the availability of such documents and information;
- (c) the master fund and the feeder fund meet the requirements prescribed by regulations made by the Commission.
- (3) Master funds and feeder funds shall remain subject, *mutatis mutandis*, to the provisions of this Act governing the conduct, supervision, and organization of investment funds.
- (4) The auditor of a feeder fund shall, in its audit report, indicate any irregularities identified in the audit report of the master fund as well as the impact of such irregularities on the financial statements of the feeder fund. Where the financial years of the master fund and the feeder fund end on

different dates, the auditor of the master fund shall prepare a specific audit report referring to the financial year-end of the feeder fund.

(5) Without prejudice to subsection (2), the Commission shall make regulations, after consultation with the Minister, specifying, among other things

- (a) the authorization procedure for the investment of a feeder fund into a master fund, including the documents and information to be submitted with the application;
- (b) the content of the agreements and internal rules of conduct referred to in subsection (2);
- (c) the requirements applicable to master funds and feeder funds and the rules governing their operations;
- (d) the rules applicable to feeder funds in the event of the liquidation, merger, demerger, temporary suspension of redemptions, or subscriptions of the master fund, and the coordination of the timing for the calculation and publication of their net asset value;
- (e) the obligations relating to communication and the exchange of information and documents between the fund managers, custodians, and auditors of the master fund and the feeder fund, as well as between such entities and the Commission and the competent authorities of the jurisdictions concerned.

(6) The establishment of a master-feeder structure shall only be permitted between investment funds belonging to the same category. The Commission shall not authorize mixed structures involving funds of different categories.

(7) This section shall not apply to master-feeder structures of private funds and innovative funds.

Merger and demerger of investment funds

29. (1) The merger and demerger of investment funds shall be subject to the authorization of the Commission, after consultation with the Minister.
- (2) For the purposes of subsection (1), investment fund managers shall submit to the Commission the relevant merger or demerger project, together with certifications of compliance issued by the custodians of the investment funds involved, and with the information to be provided to the investors allowing them to make an informed judgment on the impact of the transaction on their investment.
- (3) Investment fund managers shall make available to the Commission and to the investors of the interested investment funds a report prepared by the custodian, or by an auditor or auditing firm, certifying the accuracy of the valuation criteria for the assets and liabilities of the investment funds, of any cash adjustments, and of the method and actual exchange ratio calculated at the relevant date.
- (4) No registration or filing with the [companies' registry] or any other competent authority shall be made prior to the obtainment of the authorization by the Commission pursuant to this section.

Authorization of mergers and demergers.

(5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [29], specifying, among other things, with respect to each category of investment fund

- (a) the procedure and conditions for granting authorization;
- (b) the determination of the effective date of the merger or demerger and the allocation of the related costs;
- (c) the information to be provided to investors;
- (d) the permitted forms and structures of mergers and demergers;
- (e) the content of the certifications and reports referred to in subsections (2) and (3); and
- (f) the rights of investors in the context of mergers and demergers.

(6) This section shall not apply to mergers and demergers of private funds and innovative funds.

PART III FUND MANAGEMENT AND ADMINISTRATION

General provisions

30. (1) The accounts of a regulated entity shall be audited annually by an auditor approved by the Commission. Audit of regulated entities' accounts.
- (2) The auditor under subsection (1) shall
- (a) make an examination of the annual financial statements and other regulatory filings of the regulated entity in accordance with generally acceptable auditing standards and shall prepare a report on the audit in accordance with generally accepted accounting principles; and
 - (b) when requested to do so by the Commission, provide a report on any matter relating to the financial affairs of the regulated entity.
- (3) Where the auditor's report required by subsection (2)(a) expresses a qualified opinion — indicating material misstatements or limitations in the audit scope — or the report required by subsection (2)(b) discloses material weaknesses, deficiencies, or non-compliance with prescribed requirements, the Commission may take any action it deems necessary until the issues are resolved or rectified.
- (4) Where, in the course of performing the duties under subsection (2), the auditor identifies a matter that could give rise to a qualified opinion in the audit report or detects a material weakness, deficiency, or non-compliance with any provision of this Act relating to the financial affairs of the regulated entity, the auditor shall immediately notify the Commission in writing and promptly deliver a copy of the notice to the regulated entity.
- (5) The Commission may require the auditor of a regulated entity to
- (a) submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
 - (b) enlarge or extend the scope of the audit of the business and affairs of the regulated entity;
 - (c) carry out any other examination or establish any procedure in any particular case;

(d) submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c), and the auditor shall carry out such additional duty or duties.

(6) A regulated entity shall submit its audited accounts in respect of a financial year to the Commission within [4] months after the end of that financial year or within such further period as the Commission may allow.

Investment fund managers

- 31.** An entity shall not carry on fund management activities in Barbados unless the entity
- (a) holds a general management licence;
 - (b) holds a restricted management licence;
 - (c) holds a specialised management licence, or
 - (d) is registered pursuant to section [52], or [57].
- 32.** (1) An investment fund manager appointed under section [8] shall at any time
- (a) act honestly and fairly with due skill, care and diligence in conducting its activities;
 - (b) manage each investment fund in accordance with this Act and the constitutive documents of the fund, acting in the best interests of the fund and its investors, and in a manner that upholds 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 and 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 funds it manages are fairly treated;
 - (e) ensure compliance with the provisions of this Act and any implementing regulations hereto, including all regulatory requirements applicable to the conduct of its business activities; 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 investment fund's constitutive documents.
- (2) Where an investment fund manager is unable to ensure compliance with the requirements of this section for which an investment fund on its behalf is responsible, it shall immediately inform the Commission of the investment fund concerned and shall forthwith take the necessary steps to remedy the situation.
- (3) Where there is further non-compliance, the Commission shall require that the investment fund manager resign as investment fund manager of that investment fund.
- 33.** (1) The Commission may refuse to grant an investment fund manager a licence under section [34], or register an investment fund manager under
- Entities to be authorized to manage investment funds.
- Duties of the investment fund manager.
- Restriction on choice of name.

section [52] or section [57] in respect of an investment fund manager making use of a name that

- (a) is identical with that of any company, firm, business or other entity, whether or not within Barbados, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive;
- (b) is likely to suggest, falsely, the patronage of or a connection with some person or authority, whether within Barbados or elsewhere; or
- (c) is likely to suggest, falsely, that the fund manager has a special status in relation to or derived from the Government.

(2) Where, subsequent to granting a fund management licence, the Commission discovers that the investment fund manager is authorized to carry on business as an investment fund manager in or from Barbados making use of a name that in the opinion of the Commission, would have led to a refusal of registration by virtue of subsection (1), the Commission may direct the investment fund manager to change its name to a name approved by the Commission.

(3) An investment fund manager shall comply with a direction given to it in accordance with subsection (2).

(4) Where a registered investment fund manager is found by the Commission to be carrying on business under a name that, in the opinion of the Commission, would have led to a refusal of registration by virtue of subsection (1), the Commission shall notify the investment fund manager in writing, requiring it to adopt a name approved by the Commission within [90] days of the date of such notification. If the investment fund manager fails to comply within the specified period, its registration shall be deemed to have lapsed at the end of that period.

34. (1) The Commission may grant fund managers a licence to carry out fund management activities in Barbados, as well as any of the activities referred to under section 3, subsection (3), provided that the following conditions are met

Licensing requirements.

- (a) the fund manager has adopted the legal form of a [joint-stock company];
- (b) the fund manager is established in Barbados;
- (c) at least [2] of the individuals performing administration, management, and/or control functions at the fund manager are resident in Barbados;
- (d) the stated equity capital is not less than the minimum amount established by the Commission with regulations with respect to general management licences, restricted management licences, and specialized management licences;
- (e) individuals performing administration, management, and/or control functions meet the fit and proper requirements set forth under section [5];
- (f) holders of the qualifying holdings referred to in section [6] meet the requirements and satisfy the criteria established thereunder, and the conditions for prohibition set forth under section [39] do not apply;

- (g) the group structure to which the fund manager belongs does not hinder the effective supervision on the fund manager itself;
- (h) a program of initial operations and a report on the organizational structure of the investment fund manager are submitted together with the company's constitutive documents;
- (i) the name of the company includes the words "investment fund manager".

(2) A licence shall be refused where the assessment of the conditions set out in subsection (1) does not ensure sound and prudent management of the fund manager.

(3) The Commission, after consultation with the Minister, shall make regulations laying down, among others, the licensing procedure and requirements for each type of fund management licence, as well as the prescribed application fees.

35. (1) The holder of a general administration licence is authorized to act as an investment fund manager in respect of an unlimited number of investment funds of any category. Types of fund management licences.

(2) The holder of a restricted administration licence is authorized to act as an investment fund manager solely in respect of the investment funds specified in the licence.

(3) The holder of a specialized management licence is authorized to act as an investment fund manager in respect of an unlimited number of (i) private funds, and/or (ii) professional funds that do not use leverage and do not allow investors to exercise redemption rights for five years following the initial investment.

(4) In accordance with the principle of proportionality the Commission may exempt holders of specialized management licences from the application of the implementing provisions of sections [41] through [46].

36. (1) A licensed investment fund manager shall notify the Commission of any changes that are material to the conditions for the initial granting of a fund management licence prior to implementing any changes. Notification of changes in the information provided.

(2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the investment fund manager of

- (a) any restrictions imposed by the Commission; or
- (b) any proposed changes rejected by the Commission.

(3) The proposed changes under subsection (1) shall be implemented where the Commission does not oppose the changes within the period referred to in subsection (2).

37. (1) The Commission may, at any time, revoke a fund management licence where Revocation of licence and management of crisis.
- (a) the Commission is satisfied that the licensee has not commenced its operations within [12] months from the date of granting of the licence, or it has ceased to carry on fund management activities for at least [6] months;
 - (b) the conditions to which the licence is subject are no longer met;

- (c) the licence was obtained by means of false statements or any other unlawful conduct;
- (d) the licensee fails to comply with any direction given to the licensee by the Commission pursuant to this Act;
- (e) the licensee is in breach of any other duty or obligation prescribed by this Act;
- (f) upon request of the investment fund manager.

(2) The revocation of the licence pursuant to subsection (1) shall constitute grounds for the dissolution of the licensee where it concerns all the activities for which the investment fund manager is licensed. Within [60] days of notification of the revocation measure, the licensee shall notify the Commission of its liquidation plan.

(3) The liquidator shall submit periodic reports on the progress of the liquidation to the Commission, which shall oversee the proper conduct of the liquidation procedure. The powers of the Minister and the Commission provided for under this Act shall continue to apply to investment fund managers in liquidation.

(4) The investment funds under management of the investment fund manager whose licence has been revoked shall

- (a) appoint a new investment fund manager licensed under this Act within a timeframe specified by the Commission;
- (b) where the appointment of a new investment fund manager is not possible within the specified timeframe, enter into liquidation in accordance with the instructions and under the supervision of the Commission.

(5) Without prejudice to subsections (1) to (3), where the Commission identifies serious irregularities in the management or administration of an investment fund manager, serious breaches of this Act or of the fund manager's constitutive documents, it may, after consultation with the Minister, take any of the following measures

- (a) order the removal of all or some members of the governing and control bodies of the fund manager and require the appointment of replacements;
- (b) appoint one or more persons to temporarily assume the functions of the governing bodies of the fund manager;
- (c) impose special supervisory measures aimed at safeguarding the interests of investors and the stability of the market.

(6) Fund managers subject to crisis management measures under subsection (5) shall continue to be subject to the supervisory powers of the Commission until all obligations to investors have been satisfied or otherwise appropriately discharged.

(7) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [37], including provisions governing the procedures for the appointment of a new investment fund manager, the liquidation of the affected investment funds, the measures

that may be taken by the Commission pursuant to subsection (5), and any other measures necessary to protect the interests of investors.

38. (1) Investment fund managers licensed pursuant to this Act, along with AIFMs and third country fund managers registered pursuant to this Act, are enrolled in a dedicated register kept by the Commission, which is divided into separate sections for licensed fund managers and registered AIFMs and third country fund managers. Investment fund managers' Register.
- (2) Upon enrolment in the register referred to under subsection (1), the Commission assign to each investment fund manager, AIFM, and third country fund manager, a unique identification code which must be indicated, together with the reference to the fund manager's enrolment in the register, in all documents and correspondence of the investment fund manager.
- (3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [38].
39. (1) The following shall be subject to prior notification to the Commission Acquisition or transfer of equity holdings in investment fund managers.
- (a) the acquisition or disposal, on any grounds, of a qualifying equity holding in an investment fund manager;
 - (b) changes in equity holdings in an investment fund manager where the share of voting rights or capital reaches or exceeds, either by increase or decrease, 20 per cent, 30 per cent or 50 per cent and, in any case, where the changes result in the acquisition or loss of control of the investment fund manager;
 - (c) the acquisition, on any grounds, of the control of an entity having a qualifying equity holding in an investment fund manager;
 - (d) the acquisition, on any grounds, of a share of the voting rights or equity holdings of an entity having a qualifying equity holding in an investment fund manager where, as a result of such acquisition, one of the thresholds referred to in paragraph (b) is met;
 - (e) the acquisition, on any grounds and in the absence of a direct purchase of equity holdings, of control or significant influence over an investment fund manager, or of a share of the voting rights or equity holdings equal to or greater than 10 per cent, 20 per cent, 30 per cent or 50 per cent, including through an agreement with the company or a provision in its constitutive documents, taking into account any equity interests already held.
- (2) The Commission may prohibit any of the transactions referred to under subsection (1) where it considers that the conditions to ensure the sound and prudent management of the investment fund manager are not met.
- (3) In making its assessment under subsection (2), the Commission shall take into account, where applicable, the features of the proposed acquirer and the financial soundness of the acquisition project, based on the following criteria
- (a) fit and proper requirements under section 6 of the proposed acquirer;
 - (b) the fit and proper requirements under section 5 of the individuals who, following the acquisition, will perform administrative, management, and control functions;
 - (c) the financial soundness of the proposed acquirer;

- (d) the ability of the investment fund manager to comply, after the acquisition, with the rules governing its operations;
- (e) the suitability of the group structure of the proposed acquirer to allow for effective supervision; and
- (f) the absence of reasonable grounds to suspect that the acquisition is connected to money laundering or terrorist financing.

(4) The Commission may set a deadline for completing the acquisition, and may notify, even before the expiry of such deadline, that it has no objection to the transaction.

(5) Subsections (2), (3), and (4) shall not apply to an investment fund manager that

- (a) is a licensee under the International Financial Services Act; or
- (b) has a current licence granted to it to carry on banking business or trust business within the meaning of the Financial Institutions Act or both such banking business and trust business.

40. (1) An investment fund manager shall have an initial capital as prescribed by the Commission.
- (2) An investment fund manager shall, at any time
- (a) have 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.
- (3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [40], laying down the relevant own funds and professional indemnity insurance requirements with respect to general management licences, restricted management licences, and specialized management licences.

Capital requirements, own funds and professional indemnity insurance.

41. (1) Investment fund managers shall, at any time, use adequate and appropriate human and technical resources that are necessary for the proper management of the investment funds under management.
- (2) For the purposes of subsection (1), investment fund managers shall adopt
- (a) sound administrative and accounting procedures;
 - (b) control and safeguard arrangements for electronic data processing;
 - (c) adequate internal control mechanisms including,
 - (i) policies and procedures for personal transactions by their employees;
 - (ii) policies and procedures for the holding or management of investments in order to invest on their own account and ensuring at least that
 - each transaction involving an investment fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place it was effected; and
 - the assets of the investment funds under management are invested in accordance with this Act and any implementing

General organizational requirements.

regulations hereto, as well as with the constitutive documents and offering documents of the investment funds.

(3) Investment fund managers shall establish and maintain

- (a) a compliance function responsible for ensuring that the investment fund manager and each investment fund under management comply with all applicable laws, regulations, and internal policies. The compliance function shall operate independently and have the necessary authority, resources and access to management;
- (b) a risk management function responsible for identifying, measuring, managing and monitoring on an ongoing basis all risks relevant to each investment fund's investment strategy and operations. The risk management function shall be functionally and hierarchically separate from the operating units and shall operate independently;
- (c) an internal audit function responsible for the periodic assessment of the adequacy and effectiveness of the investment fund manager's internal control systems, policies and procedures. The internal audit function shall operate independently and shall report directly to the governing body of the investment fund manager;
- (d) an anti-money laundering and counter-terrorism financing function responsible for ensuring compliance with all applicable laws and regulations on the prevention of money laundering and terrorism financing. The anti-money laundering function shall operate independently and shall have sufficient authority and resources to carry out its duties effectively, including ongoing monitoring and reporting obligations.

(4) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [41] specifying, among other things, the organization, powers, duties and independence requirements of the internal control functions referred to in subsection (3).

42. (1) Investment fund managers shall maintain and operate effective policies and procedures relating to identifying, preventing, managing and monitoring conflicts of interest. Conflicts of interest.

(2) For the purposes of subsection (1), investment fund managers shall, in the course of managing investment funds, identify conflicts of interest that may arise between

- (a) the investment fund manager, including its managers, employees or any person directly or indirectly connected to the fund manager by control, and the investment funds managed by the fund manager or the investors in such investment funds and the investment fund or any of its investors;
- (b) the investment fund or the investors of such investment fund and another investment fund under management or the investors in such investment fund;
- (c) the investment fund or the investors in such investment fund, and another client of the fund manager; or
- (d) two clients of the fund manager.

(3) Investment fund managers shall

- (a) segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and
- (b) regularly assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the investment funds under management.

(4) Where the organizational arrangements made by an investment fund manager to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the fund manager shall

- (a) clearly disclose the general nature or sources of conflicts of interest to the Commission, the concerned investment funds and their investors before undertaking business on behalf of such investment funds; and
- (b) develop appropriate policies and procedures.

(5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [41] specifying, among other things

- (a) the types of conflicts of interest as referred to in subsection (2); and
- (b) the reasonable steps investment managers are expected to take in terms of structures and organizational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

43. (1) Investment fund managers shall functionally and hierarchically separate the function of risk management from their operating units, including from the function of portfolio management.

Risk management and financial leverage.

(2) The functional and hierarchical separation of the functions of risk management in accordance with the subsection (1) shall be reviewed by the Commission in accordance with the principle of proportionality, on the understanding that the investment fund manager shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this section [43] and is consistently effective.

[(3) Investment fund managers shall

- (a) implement adequate risk management systems, policies and procedures in order to identify, measure, manage and monitor on an ongoing basis all risks relevant to each investment fund's investment strategy and to which each investment fund is or may be exposed; and
- (b) review its risk management systems at least once a year and adapt them whenever necessary;
- (c) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the managed

investment funds, according to the investment strategy, the objectives and risk profile of such investment funds;

- (d) ensure that the risks associated with each investment position of the managed investment funds and their overall effect on the fund's portfolios can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
- (e) ensure that the risk profile of the managed investment funds shall correspond to the size, portfolio structure and investment strategies and objectives of such funds as laid down in the relevant constitutive documents, prospectuses, and offering documents;
- (f) establish and maintain qualitative or quantitative risk limits, or both, for each investment fund under management, taking into account all relevant risks including, at least
 - (i) market risks;
 - (ii) credit risks;
 - (iii) liquidity risks;
 - (iv) counterparty risks; and
 - (v) operational risks;
- (g) ensure that the risk profile of the investment fund is disclosed to its investors and is consistent with the risk limits set out in this section [43];
- (h) monitor compliance by the managed investment funds with the risk limits set out in this section [43].]

(4) When establishing the risk limits under subsection (3), paragraph (f), investment fund managers shall take into account

- (a) the strategies and assets employed in respect of each investment fund under management;
- (b) the laws of the jurisdiction where the investment fund is authorized or established; and
- (c) that the risk limits must also be aligned with the risk profile of the investment fund and disclosed to its investors.

[(5) Investment fund managers shall set a maximum level of leverage which they may employ on behalf of each investment fund they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, among other things

- (a) the categories of the relevant investment funds;
- (b) the investment strategies of the investment funds;
- (c) the sources of leverage of the investment funds;
- (d) any other interlinkage or relevant relationships with other financial institutions, which could pose systemic risk;
- (e) the need to limit the exposure to any single counterparty;
- (f) the extent to which the leverage is collateralised;

(g) the asset-liability ratio; and

(h) the scale, nature and extent of the activity of the investment fund manager on the markets concerned.]

(5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [43].

44. (1) Investment fund managers shall maintain and operate effective policies and procedures, as prescribed by the Commission, for those categories of persons whose professional activities have a material impact on the risk profile of the investment fund manager and/or the investment funds under management. Remuneration.

(2) The policies and procedures adopted pursuant to subsection (1) shall

(a) be consistent with the risk management policies and procedures referred to under section [43], subsection (3);

(b) promote sound and effective risk management;

(c) not encourage risk-taking behaviours which are inconsistent with the risk profiles or constitutive documents, prospectuses, and offering documents of the investment funds under management.

(3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [44] specifying, among other things

(a) the categories of persons referred to under subsection (1);

(b) the principles on sound remuneration to be reflected in the policies and procedures adopted by investment fund managers, based on their internal organization, the nature, scope, and activities carried on, as well as the category and size of the investment funds under management.

45. (1) Investment fund managers shall, for each investment fund under management other than unleveraged close-ended investment funds, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the investment fund and ensure that the liquidity profile of the investments of the fund complies with its underlying obligations. Liquidity management.

(2) Investment fund managers shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess and monitor the liquidity risk of the investment fund under management.

(3) Investment fund managers shall ensure that, for each investment fund under management, the investment strategy, the liquidity profile, and the redemption policy are consistent with one another.

(4) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [45] specifying, among other things

(a) the liquidity management systems and procedures; and

(b) the alignment of the investment strategy, liquidity profile and redemption policy.

46. (1) Investment fund managers are responsible for the proper valuation of investment funds' assets, the calculation of the net asset value of the equity interests of the investment fund, and the publication of such net asset value. Valuation.
- (2) For the purposes of subsection (1), investment fund managers shall, for each investment fund under management, ensure that
- (a) policies and procedures appropriate to the nature, scale and complexity of the activities carried on are adopted and implemented so that a proper and independent valuation of the assets of the investment fund can be performed based on the category of such investment funds and in accordance with its constitutive documents, prospectuses, and offering documents;
 - (b) the valuation is performed impartially and with all due skill, care and diligence;
 - (c) the net asset value of the equity interests of an investment fund is calculated and disclosed to the investors of such investment fund in accordance with the constitutive documents, prospectuses, and offering documents of the investment fund;
 - (d) the assets of the investment fund are valued, and the net asset value of the equity interests is calculated, at least once every year.
- (3) With respect to each open-ended fund under management, the fund managers shall ensure that the valuations and calculations pursuant to subsection (2) are carried out at a frequency which is appropriate to the assets held by the investment fund and its issuance and redemption frequency.
- (4) With respect to each close-ended fund under management, the fund managers shall carry out such valuations and calculations in the event of any issuance, reimbursement or repurchase of the relevant fund's equity interests, and in any case at least on an annual basis.
- (5) Investment fund managers shall inform the investors of any investment fund under management of the valuation of the investment fund's assets and the calculation of the net asset value as set out in the constitutive documents, prospectuses, and offering documents of the investment fund.
- (6) An investment fund manager shall ensure that the valuation function is performed either by
- (a) the fund manager itself, provided that the valuation task is functionally independent from the portfolio management, and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the fund manager employees is prevented; or
 - (b) an external valuer which is independent from the relevant investment fund, the fund manager and any other persons with close links to the investment fund or the fund manager.
- (7) Where the valuation function is not performed by an external valuer, the Commission may require the investment fund manager to have its valuation policies and procedures, and/or valuations, verified by an external valuer or, where appropriate, an auditor.
- (8) The liability of the investment fund manager to the managed investment funds and their investors shall not be affected by the appointment of an external valuer in respect of such investment funds.

(9) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [46] specifying, among other things

- (a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value of the equity interests;
- (b) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function; and
- (c) the frequency of valuation carried out by an open-ended investment fund that is both appropriate to the assets held by the investment fund and its issuance and redemption policy.

47. (1) An external valuer shall perform the valuation function impartially and with all due skill, care and diligence.

Appointment and duties of external valuers.

[(2) In case of appointment of an external valuer pursuant to section [46], subsection (6), paragraph (b), an investment fund manager shall ensure that

- (a) the external valuer is subject to mandatory registration under the law or to rules of professional conduct;
- (b) the external valuer can provide sufficient professional guarantees to be able to effectively perform the relevant valuation function in accordance with this Act;
- (c) the custodian of an investment fund is not appointed as the external valuer of such investment fund unless it is satisfied that the custodian has functionally and hierarchically separated the performance of its custodian function from its tasks as an external valuer, and that it is able to manage the potential conflicts of interest, and monitor and disclose them to the investors of the investment fund;
- (d) the appointment of the external valuer complies with the requirements of section [48] and the delegation of functions under that section.]

(3) An external valuer shall not delegate the valuation function to a third party.

(4) Notwithstanding any contractual arrangement providing otherwise, an external valuer shall be liable to the investment fund manager of an investment fund in respect of which the valuer is appointed, for any losses suffered by the fund manager as a result of the external valuer's negligence or intentional failure in the performance of its tasks.

48. (1) An investment fund manager which intends to delegate the task of carrying out relevant operating functions on its behalf to a third party shall notify the Commission before the relevant delegation arrangements become effective.

Delegation of investment fund manager's functions.

(2) An investment fund manager may delegate its functions to a third party provided that the following conditions are met

- (a) the investment fund manager is able to justify its entire delegation structure on objective reasons;
- (b) the delegate disposes of sufficient resources to perform the delegated functions;

- (c) the individuals who effectively conduct the business of the delegate meet the fit and proper requirements set forth under section [5] and are sufficiently experienced to perform the functions delegated to them;
 - (d) where the delegation concerns portfolio management or risk management, the delegate complies with section [31];
 - (e) the delegation does not prevent the effectiveness of supervision of the investment fund manager and does not prevent the investment fund manager from acting, or the investment fund from being managed, in the best interests of its investors.
- (3) The investment fund manager must be able to demonstrate to the Commission that the delegate is qualified and capable of undertaking the delegated functions, and
- (a) the investment fund manager has selected the delegate for appointment with all due care;
 - (b) the investment fund manager is in a position to effectively monitor the activities carried out by the delegate in accordance with the relevant delegation arrangements;
 - (c) the investment fund manager is able to provide instructions to the delegate, at any time, for the performance of the delegated functions;
 - (d) the investment fund manager is able at any time to withdraw the delegation with immediate effect when it deems that such a withdrawal is in the best interests of the investors.
- (4) The investment fund manager shall review the services provided by each delegate on an ongoing basis.
- (5) An investment fund manager shall not delegate portfolio management or risk management with respect of a managed investment fund to
- (a) the fund's custodian or a delegate of the custodian; or
 - (b) any other entity whose interests may conflict with those of the investment fund manager or the investors of the relevant investment fund, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the relevant investment fund.
- (6) The investment fund manager's liability towards any managed investment funds and their investors shall not be affected by the fact that the fund manager has delegated functions to a third party, or by any further sub-delegation, nor shall the fund manager delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the relevant funds and to the extent that it becomes a letter-box entity.
- (7) A delegate may sub-delegate any of the functions delegated to it, provided that it has obtained the prior consent of the investment fund manager. All conditions and requirements applicable to delegation under this section [48] shall apply, mutatis mutandis, to any sub-delegation.

(8) The Commission may prohibit the delegation or sub-delegation of relevant operating functions where it considers that the conditions and requirements set out in this section [48] are not satisfied.

(9) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [48] specifying, among other things

- (a) the conditions for fulfilling the requirements set out in subsections (1), (2), (3), (4), and (5); and
- (b) the conditions under which the investment fund manager shall be deemed to have delegated its relevant operating functions to the extent that it becomes a letter-box entity and can no longer be considered to be the fund manager of the relevant investment funds as set out in subsection (6).

49. [(1) Each investment fund manager shall regularly report the following information to the Commission, in the manner and within the terms prescribed by the Commission

Reporting obligations.

- (a) the main markets and instruments in which it trades on behalf of the managed investment funds, including a breakdown of financial instruments and other assets, as well as the investment strategies and the geographical and sectoral investment focus of the investment funds under management;
- (b) the diversification of the portfolio of the investment funds under management, including but not limited to, their principal exposures and most relevant concentrations;
- (c) the percentage of the managed and/or marketed funds' assets which are subject to special arrangements arising from their illiquid nature;
- (d) any new arrangements for managing the liquidity of managed and/or marketed investment funds;
- (e) the current risk profile of the managed and/or marketed investment funds and the risk management systems employed by the fund manager to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- (f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with sections [43](3)(d), and [45](2).

(2) Without prejudice to the provisions of subsection (1), an investment fund manager managing funds which employ leverage on a substantial basis shall provide the Commission with information about

- (a) the overall level of leverage employed by each fund it manages;
- (b) a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives;
- (c) the extent to which the investment fund's assets have been reused under leveraging arrangements; and
- (d) the identity of the five largest sources of borrowed cash or securities for each of the investment funds under management, and the amounts

of leverage received from each of those sources for each of those funds.

(3) Where necessary for the effective monitoring of systemic risk, the Commission may require investment fund managers to provide information in addition to those under subsections (1) and (2), both on a periodic basis, and on an ad-hoc basis.

(4) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [49] specifying, among other things

(a) the manner, form and timing of the reporting obligations set out herein; and

(b) the criteria for determining when leverage is deemed to be employed on a substantial basis for the purposes of subsection (2).]

50. (1) The Commission, after consultation with the Minister, shall authorize mergers and demergers involving fund managers. Mergers and demergers of fund managers.
- (2) Authorization shall be granted where the merger or demerger does not prejudice the sound and prudent management of the fund managers involved and ensures that the conditions and requirements for licensing under this Act continue to be satisfied.
- (3) The Commission may refuse to grant authorization where it considers that the merger or demerger would result in a fund manager no longer meeting the requirements for the conduct of its activities in accordance with this Act and any regulations made thereunder.
- (4) Investment fund managers that intend to merge or demerge shall submit to the Commission, in the manner and within the timeframe prescribed by the Commission, a prior notification accompanied by
- (a) a description of the proposed transaction, including its legal, financial and organizational implications;
- (b) the amended constitutive documents, if applicable;
- (c) a business plan demonstrating compliance with the licensing requirements following the merger or demerger;
- (d) information on the impact of the transaction on the investors of the investment funds managed.
- (5) The Commission may impose conditions or require amendments to the proposed transaction to ensure compliance with the provisions of this Act and to protect the interests of investors.
- (6) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [50].
51. (1) Investment fund managers may carry on fund management activities in an EU Member State and/or in a third country, either directly or through establishment of a branch, in accordance with the regulations provided for in subsection (2) and without prejudice to subsection (5). Cross-border operations of investment fund managers.
- (2) The Commission, after consultation with the Minister, shall make regulations implementing the provisions of the AIFMD concerning the conditions and procedures to be complied with by investment fund managers

for cross-border operations in the EU, without prejudice to the provisions of Part IV.

(3) The Commission shall also define, within the regulations provided for in subsection (2), the conditions and procedures under which investment fund managers may be authorized by the Commission to carry on fund management activities in a third country.

(4) Investment fund managers may be authorized to operate in an EU Member State and/or a third country, provided that such activity is permitted under the laws and regulations of the host jurisdiction and that appropriate cooperation agreements are in place between the Commission and the relevant overseas regulatory authorities, in order to ensure at least an efficient exchange of information between such authorities.

AIFMs

52. (1) An AIFM shall not carry on fund management activities in Barbados, either directly or through establishment of a branch, unless it is registered with the Commission in accordance with this section. Registration requirements of AIFMs.
- (2) Where an application for registration is made under this section [52], the Commission may grant such registration where the applicant has filed a notification to the Commission containing
- (a) evidence of valid authorization as an AIFM by the competent overseas regulatory authority;
 - (b) information on the identity and description of the AIFM and its home EU Member State overseas regulatory authority;
 - (c) evidence that the AIFM is authorized to manage EU AIFs with comparable features to the investment funds that the AIFM intends to manage in Barbados;
 - (d) a program of operations stating the activities which it intends to perform and providing a description of the investment funds to be managed in Barbados;
 - (e) information on the arrangements for managing the investment funds in Barbados, including whether the fund management activities will be conducted directly or through the establishment of a branch.
- (3) If the AIFM intends to establish a branch, it shall provide to the Commission, in addition to the information requested in subsection (2), the following information
- (a) the organizational structure of the branch;
 - (b) the names and contact details of individuals responsible for the management of the branch.
- (4) If the AIFM intends to carry on fund management activities in Barbados without establishing a branch, it shall provide to the Commission, in addition to the information requested in subsection (2), the names and contact details of the agents appointed in compliance with section [62].
- (5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [52], including details on the registration procedure, exchange of information with the

relevant overseas regulatory authorities, as well as the prescribed application fees.

53. (1) An AIFM intending to obtain a registration under section [52] shall comply with this Act. Conditions for registration.
- (2) The Commission shall not grant registration under section [52] unless it is satisfied that the applicant
- (a) is able to meet the registration requirements set forth therein; and
 - (b) is able to comply with the provisions of this Act.
- (3) AIFMs registered pursuant to this Act are enrolled in a dedicated section of the register kept by the Commission pursuant to section [38].
54. (1) A registered AIFM shall notify the Commission of any changes that are material to the conditions for the initial granting of the registration prior to implementing any changes. Notification of changes in the information provided.
- (2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the AIFM of
- (a) any restrictions imposed by the Commission; or
 - (b) any proposed changes rejected by the Commission.
- (3) The proposed changes under subsection (1) shall be implemented where the Commission does not oppose the changes within the period referred to in subsection (2).
55. (1) The Commission may, at any time, revoke the registration of an AIFM where Revocation of AIFM registration.
- (a) the Commission is satisfied that the AIFM has not commenced its operations within [12] months from the date of registration, or it has ceased to carry on fund management activities in Barbados for at least [6] months;
 - (b) the requirements and conditions to which the registration is subject are no longer met;
 - (c) the registration was obtained by means of false statements or any other unlawful conduct;
 - (d) the AIFM fails to comply with any direction given to it by the Commission pursuant to this Act;
 - (e) the AIFM is in breach of any other duty or obligation prescribed by this Act;
 - (f) upon request of the AIFM.
- (2) Upon revocation of the registration, the AIFM shall cease all fund management activities in Barbados and comply with any instructions issued by the Commission.
- (3) The investment funds under the management of the AIFM whose registration has been revoked shall
- (a) appoint a new investment fund manager or AIFM duly licensed or registered under this Act within a timeframe specified by the Commission;

(b) where the appointment of a new investment fund manager or AIFM is not possible within the specified timeframe, enter into liquidation in accordance with the instructions and under the supervision of the Commission.

(4) The Commission may adopt any measures necessary to ensure the orderly transition of management or the orderly liquidation of the investment funds concerned, in order to protect the interests of investors and preserve the stability of the market.

(5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions of this section [55], including provisions governing the procedures for the appointment of a new investment fund manager or AIFM, the liquidation of the affected investment funds, and any other measures necessary to safeguard the interests of investors.

56. (1) An AIFM registered under this section shall provide the Commission with the information referred to under section [49], which shall apply *mutatis mutandis*. Reporting obligations.

(2) The Commission shall specify, within the regulations issued pursuant to section [49], subsection (4), the manner, form and timing applicable to the reporting obligations of AIFMs under this section [56].

Third country fund managers

57. (1) A third country fund manager shall not carry on fund management activities in Barbados other than through the establishment of a branch and unless it is registered with the Commission in accordance with this section. Registration requirements of third country fund managers.

(2) Where an application for registration is made under this section [57], the Commission may grant such registration where the applicant has filed a notification to the Commission containing

- (a) evidence of valid authorization as a third country fund manager by the competent overseas regulatory authority;
- (b) information on the identity and description of the third country fund manager and its home EU overseas regulatory authority;
- (c) evidence that the third country fund manager is authorized to manage third country funds with comparable features to those that the AIFM intends to manage in Barbados;
- (d) a program of operations stating the activities which it intends to perform and providing a description of the investment funds to be managed in Barbados;
- (e) information on the arrangements for managing the investment funds in Barbados, including
 - (i) the organizational structure of the branch; and
 - (ii) the names and contact details of individuals responsible for the management of the branch;
- (f) evidence that the third country fund manager has entered into an agreement with a custodian that ensures the custodian has access to all information necessary for the performance of its duties in accordance with this Act.

(3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [57], including details on the registration procedure, exchange of information with the relevant overseas regulatory authorities, as well as the prescribed application fees.

58. (1) A third country fund manager intending to obtain a registration under section [59] shall comply with this Act. Conditions for registration.

(2) Sections [32], [41], [42], [44], [45], [46], [47], and [48] shall apply to branches established in Barbados by registered third country fund managers.

(3) If and to the extent that compliance with a provision of this Act is incompatible with compliance with the law to which the third country fund manager is subject, there shall be no obligation on the third country fund manager to comply with that provision of this Act if it can demonstrate that

- (a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the third country fund manager is subject;
- (b) the law to which the third country fund manager is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant investment fund; and
- (c) the third country fund manager complies with the equivalent rule referred to in paragraph (b).

(4) The Commission shall not grant registration under section [57] unless

- (a) it is satisfied that the applicant is able to meet the registration requirements set forth therein;
- (b) it is satisfied that the applicant is able to comply with the provisions of this Act, including subsection (2), where applicable;
- (c) the applicant has adequate capital, own funds and/or professional indemnity insurance in relation to the number and categories of investment funds that it intends to manage, as prescribed by the Commission with the regulations referred to under section [40];
- (d) individuals performing administration, management, and/or control functions at the applicant meet the fit and proper requirements under section [5]; and
- (e) holders of qualifying equity holdings in the applicant meet the requirements of integrity and satisfy criteria of competence and fairness under section [6].

(5) third country fund managers registered pursuant to this Act are enrolled in a dedicated section of the register kept by the Commission pursuant to section [38].

59. (1) A registered third country fund manager shall notify the Commission of any changes that are material to the conditions for the initial granting of the registration prior to implementing any changes. Notification of changes in the information provided.

(2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the third country fund manager of

- (a) any restrictions imposed by the Commission; or
- (b) any proposed changes rejected by the Commission.

(3) The proposed changes under subsection (1) shall be implemented where the Commission does not oppose the changes within the period referred to in subsection (2).

60. (1) The Commission may, at any time, revoke the registration of a third country fund manager where Revocation of third country fund managers registration.

- (a) the Commission is satisfied that the third country fund manager has not commenced its operations within [12] months from the date of registration, or it has ceased to carry on fund management activities in Barbados for at least [6] months;
- (b) the requirements and conditions to which the registration is subject are no longer met;
- (c) the registration was obtained by means of false statements or any other unlawful conduct;
- (d) the third country fund manager fails to comply with any direction given to it by the Commission pursuant to this Act;
- (e) the third country fund manager is in breach of any other duty or obligation prescribed by this Act;
- (f) upon request of the third country fund manager.

(2) Upon revocation of the registration, the third country fund manager shall cease all fund management activities in Barbados and comply with any instructions issued by the Commission.

(3) The investment funds under the management of the third country fund manager whose registration has been revoked shall

- (a) appoint a new investment fund manager or third country fund manager duly licensed or registered under this Act within a timeframe specified by the Commission;
- (b) where the appointment of a new investment fund manager or third country fund manager is not possible within the specified timeframe, enter into liquidation in accordance with the instructions and under the supervision of the Commission.

(4) The Commission may adopt any measures necessary to ensure the orderly transition of management or the orderly liquidation of the investment funds concerned, in order to protect the interests of investors and preserve the stability of the market.

(5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions of this section [60], including provisions governing the procedures for the appointment of a new investment fund manager or third country fund manager, the liquidation of the affected investment funds, and any other measures necessary to safeguard the interests of investors.

61. (1) A third country fund manager registered under this section shall provide the Commission with the information referred to under section [49], which shall apply *mutatis mutandis*. Reporting obligations.

(2) The Commission shall specify, within the regulations issued pursuant to section [49], subsection (4), the manner, form and timing applicable to the reporting obligations of AIFMs under this section [61].

Agents

- 62.** (1) An AIFM intending to carry on fund management activities in Barbados without establishing a branch shall appoint an agent in Barbados. Appointment and role of agents.
- (2) The agent shall be the contact point of the AIFM in Barbados and any official correspondence between the Commission and the AIFM shall take place through such agent.
- (3) The appointment of the agent referred to in subsection (1) shall be maintained by the AIFM throughout the period during which it is registered pursuant to section [52].

Fund administrators

- 63.** (1) An entity shall not carry on fund administration activities in Barbados unless the entity Entities to be authorized to administer investment funds and appointment.
- (a) holds a general administration licence;
- (b) holds a restricted administration licence; or
- (c) is registered pursuant to section [71].
- (2) By way of derogation from subsection (1), the following entities may carry on fund administration activities directly in respect of the investment funds they manage, without obtaining a separate fund administration licence or registration
- (a) investment fund managers licensed under this Act;
- (b) AIFMs registered under this Act that carry on fund management activities through a branch established in Barbados;
- (c) third country fund managers registered under this Act.
- (3) The appointment of a fund administrator by an investment fund manager shall be evidenced by written contract.
- (4) The provisions on delegation set out in section [48], with the exception of subsection (2) thereto, shall apply to the appointment of a fund administrator.

- 64.** (1) The Commission may grant a fund administration licence to an entity established in Barbados, provided that Licensing requirements.
- (a) the entity has adopted the legal form of a [joint-stock company];
- (b) the stated equity capital is not less than the minimum amount established by the Commission with regulations with respect to general administration licences, and restricted administration licences;
- (c) individuals performing administration, management, and/or control functions at the entity meet the fit and proper requirements set forth under section [5];
- (d) a programme of initial operations and a description of the organizational structure are submitted together with the entity's constitutive documents.

- (2) The Commission may refuse to grant a fund administration licence where the requirements set out in subsection (1) are not met.
- (3) The Commission, after consultation with the Minister, shall make regulations laying down, among others, the licensing procedure and requirements for each type of fund administration licence, as well as the prescribed application fees.
- 65.** (1) The holder of a general administration licence is authorized to act as a fund administrator in respect to an unlimited number of investment funds. Types of fund administration licences.
- (2) The holder of a restricted administration licence is authorized to act as a fund administrator solely in respect to the investment funds specified in the licence.
- 66.** (1) A licensed fund administrator shall notify the Commission of any changes that are material to the requirements for the initial granting of a fund administration licence prior to implementing such changes. Notification of changes in the information provided.
- (2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the fund administrator of
- (a) any restrictions imposed by the Commission; or
- (b) any proposed changes rejected by the Commission.
- (3) The proposed changes shall be implemented where the Commission does not oppose them within the period referred to in subsection (2).
- 67.** (1) The Commission may, at any time, revoke a fund administration licence where Revocation of licence.
- (a) the licensee has ceased its operations for at least [12] months;
- (b) the requirements to which the licence is subject are no longer met;
- (c) the licence was obtained by means of false statements or any other unlawful conduct;
- (d) the licensee fails to comply with any duty or obligation prescribed by this Act;
- (e) the licensee fails to comply with any direction given by the Commission under this Act;
- (f) upon request of the fund administrator.
- (2) Where the licence of a fund administrator has been revoked, the investment fund manager that has appointed such fund administrator in respect of one or more investment funds shall
- (a) appoint a new fund administrator licensed or registered under this Act within a timeframe specified by the Commission; or
- (b) assume directly the fund administration activities previously delegated to the fund administrator whose licence has been revoked.
- 68.** (1) Fund administrators licensed or registered pursuant to this Act are enrolled in a dedicated register kept by the Commission, which is divided into separate sections for licensed and registered fund administrators. Fund administrators' Register.
- (2) Upon enrolment, the Commission assigns to each fund administrator a unique identification code to be indicated, together with the reference to the fund administrator's enrolment in the register, in all documents and correspondence.

- (3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [68].
69. (1) A fund administrator shall have an initial capital as prescribed by the Commission and shall maintain sufficient financial resources to ensure the sound performance of its operations. Capital requirements, own funds and professional indemnity insurance.
- (2) The Commission may, in accordance with the principle of proportionality, exempt or partially exempt fund administrators from own funds or professional indemnity insurance requirements.
- (3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [69], specifying, among other things, the applicable financial resource requirements with respect to general administration licences, and restricted administration licences.
70. (1) Fund administrators shall, at any time, use adequate and appropriate human and technical resources that are necessary for the proper performance of their operations. General organizational requirements.
- (2) A fund administrator shall appoint an individual as a compliance officer, subject to such conditions as prescribed by the Commission.
- (3) The compliance officer shall be responsible for ensuring that the fund administrator complies with this Act and any other applicable laws and regulations.
- (4) A fund administrator shall not appoint an individual as compliance officer under subsection (2) unless it is satisfied that the individual meets the fit and proper requirements under section [5] and has satisfied the requirements established by the Commission.
- (5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [70]
71. (1) Entities established in a EU Member State or in a third country that intend to carry on fund administration activities in Barbados may apply for registration, provided that they restrict their activities to administrative services in favour of investment funds established in Barbados. Registration requirements.
- (2) Where an application for registration is made under this section [71], the Commission may grant such registration where the applicant has filed a notification to the Commission containing
- (a) information on the identity and description of the entity;
 - (b) a program of operations stating the activities which it intends to perform and providing a description of the investment funds which intends to administer in Barbados;
 - (c) information on the arrangements for carrying on administration activities in Barbados, including whether such activities will be conducted directly or through the establishment of a branch.
- (3) If the applicant intends to establish a branch, it shall provide to the Commission, in addition to the information requested in subsection (2), the following information
- (a) the organizational structure of the branch;

- (b) the names and contact details of individuals responsible for the management of the branch.
- (4) A fund administrator intending to obtain a registration under this section [71] shall comply with this Act.
- (5) The Commission shall not grant registration under this section [71] unless
- (a) it is satisfied that the applicant is able to meet the registration requirements set forth herein; and
 - (b) it is satisfied that the applicant is able to comply with the provisions of this Act.
- (5) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [71].
72. (1) A registered fund administrator shall notify the Commission of any changes that are material to the requirements for the initial granting of the registration prior to implementing such changes. Notification of changes in the information provided.
- (2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the fund administrator of
- (a) any restrictions imposed by the Commission; or
 - (b) any proposed changes rejected by the Commission.
- (3) The proposed changes shall be implemented where the Commission does not oppose them within the period referred to in subsection (2).
73. (1) The Commission may, at any time, revoke a registration provided under section [70] where Revocation of registration.
- (a) the fund administrator has ceased its operations for at least [12] months;
 - (b) the requirements to which the registration is subject are no longer met;
 - (c) the registration was obtained by means of false statements or any other unlawful conduct;
 - (d) the registered fund administrator fails to comply with any duty or obligation prescribed by this Act;
 - (e) the registered fund administrator fails to comply with any direction given by the Commission under this Act;
 - (f) upon request of the fund administrator.
- (2) Where the registration of a fund administrator has been revoked, the investment fund manager that has appointed such fund administrator in respect of one or more investment funds shall
- (a) appoint a new fund administrator licensed or registered under this Act within a timeframe specified by the Commission; or
 - (b) assume directly the fund administration activities previously delegated to the fund administrator whose registration has been revoked.
74. (1) Fund administrators shall submit to the Commission periodic reports concerning their administrative activities, as prescribed by the Commission. Reporting obligations.

(2) The Commission, after consultation with the Minister, shall make regulations implementing the provisions under this section [74], specifying, among other things, the scope, manner, form and timing of reporting obligations.

Custodians

75. (1) Without prejudice to the requirement referred to in section [5], and section [6], the custodian must be (i) a bank, within the meaning of the *Financial Institutions Act*, established in Barbados or (ii) a Barbadian branch of a bank established in an EU Member State or in a third country. Authorization of the custodian.
- (2) The [Central Bank of Barbados] shall authorize the performance of custodian functions and, after consultation with the Commission, shall regulate the conditions under which the role may be assumed.
- (3) Individuals performing administration, management, and/or control functions at the custodian shall promptly report to the [Central Bank of Barbados and] the Commission, within their respective areas of competence, any irregularities identified in the management of the investment funds or the administration of the fund manager. They shall also provide, upon request of [the Central Bank of Barbados or] the Commission, information on any acts or facts of which they become aware in the performance of their duties as custodian.
76. (1) The custodian shall act (i) independently from the investment fund manager, the investment fund administrator, and the operator of the fund and (ii) in the interest of the fund's investors. The custodian shall take all appropriate measures to prevent potential conflicts of interest between its custodian functions and any other activities it performs. Role and functions of the custodian.
- (2) The custodian shall fulfil its duties regarding the safekeeping of financial instruments entrusted to it and shall verify ownership and maintain records of other assets. Unless entrusted to other entities, it shall also hold the investment fund's cash assets.
- (3) In carrying out its functions, the custodian shall
- (a) verify that the sale, issue, re-purchase, redemption and cancellation of the investment fund equity interests, as well as the allocation of income of the fund, are carried out in accordance with applicable laws and regulations;
 - (b) verify the accuracy of the calculation of the value of the fund equity interests;
 - (c) verify that, in transactions relating to the investment fund, any consideration is remitted to the fund itself within customary time limits;
 - (d) execute the fund manager's instructions unless they are contrary to law, the constitutive documents of the investment fund, and/or any regulatory requirements;
 - (e) monitor the fund's cash flows where such liquidity is not held by the custodian itself.
- (4) The custodian may carry out other activities on behalf of the fund manager, including the calculation of the value of the fund equity interests, without prejudice to the applicable rules on delegation of relevant operating functions under section [48]. In such cases, the custodian shall ensure a

hierarchical and functional separation between its custodian duties and any potentially conflicting activities, and potential conflicts of interest must be identified, managed, monitored, and disclosed to the fund's investors.

(5) The [Central Bank of Barbados, after consultation with the Commission], shall issue implementing provisions for this section [76], including with respect to the identification of entities other than the custodian that may be entrusted with the investment fund's cash assets, the procedures for depositing such assets, and the conditions for the delegation of custody and the reuse of fund assets by the custodian.

77. (1) The custodian shall be liable to the fund manager and to the fund's investors for any loss suffered by them as a result of a breach of its obligations. Liability of the custodian.

(2) In the event of loss of financial instruments held in custody, the custodian shall, unless it can prove that such loss was due to force majeure or unforeseeable circumstances, promptly return financial instruments of the same type or a corresponding amount in cash, without prejudice to its liability for any further loss suffered by the fund or its investors as a result of intentional misconduct or negligence in the performance of its duties.

(3) In the event of loss of financial instruments by a third party to whom custody was delegated, the liability of the custodian shall remain unaffected, unless a written agreement has been entered into between the fund manager, the custodian, and the third party pursuant to which the third party assumes exclusive liability. The conclusion of such agreements shall comply with the provisions issued by the Central Bank of Barbados, after consultation with the Commission, which define the cases in which such agreements are permitted and their minimum content.

(4) Where exclusive liability is assumed by the third party in accordance with subsection (3), such party shall be liable under the terms of subsection (2). If the third party further delegates custody to another entity, its liability shall remain unaffected, without prejudice to the possibility of entering into agreements as provided for under subsection (3).

78. (1) The investment fund shall appoint its custodian within [30] days from the date of its establishment and, in any case, before it starts operations. Appointment of the custodian.

(2) The appointment of the custodian shall be evidenced by written contract. The contract shall regulate, among other things, the flow of information deemed necessary to allow the custodian to perform its functions in favour of the investment fund for which it has been appointed as custodian.

(3) The [Central Bank of Barbados], after consultation with the [Commission], shall make regulations implementing the provisions under this section [78].

Placement agents

79. (1) An entity shall not carry on marketing activities in Barbados unless the entity Entities to be authorized to market equity interests of investment funds.
- (a) holds a marketing licence; or
- (b) is registered pursuant to section [81].

(2) By way of derogation from subsection (1), the following entities may carry on marketing activities directly in respect of the investment funds they manage, without obtaining a separate marketing licence or registration

- (a) investment fund managers licensed under this Act;
 - (b) AIFMs registered under this Act that carry on fund management activities through a branch established in Barbados;
 - (c) third country fund managers registered under this Act.
- (3) The appointment of a placement agent by an investment fund manager shall be evidenced by written contract.
- 80.** (1) The Commission may grant a licence to an entity to carry on marketing activities in or from Barbados as a placement agent, provided that the following conditions are met Licensing requirements.
- (a) the applicant has adopted the legal form of a company, partnership, or other legal form as prescribed by the Commission with regulations;
 - (b) the applicant is established in Barbados;
 - (c) the applicant demonstrates that it has adequate and appropriate resources, systems, and internal procedures for the conduct of marketing activities;
 - (d) individuals performing administration, management, and/or control functions in the applicant entity meet the fit and proper requirements under section **[5]**;
 - (e) the applicant satisfies any other requirement prescribed by the Commission with regulations.
- (2) The Commission may refuse to grant a licence where it considers that the conditions under subsection (1) are not met, or where it deems that the protection of investors or market integrity may otherwise be compromised.
- 81.** (1) Entities established in a EU Member State or in a third country that intend to carry on marketing activities in Barbados shall be registered by the Commission in accordance with this section. Registration requirements.
- (2) Where an application for registration is made under this section **[81]**, the Commission may grant such registration where it is satisfied that
- (a) the applicant is authorized to carry on marketing activities or equivalent investment services in its home jurisdiction and is subject to effective supervision by the competent overseas regulatory authority;
 - (b) the applicant meets the fit and proper requirements prescribed by the Commission with respect to the individuals performing key functions;
 - (c) the applicant has appointed a local representative in Barbados to act as its point of contact for regulatory purposes; and
 - (d) in case the applicant is established in a third country, appropriate cooperation agreements are in place between the Commission and the overseas regulatory authority of the applicant's home jurisdiction, ensuring an efficient exchange of information and coordination of supervisory activities.
- (4) An entity intending to obtain a registration under this section **[81]** shall comply with this Act.

- (5) The Commission shall not grant registration under this section [81] where the requirements of subsection (2) are not met, or where registration is not deemed to be in the public interest or in the interest of investor protection.
- 82.** (1) A licensed or registered placement agent shall notify the Commission of any changes that are material to the requirements for the initial granting of the licence or registration prior to implementing such changes. Notification of changes in the information provided.
- (2) The Commission shall, within [30] days of receipt of the notification referred to in subsection (1), inform the placement agent of
- (a) any restrictions imposed by the Commission; or
 - (b) any proposed changes rejected by the Commission.
- (3) The proposed changes shall be implemented where the Commission does not oppose them within the period referred to in subsection (2).
- 83.** (1) The Commission may, at any time, revoke the licence or registration of a placement agent where Revocation of licence or registration.
- (a) the placement agent has not commenced operations within [12] months of licensing or registration, or has ceased activity for at least [6] months;
 - (b) the conditions to which the licence or registration is subject are no longer met;
 - (c) the licence or registration was obtained through false statements or unlawful conduct;
 - (d) the placement agent fails to comply with any direction issued by the Commission under this Act;
 - (e) the placement agent is in breach of any duty or obligation prescribed under this Act;
 - (f) the revocation is requested by the placement agent.
- (2) Upon revocation of the licence or registration, all mandates granted to the placement agent for the marketing of equity interests of investment funds in or from Barbados shall immediately cease to have effect, unless otherwise determined by the Commission with the revocation provision.
- 84.** (1) Placement agents shall at all times maintain adequate policies and procedures to ensure Organizational requirements.
- (a) honest, fair and professional conduct in the placement of fund's equity interests;
 - (b) proper identification and management of conflicts of interest; and
 - (c) accurate, clear, and non-misleading communications with potential investors.
- (2) Placement agents shall ensure that all marketing communications are consistent with the offering documents of the investment fund and comply with any applicable disclosure requirements set out by the Commission.
- (3) Placement agents shall not receive or hold client assets or investor funds, unless separately authorized under applicable legislation.
- 85.** (1) Placement agents shall carry out marketing activities in accordance with Rules of conduct. high standards of integrity, professionalism, and transparency, acting

honestly, fairly, and in the best interests of the investors to whom the equity interests of investment funds are offered.

(2) In carrying out marketing activities, placement agents shall ensure that

- (a) they understand the investment strategies, risk profiles, and features of the investment funds they market;
- (b) the funds' equity interests offered are suitable for the categories of investors targeted, having regard to the financial situation, investment objectives, and risk tolerance of such investors;
- (c) potential conflicts of interest are identified, mitigated, and, where necessary, clearly disclosed to the investor;
- (d) all information provided to investors is fair, clear, and not misleading, and includes appropriate disclosures on costs, risks, and other relevant features of the investment fund;
- (e) no undue pressure is exercised on investors to subscribe to the investment fund, and that investors are given sufficient time and information to make an informed decision.

86. The Commission, after consultation with the Minister, shall make regulations implementing the provisions under sections [79] through [85], specifying, among other things

Implementing regulations.

- (a) the licensing and registration procedures, requirements, as well as the prescribed application fees;
- (b) the permitted scope of activity of licensed and registered placement agents;
- (c) any applicable disclosure and reporting obligations, as well as rules of conduct including in relation to investor disclosure, risk warnings, and suitability assessment;
- (d) the rules applicable to marketing to retail investors, where permitted, including enhanced disclosure and due diligence requirements;
- (e) any other measure necessary for the proper administration of the placement agent regime under this Act.

87. (1) Placement agents licensed or registered under this Act shall be enrolled in a dedicated register maintained by the Commission, divided into separate sections for licensed and registered placement agents.

Placement agents' Register.

(2) Upon enrolment, the Commission shall assign a unique identification code to each placement agent, to be included in all relevant correspondence.

(3) The Commission, after consultation with the Minister, shall make regulations implementing the provisions of this section [87].

PART IV MARKETING OF INVESTMENT FUNDS

General Provisions

88. For the purposes of this Part IV

Interpretation.

- (a) the terms "fund manager" and "investment fund manager" shall be interpreted as referred to investment fund managers, AIFMs, and

third country fund managers duly licensed or registered under this Act, as applicable; and

- (b) the term “foreign jurisdiction” shall be interpreted as referred to any EU Member State and/or third country;
- (c) the term “foreign investment fund” shall be interpreted as referred to any EU AIF and/or third country fund.

89. (1) No person shall market equity interests in an investment fund in or from Barbados unless the marketing activity is carried out in accordance with the provisions of this Part IV. General rules on marketing in Barbados.

(2) The marketing of equity interests shall be carried out exclusively by

- (a) the investment fund manager of the fund being marketed;
- (b) a placement agent licensed or registered under this Act; or
- (c) a person authorized to market financial instruments under any other enactment in force in Barbados, provided that the marketing is limited to equity interests in investment funds licensed or registered under this Act.

(3) The Commission may prohibit or suspend the marketing of equity interests in an investment fund where

- (a) it is of the opinion that the conduct of the fund manager or placement agent is contrary to this Act or to the interests of investors;
- (b) the information disclosed to investors is false, misleading or materially incomplete; or
- (c) any other requirement of this Part is not complied with.

(4) This section shall not apply in case of a reverse solicitation, provided that the Commission may require at any time the fund manager or placement agent to provide documentary evidence of the unsolicited nature of the investor’s request.

90. (1) Professional funds and innovative funds registered under this Act shall prepare an offering document which includes clear, accurate and up-to-date information to enable investors to make informed investment decisions and to understand the risks associated with the investment fund. Offering document.

(2) The offering document shall be made available to prospective investors by the investment fund manager prior to any subscription or acquisition of equity interests in the investment fund.

(3) The offering document shall include at least the following information

- (a) qualification of the investment fund as a close-ended or open-ended fund, along with a description of the relevant investment strategy and objectives, the categories of assets in which the investment fund may invest, the techniques that may be employed and the associated risks, including information on leverage, restrictions on its use, and the maximum level of leverage permitted;
- (b) the procedures by which the investment strategy or policy may be amended;
- (c) the main legal implications of investing in the fund, including applicable law, jurisdiction and any recognition of foreign judgments;

- (d) the identity and duties of the investment fund manager, fund administrator, the custodian, auditor, and any other appointed service providers, and a summary of the rights of investors;
- (e) a description of how the fund manager complies with the capital, own funds and professional indemnity insurance requirements under this Act, having regard to the number and category of investment funds under management;
- (f) a description of any delegation arrangements in respect of portfolio or risk management, and the custody of assets, including the identity of any delegates and the associated conflicts of interest;
- (g) a description of the valuation procedure and the pricing methodology used to evaluate the fund's assets;
- (h) a description of the liquidity management policy, including redemption rights in normal and exceptional circumstances, and any redemption arrangements agreed with investors;
- (i) a description of all fees, charges and expenses borne directly or indirectly by investors, and the maximum levels applicable;
- (j) an indication of whether any investors obtain preferential treatment or the right to obtain such treatment, and if so, the type of investors and the nature of the preferential treatment;
- (k) information on the latest annual report of the investment fund;
- (l) the procedure and conditions for subscribing to, and redeeming or transferring, equity interests;
- (m) the latest net asset value or market price of the equity interests;
- (n) where applicable, the historical performance of the investment fund;
- (o) a description of how and when the financial statements of the fund will be made available to investors.

(4) The offering document shall be updated and made available to investors whenever a material change occurs with respect to the information referred to in subsection (3).

(5) The Commission shall make regulations, after consultation with the Minister, specifying the format, structure, and any additional content requirements for the offering document referred to in this section [90].

91. (1) A retail fund shall prepare and publish a prospectus in accordance with this Act and the regulations made by the Commission. Prospectus.

(2) The prospectus shall contain all information necessary to enable investors to make an informed assessment of the investment fund, its investment strategy and objectives, the risks involved, and the rights and obligations associated with the subscription, holding and redemption of its equity interests.

(3) The prospectus shall be clear, concise and comprehensible, and shall not contain material omissions or misleading information. It shall be structured in a way that facilitates comparability and accessibility of information for retail investors.

(4) The prospectus shall be made available free of charge to any investor prior to subscription and at any time during the life of the fund.

(5) The Commission may require the investment fund manager or placement agent to modify or withdraw any prospectus that is found to be incomplete, inaccurate, or misleading.

(6) The content, format, approval, publication, and updating of the prospectus shall be further specified by regulations made by the Commission after consultation with the Minister. Such regulations shall ensure that

- (a) the information contained in the prospectus is sufficient and appropriate in light of the fund's structure, strategy, risk profile and investor base;
- (b) the prospectus includes at least the information under section 90, subsection (3);
- (c) the prospectus includes a summary that provides key information in plain language and in a standardised format;
- (d) the prospectus is kept up to date and revised when there is any material change affecting the fund or its offering;
- (e) appropriate procedures are established for the approval and filing of the prospectus by the Commission prior to the commencement of marketing to retail investors.

92. (1) Fund managers marketing investment funds to retail investors in Barbados shall ensure that adequate facilities are made available within Barbados to perform the following tasks Investor facilities for retail funds.

- (a) process subscription, payment, repurchase, and redemption orders from investors relating to equity interests of the investment fund, in accordance with the terms set out in the fund's offering and constitutive documents;
- (b) provide investors with clear information on how orders referred to under paragraph (a) can be submitted, and the procedures for payment of repurchase and redemption proceeds;
- (c) facilitate the handling of information concerning the exercise of investors' rights arising from their investment in the fund marketed in Barbados;
- (d) make available for inspection and provide copies of all information and documents upon request of the Commission;
- (e) provide investors with relevant information on the tasks performed by the facilities referred to in this section, in a durable medium approved by the Commission;
- (f) act as a local point of contact for communication with the Commission.

(2) The facilities referred to in subsection (1) may be provided physically or electronically, and must

- (a) operate in English;
- (b) be provided directly by the fund manager or alternatively, by a third party subject to adequate regulatory oversight and supervision for the tasks performed.

(3) Where a third party is appointed pursuant to subsection (2)(b), such appointment shall be evidenced by a written contract specifying the tasks referred to in subsection (1) that are to be performed by the third party, and

confirming that the third party will receive all necessary information and documents from the fund manager.

- 93.** (1) Any advertising or promotional material relating to investment funds marketed in or from Barbados shall be fair, clear, and not misleading. Advertising standards and prohibition of unfair practices.
- (2) Advertising communications shall
- (a) be consistent with the information contained in the offering document and, where applicable, the prospectus;
 - (b) present a balanced view of the risks and benefits associated with the investment;
 - (c) not emphasise potential returns without providing appropriate information on associated risks;
 - (d) not use misleading comparisons or past performance data in a manner that could deceive investors; and
 - (e) clearly identify the investment fund and the relevant investment fund manager and placement agent, if any.
- (3) The use of terms such as “guaranteed”, “capital protected”, “safe”, or other similar expressions is prohibited unless such terms are justified by the characteristics of the product and appropriately explained.
- (4) Advertising targeted at retail investors shall include a prominent warning that the investment may involve risks, including the potential loss of capital.
- (5) The Commission may, at any time, require the amendment, suspension, or withdrawal of any advertising or marketing communication that it considers to be in breach of the provisions of this Act or any regulations made hereunder.
- (6) The Commission shall make regulations implementing the provisions of this section [93], including
- (a) the standards applicable to the advertising and marketing of investment funds;
 - (b) the manner and format in which advertising materials must be prepared and distributed; and
 - (c) the supervisory and enforcement powers of the Commission in relation to advertising practices.

Marketing requirements and notification procedures

- 94.** (1) An investment fund licensed as a retail fund shall not be marketed in Barbados unless the fund manager has submitted a request for authorization to the Commission and such request has been approved. Marketing of retail funds.
- (2) The request for authorization shall be made in the prescribed form and shall be accompanied by the following documents and information
- (a) the name and identification code of the investment fund;
 - (b) copies of the fund’s prospectus, prepared in accordance with section [91];
 - (c) copies of the constitutive documents of the investment fund;

- (d) a summary of the arrangements for the distribution of the fund's equity interests, including the identity and licensing status of the placement agents involved;
- (e) evidence that appropriate investor facilities will be made available in Barbados in accordance with the regulations made under this Act; and
- (f) any other information or documentation prescribed by the Commission.

(3) Within [30] business days of receipt of a complete request for authorization, the Commission shall inform the applicant of its decision. The marketing of the fund may only commence upon receipt of the Commission's approval.

(4) Within the term referred to under subsection (3), the Commission may request clarifications or additional documentation, and where such request is not fulfilled within [15] business days, the fund manager shall be deemed not to have completed the notification process.

(5) The Commission may refuse to authorize the marketing of a retail fund where it considers that

- (a) the documentation submitted is incomplete, unclear, inconsistent, or misleading;
- (b) the distribution arrangements fail to ensure adequate investor protection; or
- (c) the marketing would otherwise be inconsistent with the provisions of this Act or the regulations made hereunder.

(6) Where a retail fund has been authorized for marketing, any material change to the fund prospectus or distribution arrangements shall be notified to the Commission at least [30] business days prior to its entry into effect. The Commission may, within [15] business days of receipt of the notification, object to the proposed change where it considers that it would be detrimental to investors.

95. (1) An investment fund registered as a professional fund or as an innovative fund under this Act shall not be marketed in Barbados unless the fund manager has submitted a prior notification to the Commission in accordance with this section. Marketing of professional and innovative funds.

(2) The notification shall be submitted in the prescribed form and shall include the following information and documentation

- (a) the name and identification code of the investment fund;
- (b) the fund's offering document prepared in accordance with section [90];
- (c) copies of the constitutive documents of the investment fund;
- (d) the categories of investors to whom the fund is intended to be marketed;
- (e) a summary of the arrangements for the distribution of the fund's equity interests, including the identity and licensing status of the placement agents involved;
- (f) any other information as may be prescribed by the Commission.

(3) The Commission shall acknowledge receipt of the notification within [10] business days. The marketing of the fund may commence upon such acknowledgment, unless the Commission, within such period, requests the fund manager to provide clarifications or additional documentation and such request is not fulfilled within [15] business days.

(4) Any material change to the information or documentation submitted pursuant to this section shall be notified to the Commission no later than [30] days after the change occurs.

96. (1) Equity interests in private funds may be offered in or from Barbados exclusively through private placements addressed to a limited number of eligible investors, as defined by the Commission with regulations made under this Act. Private funds.

(2) The private placement of equity interests in a private fund shall not constitute a public offering and shall not be subject to authorization by the Commission, provided that all the following conditions are met

- (a) the fund is registered as a private fund under section [21];
- (b) the offer is made solely to investors that meet the eligibility criteria established for private funds by the Commission;
- (c) the number of investors does not exceed the maximum threshold prescribed by the Commission; and
- (d) the investment is not subject to any form of general solicitation or advertisement in Barbados.

(3) Fund managers intending to offer equity interests of a private fund in Barbados shall notify the Commission in writing prior to the commencement of the offering, including the following information

- (a) the name and identification code of the fund;
- (b) the categories and number of investors targeted by the private placement; and
- (c) the expected timing and duration of the offering.

97. (1) Investment funds licensed or registered under this Act intending to offer their equity interests to investors located in a foreign jurisdiction shall notify the Commission in advance of the commencement of such marketing activity. Marketing of investment funds in a foreign jurisdiction.

(2) The notification referred to in subsection (1) shall be submitted in the prescribed form and shall include at least the following information

- (a) the name, identification code, and relevant classification of the investment fund to be offered;
- (b) a description of the marketing strategy and the manner in which the offer will be carried out in the foreign jurisdiction, including whether it will be conducted directly or through intermediaries;
- (c) the identity and status of any entities involved in the offer, including local distributors, placement agents, or other intermediaries engaged in the marketing activity;
- (d) the name of the target jurisdiction and the applicable legal or regulatory framework governing the marketing of investment funds in such jurisdiction;

- (e) a summary of any authorization, notification, or registration procedures completed or to be completed with the competent authority of the target jurisdiction;
- (f) any other information or documentation required by the Commission, including translations of the relevant documents where necessary.

(3) The Commission may, at any time, request additional information or clarifications relating to the offer and may issue guidance or conditions to ensure compliance with applicable legal, regulatory, or investor protection standards.

98. (1) A foreign investment fund shall not offer, nor cause to be offered, its equity interests to investors in Barbados unless

Marketing of foreign investment funds in Barbados.

- (a) the fund is authorized, licensed or registered in its home jurisdiction in accordance with the applicable regulatory framework; and
- (b) the offer is carried out in accordance with the provisions of this section and the regulations made hereunder.

(2) The offering of equity interests in Barbados by a foreign investment fund shall be subject to

- (a) prior authorization by the Commission, in the case of foreign investment funds offered to retail investors;
- (b) prior notification to the Commission, in the case of foreign investment funds offered exclusively to professional or sophisticated investors, or through private placement, in accordance with the conditions established by the Commission.

(3) The application for authorization or the notification shall be made in the manner and form prescribed by the Commission and shall include

- (a) a certified copy of the fund's constitutive documents;
- (b) copies of documents containing, at a minimum, information equivalent to that required under section [90] for the offering document and, where applicable, under section [91] for the fund prospectus;
- (c) evidence of authorization or registration of the fund in the home jurisdiction;
- (d) details of the offering structure, including whether the offering is to be conducted through local intermediaries;
- (e) in case of request for authorization pursuant to subsection (2), paragraph (a), evidence that appropriate investor facilities will be made available in Barbados in accordance with the regulations made under this Act; and
- (f) any other information or documents required by the Commission.

(4) All documents submitted pursuant to subsection (3) must be accompanied by a certified English translation where the original documents are not in English.

(5) The Commission may refuse to authorize or may restrict the offering of a foreign investment fund in Barbados where it considers that

- (a) the regulatory regime of the home jurisdiction does not provide sufficient safeguards for investor protection;

(b) the offering could compromise financial stability or the reputation of Barbados;

(c) the fund does not comply with the provisions of this Act and the regulations made hereunder.

(6) The Commission may impose conditions on the offering of foreign investment funds in Barbados, including conditions relating to disclosure, minimum investment thresholds, distribution arrangements, and the availability of facilities for investors.

99. (1) The Commission, after consultation with the Minister, shall make regulations implementing the provisions of sections [94] through [98].

Implementing regulations.

(2) The regulations referred to in subsection (1) shall include, among other things

(a) the procedures, forms, and documentation required for the authorization of the marketing of retail funds in Barbados, including the timeframes for review and approval and any conditions that may be attached to such authorization;

(b) the procedures and information to be provided for the notification of the marketing of professional and innovative funds in Barbados, including updates to notifications and modalities for discontinuation of marketing;

(c) the rules and requirements for the communication of private placement activities concerning private funds, including thresholds, eligible investors, and contents of the communication;

(d) the procedures for the prior notification to the Commission of the intention to market Barbadian investment funds abroad, including the information and documentation to be provided with respect to the host country, the funds concerned, and the planned mode of distribution;

(e) the consequences of non-compliance with the marketing procedures set out under this Part, including the suspension or prohibition of marketing activities and related investor protection measures.

PART V

SUPERVISION AND ENFORCEMENT

General provisions

100. (1) The Commission shall supervise the conduct and operations of investment funds and regulated entities licensed or registered under this Act, to ensure compliance with this Act and with the regulations made thereunder.

Purpose and scope.

(2) Supervision by the Commission shall be exercised for the purpose of ensuring the sound and prudent management of investment funds and regulated entities, the protection of investors, and the integrity and orderly functioning of the investment funds sector.

(3) In carrying out its supervisory tasks, the Commission shall take into account the nature, scale and complexity of the activities of each regulated entity, and/or the type and scale of each investment fund, and shall apply its powers in accordance with the principles of proportionality and effectiveness.

- 101.** (1) The Commission may, at any time, request from any investment fund and regulated entity or from any person acting on their behalf any information, data, documents or records that it considers necessary to carry out its supervisory duties under this Act. Powers to request information and documentation.
- (2) The obligation to comply with the requests under this section shall also apply to
- (a) any person to whom the regulated entity has outsourced essential or important functions or activities, and their staff;
 - (b) any third-party appointed to perform services or tasks relevant to the entity's operations, including the statutory auditor or audit firm responsible for auditing the financial statements of the entity.
- (3) In the exercise of its powers under this section, the Commission may conduct interviews or oral hearings with any person where it considers that such person may possess information relevant to the effective performance of its supervisory functions.
- (4) Requests for information and documentation under this section shall be complied with in the form, manner and time limits specified by the Commission.
- (5) Where appropriate, the Commission may cooperate with other competent authorities, including those responsible for tax and anti-money laundering supervision, for the purpose of acquiring or exchanging information useful for the fulfilment of its supervisory functions.
- (6) Any person receiving a request under this section shall provide complete and truthful responses and may not obstruct or delay compliance with such request without justified reason.
- (7) All information, data and documentation obtained by the Commission in the exercise of the powers referred to in this section shall be subject to professional secrecy in accordance with [the laws of Barbados].
- 102.** (1) The Commission may carry out inspections, with or without prior notice, at the premises of any regulated entity or of any investment fund established in Barbados, for the purpose of verifying compliance with this Act and any regulations, rules, or guidelines issued thereunder. Inspection powers.
- (2) Inspections may also be conducted at the premises of third parties providing services to the entities referred to in subsection (1), including in the case of outsourced functions, and may extend to the documentation, data, or systems relevant to such services.
- (3) For the purposes of an inspection under this section, the Commission may
- (a) access the registered office or any other place of business located in Barbados used by the entity or fund subject to inspection;
 - (b) examine, copy, or take extracts from any books, records, accounts, contracts, data, or other documents, in any format, relevant to the subject of the inspection;
 - (c) request explanations or clarifications, orally or in writing, from any individuals performing functions at the inspected entity, including officers, directors, and employees;
 - (d) examine systems and internal procedures used for compliance, risk management, and control purposes;

- (e) require the production of documents and data in a structured format, and where necessary, demand access to software, IT systems, or encrypted data relevant to the inspection;
- (f) request and obtain any existing recordings or stored data related to telephone conversations, electronic communications, or data exchanges held by the regulated entity, or by a telecommunications operator with respect to such entity.

(4) Where the Commission considers it necessary for the purposes of the inspection, it may seize or secure any documents, files or media, subject to any applicable legal privilege or safeguards under the laws of Barbados.

(5) The Commission may request overseas regulatory authorities to carry out inspections at the offices or branches of investment fund managers, fund administrators, custodians or placement agents licensed or registered under this Act and established in the territory of the relevant EU member state or third country, or may agree with such authorities on alternative arrangements for conducting such inspections.

(6) Overseas regulatory authorities may, after informing the Commission, carry out inspections, either directly or through appointed representatives, at the branches established in Barbados of AIMFs, third country fund managers, fund administrators, custodians or placement agents authorized by such foreign authorities. Where requested, the Commission shall either carry out the inspections itself or agree with the requesting overseas regulatory authority on the appropriate arrangements to facilitate such inspections.

(7) The Commission may enter into cooperation agreements with overseas regulatory authorities to define the modalities for access and inspection of the branches of entities authorized by either the Commission or the overseas regulatory authorities and established in the territory of the other.

(8) The Commission may carry out inspections referred to in this section by appointing its officers or agents, or by delegating the function to other public authorities or professionals, under its direction and responsibility.

(9) A report shall be drawn up following each inspection, summarising the findings and any breaches identified, and shall be notified to the person subject to inspection.

(10) Persons subject to inspection shall fully cooperate with the Commission or its delegates and shall not obstruct, hinder or delay the inspection in any way whatsoever.

- 103.** (1) Where the Commission finds that an investment fund or a regulated entity has breached, or is likely to breach, provisions of this Act or of the regulations made thereunder, it may, without prejudice to the imposition of any administrative sanctions in accordance with sections [115] through [121]
- Powers of intervention on regulated entities.
- (a) issue warnings or recommendations;
 - (b) order the entity to cease or modify certain conduct or operations;
 - (c) require the replacement or removal of directors, senior officers or other key personnel;
 - (d) require the modification of internal procedures, including risk management, compliance and audit systems;
 - (e) impose temporary restrictions on activities or services;

(f) require the entity to adopt specific remedial measures within a defined time frame.

(2) The Commission shall give the entity prior notice of its intention to adopt a measure under subsection (1), indicating the grounds therefor and allowing the entity to submit written observations, unless immediate action is required to protect investors or ensure market integrity.

(3) The Commission may also refer the matter to the [public prosecutions] for the institution of criminal proceedings where applicable.

- 104.** (1) Where a foreign investment fund is marketed in Barbados in breach of this Act or fails to comply with its obligations under the authorization or notification granted by the Commission, the Commission may
- (a) suspend or prohibit the marketing of the fund in Barbados;
 - (b) require the fund or its manager to adopt specific measures within a prescribed time frame;
 - (c) notify the competent authority of the fund's home jurisdiction of the breach; and
 - (d) publish the suspension or prohibition order in the Official Gazette or through any other public means.

Measures relating to foreign investment funds marketed in Barbados.

(2) The measures under this section shall be proportionate to the breach and aim to protect investors and maintain the integrity of the market.

Administrative sanctions

- 105.** (1) In determining the nature, extent and amount of the administrative sanction to be imposed under this Act, the Commission shall consider, among other things
- (a) the seriousness and duration of the violation;
 - (b) the degree of responsibility of the person or entity involved;
 - (c) the amount of advantage gained or loss avoided as a result of the violation, where determinable;
 - (d) the damage caused to investors or the market, where ascertainable;
 - (e) the level of cooperation of the perpetrator with the Commission;
 - (f) any previous breaches committed by the same person;
 - (g) the systemic impact of the violation;
 - (h) any corrective or mitigating actions taken by the perpetrator after the breach occurred.

Criteria for determining administrative sanctions.

(2) Where the sanction includes the imposition of an administrative fine, the Commission shall also consider the financial situation of the sanctioned person.

(3) For the purposes of determining the administrative pecuniary sanctions provided for under this Part V, "turnover" shall mean the total annual turnover of the entity, as resulting from the latest available financial statements approved by the competent bodies of the entity.

- 106.** (1) Any person who, in the course of a request for information or documentation, or in connection with an inspection, supervisory or enforcement activity carried out under this Act

Protection of the Commission's supervisory activity.

- (a) refuses to provide information or documentation requested by the Commission pursuant to this Act;
- (b) provides false, misleading, or incomplete information;
- (c) obstructs the Commission, or any person acting on its behalf, in the performance of its duties under this Act,

shall be subject to an administrative pecuniary sanction not exceeding \$ [250,000], unless the conduct constitutes a criminal offence under any other law of Barbados.

(2) The Commission may, in addition to the administrative pecuniary sanction under subsection (1), impose any corrective measure it deems necessary, including the suspension of a licence or registration.

(3) Where the conduct referred to in subsection (1) is committed by an entity, such entity shall be subject to an administrative pecuniary sanction ranging from \$ [10,000] to \$ [2,500,000], or up to [10%] of its turnover, where such amount exceeds \$ [2,500,000] and where the turnover is determinable pursuant to section [105].

(4) Without prejudice to the sanction imposed on the entity pursuant to subsection (3), the administrative pecuniary sanction set out in subsection (3) may also be imposed on the corporate officers and employees of the entity where the relevant conduct has

- (a) materially affected the overall organizational structure or risk profile of the entity; or
- (b) caused serious prejudice to investor protection, or to the transparency, integrity, or proper functioning of the market.

(5) Where the advantage gained by the perpetrator of the violation as a consequence of such violation exceeds the maximum pecuniary limits provided under this section, the sanction may be increased up to twice the amount of the benefit obtained, provided that such amount is determinable.

107. (1) Any entity that, without being licensed or registered under this Act, uses in their name, documentation, or advertising any expression that falsely suggests that such entity is licensed, registered, or otherwise authorized under this Act, shall be subject to an administrative fine not exceeding \$ [200,000] and an order to cease the unlawful use. Unlawful use of reserved designations.

(2) The Commission may impose further corrective measures, including publication of the violation and prohibition from conducting any further activity in or from Barbados.

108. (1) Any person who acquires, directly or indirectly, a qualifying holding in a regulated entity without complying with the prior notification and authorization requirements set forth in this Act, shall be subject to an administrative fine ranging from \$ [25,000] to \$ [2,500,000]. Unlawful acquisition of qualified holdings.

(2) Where the acquirer is already a shareholder or partner in the regulated entity, the Commission may order the suspension of voting rights associated with the unlawfully acquired equity interests.

109. (1) Where a person fails to comply with any of the provisions under Part II, Part III, and Part IV, or of any related implementing regulation, rule, or guideline issued by the Commission, unless the conduct constitutes a criminal offence under any other law of Barbados it may be subject to an administrative sanction ranging from \$ [25,000] to \$ [5,000,000]. Administrative sanctions for breaches of fund regulatory provisions.

- (2) The administrative sanction referred to under subsection (1) may be increased up to [10%] of the entity's turnover, where
- (a) the perpetrator is an entity; and
 - (b) the turnover exceeds \$ [5,000,000] and is determinable pursuant to section [105].
- (3) The administrative sanction may be accompanied by other corrective measures, including
- (a) suspension or revocation of the licence or registration;
 - (b) removal or suspension of responsible officers;
 - (c) prohibition from engaging in certain business activities;
 - (d) mandatory appointment of an external advisor or auditor.
- (4) The provisions of subsections (1) through (3)
- (a) shall not apply to cases of non-compliance falling within the scope of sections [106, 107, and 108];
 - (b) shall also apply to cases of non-compliance falling within the scope of section [143].
- 110.** (1) The individuals performing administration, management, and/or control functions in a regulated entity who, through wilful misconduct or gross negligence, cause the entity to commit a violation under sections 106 through 109 of this Act, shall be subject to an administrative pecuniary sanction not exceeding \$ [500,000].
- (2) The Commission may impose the sanctions under subsection (1) independently of the sanctions imposed on the regulated entity.
- (3) The sanctions under this section [110] shall not preclude the application of civil or criminal liability under any other law of Barbados, where applicable.
- 111.** (1) Where the Commission finds that any person has violated a provision of this Act or of the regulations made thereunder, it may order such person to cease and desist from committing the violation and to take, within a timeframe specified in the order, any corrective or remedial action necessary to ensure compliance.
- (2) An order under subsection (1) may be issued independently of, or in addition to, any administrative pecuniary sanction provided for under this Part V.
- 112.** (1) The Commission may, in accordance with the conditions set forth in regulations made under this Act, allow the recipient of an administrative pecuniary sanction to settle the violation by paying, within a specified timeframe, a reduced amount not exceeding [two-thirds] of the full sanction.
- (2) Payment of the reduced amount pursuant to subsection (1) shall preclude the initiation of any further administrative proceedings for the same violation.
- 113.** No administrative pecuniary sanction shall be imposed where the conduct is deemed inoffensive by reason of its negligible seriousness, absence of material consequence, or compliance obtained within the time limit set forth in an order issued under section [111].
- Liabilities of officers and employees.
- Order to cease violations.
- Payment in reduced amounts.
- Non-punishable conduct.

- 114.** (1) The Commission may issue a public statement disclosing that a person is under investigation or has committed a violation of this Act, where such disclosure is necessary or appropriate in the interest of investor protection, market transparency, or financial stability. Public statements and publication of sanctions.
- (2) Final decisions imposing administrative sanctions or other enforcement measures under this Part V shall be published on the official website of the Commission without undue delay, including at least the identity of the person sanctioned, a description of the breach, and the nature and amount of the sanction or measure imposed.
- (3) The Commission may refrain from publishing any decision under subsection (2), or may publish them in anonymised or aggregate form, where it considers that publication would cause disproportionate harm to the parties involved or jeopardise the stability of financial markets.

Sanctioning proceedings

- 115.** (1) The sanctioning proceedings conducted by the Commission pursuant to this Act shall be governed by the principles of adversarial process, transparency, and procedural fairness, in accordance with the provisions set out in the sections that follow. Principles governing sanctioning proceedings.
- (2) In the course of the proceedings, the person subject to the procedure shall be granted full access to the investigative file and shall have the right to be heard on the facts and charges alleged against them before any final decision is adopted, in accordance with the procedural timelines and defence rights specified in this Part V.
- (3) The Commission shall ensure the separation between the functions responsible for conducting the investigation and those responsible for adopting the final decision, and shall ensure that minutes are taken of all material steps and declarations made during the course of the proceedings.
- 116.** (1) Where the Commission has reasonable grounds to believe that a person has committed a violation of this Act or of any regulation, rule, or guideline issued under it, it shall notify the concerned party in writing of Notification of violations.
- (a) the alleged facts and conduct constituting the violation;
- (b) the relevant legal provisions allegedly breached;
- (c) any supporting evidence;
- (d) possible administrative sanctions or corrective measures that may be imposed;
- (e) the right to submit written observations and to request a hearing within a specified time limit, which shall not be less than **[20]** business days from the notification.
- (2) The notification under subsection (1) shall be deemed to initiate the sanctioning proceeding and shall suspend any limitation periods applicable to the imposition of administrative sanctions.
- 117.** (1) Upon expiry of the term referred to in section **[116]**, subsection (1), paragraph (e), the Commission shall, where appropriate, formally commence the enforcement proceeding by Commencement of proceedings.
- (a) appointing an internal case officer or enforcement unit to oversee the procedure;

- (b) informing the concerned party of the identity of the designated officer or unit;
- (c) fixing a schedule for the completion of the proceedings, including deadlines for submission of evidence and scheduling of hearings, where requested.

(2) The Commission shall conduct the proceedings with impartiality and independence and shall ensure full respect of the right of defence of the concerned party.

118. During the instruction phase, the Commission shall

Instruction phase.

- (a) evaluate the evidence submitted by the parties;
- (b) conduct any further investigations necessary to establish the facts;
- (c) allow the concerned party to make written representations and, if requested, to be heard in person.

(2) The Commission may also obtain information or assistance from other public authorities in Barbados or overseas regulatory authorities, pursuant to applicable agreements or international cooperation frameworks.

(3) The concerned party may be assisted by legal counsel and shall have access to the file, save for information classified as confidential or protected by law.

119. (1) Following the instruction phase, the Commission shall issue a reasoned decision either

Decision phase.

- (a) closing the proceedings without further action; or
- (b) imposing one or more administrative sanctions or corrective measures pursuant to sections [105 to 114].

(2) The administrative sanctions referred to in this Part shall be applied by the Commission, following the notification of the ascertained infringements to the concerned parties. Such notification shall be made within [180 days] from the date of the ascertainment of the facts, or within [360 days] where the concerned party is domiciled or has its registered office outside of Barbados.

(3) The decision shall state

- (a) the facts established;
- (b) the applicable legal provisions;
- (c) the reasons for the sanction or measure imposed;
- (d) the amount and terms of payment in case of fines;
- (e) the available remedies, including the right to appeal.

(4) The decision shall be notified without delay to the concerned party and shall take effect from the date of notification, unless otherwise specified therein.

120. (1) Any person subject to an administrative sanction or measure under this Act may appeal the Commission's decision to the [Court] within [30 business days] from the date of notification of the decision under section [119].

Sanctions and appeal.

(2) The appeal shall not suspend the enforcement of the decision, unless otherwise ordered by the [Court] on request of the appellant.

(3) The publication of final decisions and sanctions shall be governed by section 114.

121. (1) The Commission, after consultation with the Minister, shall make regulations for the proper implementation of this Part V. Implementing regulations.

[(2) Without prejudice to the generality of subsection (1), such regulations may provide for

(a) the procedures and timeframes for the investigation of suspected breaches and the exercise of inspection and information powers by the Commission;

(b) the procedural rules applicable to the initiation, conduct, and conclusion of sanctioning proceedings, including the right of defence, access to the file, and modalities of personal hearings;

(c) the criteria and methodology for determining the amount of administrative pecuniary sanctions, including aggravating or mitigating circumstances;

(d) the mechanisms for appealing decisions issued by the Commission under this Part V, in compliance with the laws of Barbados;

(e) the form, timing, and modalities for the publication of enforcement measures and sanctions;

(f) the cooperation frameworks and procedures for coordination with overseas regulatory authorities in the context of supervisory or enforcement actions.]

(3) The Commission may issue guidelines to provide further guidance on the interpretation and application of the regulations adopted pursuant to this section.

PART VI DUTIES AND POWERS OF THE COMMISSION

General provisions

122. (1) The Commission shall be responsible for the general administration and enforcement of this Act, and for the supervision and regulation of all investment funds, fund managers, and other regulated entities licensed or registered under this Act. In performing its functions and duties, the Commission shall act in the public interest and for the protection of investors, and shall have regard to the fairness, efficiency and transparency of the investment funds sector and the reduction of systemic risk in the financial system, consistent with internationally accepted regulatory principles. General responsibilities of the Commission.

(2) Without prejudice to the generality of subsection (1), the functions of the Commission under this Act include

(a) supervising the activities and operations of investment funds, fund managers, fund administrators, custodians, and other regulated entities to ensure compliance with this Act and any regulations or rules made hereunder;

(b) monitoring and securing compliance by all persons subject to this Act with the provisions of this Act, the regulations and any rules or guidelines issued by the Commission;

- (c) promoting the sound and prudent management of investment funds and the protection of investors in such funds;
- (d) taking such measures as are necessary to prevent fraudulent, unfair or otherwise improper practices in the management or distribution of investment funds; and
- (e) performing any other function or duty conferred on the Commission by or under this Act or any other law.

(3) In carrying out its supervisory responsibilities, the Commission may exercise all powers conferred on it by this Act and by the Financial Services Commission Act (or any successor legislation), including any power and authority under Part VI. The Commission shall coordinate its supervision and enforcement actions under this Act with its functions under any other applicable enactments to ensure a coherent and effective regulatory approach.

(4) The Commission shall administer this Act in accordance with its provisions and objectives. In the event of any conflict between the exercise of the Commission's powers under this Act and its powers under the Financial Services Commission Act, the provisions of this Act shall, to the extent of the conflict, prevail in matters specifically relating to investment funds.

123. (1) In the exercise of its regulatory and supervisory powers under this Act, the Commission shall promote technical cooperation and regulatory dialogue with Technical and regulatory cooperation.

- (a) other domestic regulatory and supervisory authorities, in order to ensure consistency, efficiency, and coordination in the application of financial sector legislation; and
- (b) overseas regulatory authorities, international standard-setting bodies, and regional organizations, to enhance regulatory convergence, mutual recognition, and information exchange.

(2) For the purposes of subsection (1) and pursuant to the provisions of the Financial Services Commission Act, the Commission may enter into memoranda of understanding or similar arrangements that establish mechanisms for consultation, cooperation, and the exchange of information, including on supervisory practices, enforcement actions, and cross-border matters affecting investment funds or regulated entities, and, more in general, any other matter governed under this Act.

(3) The Commission shall seek to align its regulatory and supervisory practices with internationally recognised standards, including those established by IOSCO, FATF, and other relevant bodies, taking into account the specific characteristics of the Barbadian market.

124. (1) Prior to the adoption of regulations, rules and/or guidelines of general application under this Act, the Commission may, unless urgency or public interest requires otherwise, conduct a public consultation process aimed at gathering comments from affected stakeholders and the general public. Public consultations and regulatory impact analysis.

(2) The Commission may publish a consultation document setting out the proposed measures, the objectives pursued, and a summary of the rationale supporting the proposal, including its expected regulatory, financial, and market impact.

(3) The consultation process shall remain open for a reasonable period of time, not less than [30 business days] from publication, and the Commission shall consider all feedback received before finalising the proposed measures.

Regulatory and rule-making powers

- 125.** (1) In exercising its powers to issue regulations, rules, or guidelines under this Act, the Commission shall observe the following general principles
- Principles governing the Commission's rule-making powers.
- (a) respect for the autonomy and operational discretion of investment funds and regulated entities, subject to the achievement of regulatory objectives and the protection of investors;
 - (b) proportionality, meaning that regulatory obligations shall be adequate and necessary to achieve the intended objectives, and shall avoid imposing unnecessary burdens on investment funds and regulated entities;
 - (c) promotion of financial innovation, digitalisation, and competition in the investment funds sector, while ensuring market integrity and investor protection.
- (2) The Commission may, in duly justified and exceptional circumstances, impose additional regulatory requirements with respect to the performance of fund management activities, fund administration activities and any other activity regulated under this Act, where such requirements are objectively necessary to address specific risks to investor protection, financial stability, or market integrity that are particularly relevant to the financial market.
- (3) In such cases, the Commission shall clearly identify the nature, scope, and duration of the additional obligations imposed under subsection (2), and shall ensure that such obligations are proportionate to the specific risk addressed.
- (4) The Commission shall inform the Minister of any regulation adopted under subsection (2) and provide the reasons for its adoption, in view of its notification to the relevant international standard-setting bodies, where applicable.
- 126.** (1) Without prejudice to subsection (5), the Commission may make regulations prescribing any matter required or authorized by this Act to be prescribed, or otherwise for the purpose of giving full effect to the provisions of this Act.
- Power to make regulations.
- (2) Regulations made under this section shall be published in the Official Gazette and made available by such other means as the Commission considers appropriate.
- (3) Without limiting the generality of subsection (1), such regulations may provide for
- (a) the qualification, requirements and ongoing obligations of investment funds, fund managers, fund administrators, custodians, placement agents, and any other person subject to licensing or registration under this Act;
 - (b) capital, solvency, or financial resource requirements to be maintained by regulated entities;
 - (c) the form, content, and periodic update of offering documents, fund prospectuses, periodic reports, and investor disclosures;

- (d) conduct of business and prudential requirements, including rules on valuation of assets, redemption of equity interests, risk management, delegation and outsourcing, and liquidity;
- (e) fees and charges payable to the Commission, and forms to be used for applications and notifications under this Act;
- (f) any other matter necessary or expedient for the implementation of this Act.

(4) Regulations made under this section may differentiate based on the type of investment fund or category of licensee or registrant, provided that such differentiation is based on objective criteria consistent with the purpose of this Act.

(5) The Commission shall consult with the Minister before issuing any regulation of general application. Where regulations concern matters of technical nature or are limited to the implementation of detailed provisions of this Act, the Commission may issue such regulations upon notification to the Minister.

127. (1) The Commission may, by written instrument, issue rules for the purpose of implementing and clarifying specific provisions of this Act or of any regulation made under section [126]. Power to make rules.

(2) Rules may apply to specific categories of funds, fund managers, or other regulated entities, and may address operational, procedural, or compliance-related matters. Rules shall have binding effect on those to whom they are addressed, unless otherwise specified therein.

(3) In the event of a conflict between a rule and a regulation or this Act, the regulation or the Act shall prevail.

(4) The Commission shall publish any rules issued under this section in a manner accessible to the general public, including by electronic means.

128. (1) The Commission may issue guidelines for the purpose of interpreting, clarifying, or assisting compliance with the provisions of this Act, regulations or rules. Power to make guidelines.

(2) Guidelines may be issued generally or in respect of specific categories of entities, transactions, or activities, and shall be published on the Commission's website or by such other means as the Commission considers appropriate.

Exemptions

129. (1) The Commission may, in accordance with the provisions of this Part VI, grant exemptions from specific requirements of this Act or of any regulations or rules made thereunder, where such exemptions are justified by the nature, scale or complexity of the activities of the relevant investment fund or regulated entity, and do not compromise the objectives of investor protection, financial stability, or market integrity. General framework for exemptions.

(2) The grant of any exemption under this Act shall be subject to the following conditions

- (a) the exemption must be necessary and proportionate in light of the specific operational, structural, or investor profile of the regulated entity or fund concerned;

(2) The Commission shall assess the application and issue a reasoned decision within [20 business days], indicating whether the exemption is granted, denied, or granted with conditions.

(3) The Commission shall issue guidance specifying the criteria, documentation and process for submitting an application for exemption under this section [131].

(4) The Commission shall publish on its website a list of the exemptions granted under this section, including a description of the rationale and any conditions imposed to the exempted funds and regulated entities, except where the Commission determines that publication would prejudice legitimate confidentiality interests or market stability.

Expedited licensing and registration

132. (1) The Commission may grant provisional licences or registrations to investment funds that meet the conditions set out in this section, subject to the subsequent completion of the standard licensing or registration process in accordance with this Act. Expedited licensing and registration process.

(2) A provisional licence or registration may be issued within [72] hours from the date of receipt of a complete application, where the following conditions are cumulatively satisfied

- (a) the application is submitted by a sponsor in good standing;
- (b) the investment fund to which the application relates is not a retail investment fund;
- (c) the application is accompanied by the offering document, a letter from the appointed custodian and auditor, confirming their appointment and engagement with the fund;
- (d) each operator of the investment fund has submitted a completed fit and proper declaration, including information and documents as prescribed by the Commission;
- (e) the application includes payment of the prescribed provisional registration or licensing fee.

(3) A provisional licence or registration shall remain valid for a period not exceeding [90] days from the date of issue, unless earlier replaced by a definitive licence or registration, or revoked by the Commission for non-compliance with this Act or any regulation made thereunder.

(4) The granting of a provisional licence or registration does not exempt the fund or its operators from the obligation to comply fully with all substantive requirements of this Act and the regulations, including the formal review and approval of all documentation by the Commission within the prescribed timeframe.

(5) For the purposes of this section, “sponsor” means any fund manager, AIFM, third-country fund manager, that has already successfully submitted one or more fund applications under this Act and has been duly registered as a sponsor by the Commission under section [133].

(6) The Commission shall make regulations implementing the provisions under this section, including the applicable procedures and requirements for the expedited approval process, relevant forms, supporting documentation, and any conditions under which the provisional approval may be revoked or extended.

133. (1) A person may act as a sponsor for the purposes of section [132] where that person is
- Eligibility and register of sponsors.
- (a) licensed or registered as a fund manager, AIFM, third-country fund manager under this Act; and
 - (b) has already successfully submitted at least an application to manage and/or market investment funds in Barbados under this Act that resulted in the grant of a licence or registration.
- (2) A sponsor shall remain eligible for the purposes of section 135 only for so long as they remain in good standing with the Commission and continue to meet the conditions of their licence or registration.
- (3) The Commission shall maintain an internal register of all persons who are eligible to act as sponsors under section [132].
- (4) The register shall be updated periodically and may be made publicly available in whole or in part, as determined by the Commission.

Dissolution and winding-up

134. (1) Where, following the occurrence of any of the events referred to in section [8, subsection (1)], and/or section [9, subsection (1)], the investment fund has not appointed a new fund manager or custodian within the timeframe established therein, and the further period granted for such appointment has also expired, the operators of the investment fund shall request the Commission to initiate the dissolution and liquidation process of the fund.
- Dissolution of investment funds.
- (2) Upon receiving a request under subsection (1), or where it determines that the circumstances of the investment fund warrant such action in the interest of investor protection or market integrity, the Commission may
- (a) order the dissolution and liquidation of the investment fund;
 - (b) appoint one or more individuals, who meet the fit and proper criteria and possess the appropriate qualifications and experience, to act as liquidator(s) for the fund and oversee the realisation and distribution of its assets;
 - (c) notify any other competent authority in order to ensure that the dissolution is carried out in accordance with the applicable legal and procedural requirements based on the legal form of the investment fund;
 - (d) adopt any other measure deemed necessary to safeguard the interests of investors and creditors of the investment fund.
- (3) The operators, service providers and any person having control over the assets, accounts, books, or records of the investment fund shall fully cooperate with the Commission and any individuals appointed under subsection (2)(b) in the execution of the liquidation process.
- (4) The liquidation shall be carried out in accordance with the legal and procedural framework applicable to the legal form of the investment fund, and the Commission may cooperate with the competent authorities responsible for overseeing such framework, as necessary to facilitate the process and ensure the protection of investors and creditors.
- (5) The Commission shall adopt regulations to govern the procedures, criteria, and requirements applicable to the dissolution and liquidation of investment funds under this section.

- 135.** (1) Where a regulated entity established in Barbados becomes unable to carry out its activities in compliance with this Act due to insolvency, loss of licence or registration, cessation of business, or any other circumstance that materially impairs its ability to fulfil its obligations, the Commission may
- Dissolution of regulated entities.
- (a) order the dissolution and liquidation of the regulated entity;
 - (b) appoint one or more individuals, who meet the fit and proper criteria and possess the appropriate qualifications and experience, to act as liquidator(s) and oversee the realisation and distribution of the entity's assets;
 - (c) notify any other competent authority in order to ensure that the dissolution is carried out in accordance with the applicable legal and procedural requirements based on the legal form of the regulated entity;
 - (d) adopt any other measure deemed necessary to ensure an orderly wind-up of operations and to safeguard the interests of clients, investors, investment funds or other affected parties.
- (2) Prior to adopting the measures referred to in subsection (1), the Commission shall notify the regulated entity of the grounds on which the dissolution may be ordered, and shall grant a period of **[6]** months from the date of such notification for the regulated entity to take appropriate remedial action or otherwise regularise its position.
- (3) The regulated entity, its directors, officers, employees, and any relevant service providers shall cooperate fully with the Commission and with any individual appointed under subsection (1)(b), and shall grant access to all documents, accounts, records, and assets necessary for the execution of the dissolution process.
- (4) The liquidation shall be carried out in accordance with the legal and procedural framework applicable to the legal form of the regulated entity, and the Commission may coordinate with the competent authorities responsible for such framework, as necessary to facilitate the dissolution and to ensure the protection of clients, investors, and market participants.
- (5) The Commission shall adopt regulations to govern the procedures, criteria, and requirements applicable to the dissolution and liquidation of regulated entities under this section.

PART VII MISCELLANEOUS

- 136.** (1) The Commission shall publish in the Official Gazette and in at least one newspaper in daily circulation in Barbados a notice of any decision adopted under this Act that results in the granting or revocation of a licence, registration, or authorization.
- Publication of measures and decisions.
- (2) Unless otherwise provided in this Act or in any regulation made thereunder, the Commission shall also publish – in the manner referred to under subsection (1) - any other decision or measure adopted under this Act where such publication is necessary or appropriate in the interest of investor protection, market transparency, or public awareness.
- 137.** Notwithstanding any enactment to the contrary
- Tax exemptions.
- (a) an investment fund authorized to carry on business under this Act; and

- (b) an investor in any such investment fund,
shall be exempt from the provisions of the *Stamp Duty Act* and the *Property Transfer Tax Act* with respect to transactions concerning the acquisition or transfer of equity interests in investment funds.
138. Where it is provided in this Act that a register be established and maintained or kept, or a book of accounts be kept, or any other document be prepared and/or published, any entry in such register, book of account or other document, or the production of any licence, registration, authorization or certificate issued under this Act, shall be *prima facie* evidence of the contents thereof. Register and other documents as evidence.
139. (1) The Commission shall adopt the regulations necessary to implement the provisions of this Act within [6] months from the date of its entry into force. Implementing regulations.
(2) Without prejudice to the generality of subsection (1), such regulations shall address, *inter alia*, licensing and registration procedures, prudential and conduct requirements, reporting obligations, and any other matter expressly mandated under this Act to be prescribed by regulation.
140. (1) Any person carrying out an activity regulated under this Act on the date of its entry into force shall, within [6] months from the adoption of the implementing regulations referred to in section [141], submit an application for authorization or registration under this Act, in accordance with the procedures and requirements established therein. Transitional provisions.
(2) Until the expiry of the transitional period referred to in subsection (1), any such person shall be deemed to be operating on a provisional basis, and may continue its activities provided that it complies, to the extent possible, with the general principles of this Act and acts in good faith to ensure timely compliance.
(3) After the expiry of the transitional period, no person shall continue to carry out any regulated activity under this Act unless duly authorized or registered in accordance with its provisions.
141. Any regulation, rule, directive, or other measure, issued by the Commission under the *Mutual Funds Act* that is not inconsistent with this Act shall be deemed to have been made under this Act and shall continue to have full effect as if it was made under this Act, until revoked, replaced, or amended under this Act. Savings.
142. The *Mutual Funds Act* is repealed. Repeal of Mutual Funds Act.

Schedule 1

Financial instruments include any of the following:

- (1) transferable securities;
- (2) money-market instruments;
- (3) equity interests, units and/or parts of investment funds;
- (4) options, futures, swaps, forward rate agreements and any other derivative instruments;
- (5) financial contracts for differences.

APPENDIX II

2025-06-26

OBJECTS AND REASONS

This Bill would amend the Financial Services Commission Act, 2010 (Act 2010-21).

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Act 2010-21
3. Amendment of section 4 of Act 2010-21
4. Amendment of section 6 of Act 2010-21
5. Insertion of section 6D into Act 2010-21
6. Amendment of section 8 of Act 2010-21
7. Insertion of new sections 9A, 9B and 9C in Act 2010-21
8. Amendment of section 10 of Act 2010-21
9. Amendment of section 11 of Act 2010-21
10. Repeal and replacement of section 15 of Act 2010-21
11. Amendment of section 16 of Act 2010-21
12. Insertion of section 19A into Act 2010-21
13. Amendment of section 20 of Act 2010-21
14. Amendment of section 23 of Act 2010-21
15. Amendment of section 25 of Act 2010-21

- 16.** Amendment of section 31 of Act 2010-21
- 17.** Repeal and replacement of section 38 of Act 2010-21
- 18.** Insertion of new sections 39A, 39B, 39C, 39D and 39E into Act 2010-21
- 19.** Amendment of section 40 of Act 2010-21
- 20.** Amendment of section 54 of Act 2010-21
- 21.** Insertion of 54A into Act 2010-21

BARBADOS

A Bill entitled

An Act to amend the *Financial Services Commission Act, 2010*
(Act 2010-21).

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Financial Services Commission (Amendment) Act, 2025*.

Amendment of section 2 of Act 2010-21

2. *Section 2 of the Financial Services Commission Act, 2010 (Act 2010-21), in this Act referred to as the principal Act, is amended by*

(a) deleting the definition of “financial institution” and substituting the following definition:

“ “financial institution”

(a) means an institution or a business which is governed by any of the Acts set out in the *Second Schedule*; and

(b) includes

(i) a credit union;

(ii) a mutual fund;

(iii) a pension plan; or

(iv) a reporting issuer; ”; and

(b) inserting the following definitions in their appropriate alphabetical order:

“ “administrative penalty” means a penalty of up to \$250 000 payable to the Commission for

(a) a breach of a term or condition of a licence, certificate, registration or authorization, as the case may be; or

(b) a contravention of this Act, its statutory instruments or a specified enactment;

“intermediary” includes

- (a) an insurance intermediary as defined in section 2 of the *Insurance Act*, Cap. 310;
- (b) a market actor as defined in section 2 of the *Securities Act*, Cap. 318A; and
- (c) a mutual fund administrator as defined in section 2 of the *Mutual Funds Act*, Cap. 320B;

“mutual fund” has the meaning assigned to it under section 2 of the *Mutual Funds Act*, Cap. 320B;

“pension plan” has the meaning assigned to it under section 2 of the *Occupational Pension Benefits*, Cap. 350B;

“reporting issuer” has the meaning assigned to it under section 2 of the *Securities Act*, Cap. 318A;”.

Amendment of section 4 of Act 2010-21

3. Section 4 of the principal Act is amended in subsection (1)

- (a) *by deleting the word “and” appearing immediately after the words “operating in Barbados” in paragraph (h);*
- (b) *by deleting paragraph (i);*
- (c) *by inserting the following new paragraphs immediately after paragraph (h):*
 - “(i) to establish and promote any conditions necessary, advisable or appropriate, as the case may be, to facilitate the orderly growth and development of the non-bank financial sector including the introduction of new services and products;
 - (j) to maintain surveillance of the market; and

- (k) to do such other things as are necessary to effectively carry out the purposes of this Act.”.

Amendment of section 6 of Act 2010-21

4. *The principal Act is amended by deleting section 6 and substituting the following:*

“Duty to be licensed or registered

6.(1) Subject to subsection (2), no person shall operate a financial institution or function as an intermediary unless it is registered or licensed, as the case may be, in accordance this Act or the relevant specified enactment.”

(2) After the commencement of this Act, all licences and certificates of registration issued under the specified enactments shall remain valid until the date fixed for their expiry.

(3) An application shall be in the prescribed form and manner.

(4) No person shall be registered or licensed, as the case may be, unless it provides such sum of capital **as prescribed by the Commission** that adequately reflects the risk associated with the stated proposed activity of the financial institution.

(5) The Commission shall issue a certificate of registration or licence, as the case may be, where it is satisfied that

(a) **a person has met the requirements under this Act or any of the specified enactments;** and

(b) the person is a fit and proper person to operate a financial services business.

(6) The certificate of registration or licence issued under subsection (1) shall be in such form as the Commission approves.

(8) Where there is reasonable cause to believe that a person has contravened subsection (1), the Commission may cause an examination to be made of that person and the provisions of this Act shall apply *mutatis mutandis* for the purposes of the examination as if the person was registered or licensed under this Act.

(9) A person who holds funds obtained from carrying on business in Barbados contrary to subsection (1) shall repay those funds in accordance with the direction of the **Commission**.

(10) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.”.

Insertion of section 6D into Act 2010-21

5. *The principal Act is amended by inserting immediately after section 6C the following new section:*

“Display of licence or certificate of registration

6D.(1) A licensee or registrant shall conspicuously display

(a) **its licence or certificate of registration, as the case may be, at the primary location where the licensee or registrant conducts business; and**

(b) **a copy of the licence or certificate of registration, as the case may be, at every other location or branch in Barbados.**

(2) A person who contravenes subsection (1) **is liable to an administrative penalty.”.**

Amendment of section 8 of Act 2010-21

6. Section 8 of the principal Act is amended by

(a) deleting subsection (1) and substituting the following:

“(1) The Commission shall have the power to

(a) give directives

(i) to ensure compliance with this Act, its statutory instruments, guidelines or any of the specified enactments;

(ii) to ensure that a financial institution is being properly managed and remains financially sound;

(b) examine or investigate the affairs of any person in accordance with this Act or any of the specified enactments;

(c) suspend, cancel or revoke the licence, certificate, registration or authorization, as the case may be, of a financial institution or intermediary, pursuant to this Act and the specified enactments or take such other action, measure or impose such sanction as permitted under the specified enactments;

(d) seize the management and control of a financial institution, appoint a manager or take any other necessary action for the purpose of protecting the interest of customers of financial institutions, as well as creditors and the public and ensuring that the financial institution remains financially sound;

- (e) reorganize or wind up a financial institution in accordance with the specified enactments and any other applicable enactment;**
- (f) exempt any financial institution or any financial services sector from any requirement under this Act, its statutory instruments, any specified enactment or the guidelines where, in the opinion of the Commission, it is necessary to do so;**
- (g) exercise any of the powers exercisable by the regulatory authorities under the specified enactments before the commencement of this Act;**
- (h) require a person seeking to be registered or licensed, as the case may be, under the Act, provide appropriate levels of capital that reflect the risk associated with the stated activity of the financial institution;**
- (i) impose administrative measures including administrative penalties;**
- (j) cause or initiate the wind up of a registered or licensed financial institution where such institution has not commenced business within one year of the issue of a certificate of registration or licence, as the case may be;**
- (k) review, approve or refuse, as the case may be, an amalgamation, merger, takeover or any other form of business combinations;**
- (l) make an application to the court for an order to freeze the assets of a registered or licensed financial institution or any other person;**
- (m) make an application to the court for the purpose of protecting the interest of customers and creditors of the**

financial institutions, the public and integrity of the financial services sector;

- (n) approve or refuse a service, product or transaction;**
- (o) prohibit a person from carrying on business under a name that is likely to mislead the public that such person is licensed or registered, as the case may be, under the Act;**
- (p) issue orders and give directions, to such persons and in such manner as it thinks fit, for the purpose of**
 - (i) ensuring the attendance of a party or witness to any proceeding or hearing;**
 - (ii) requiring the disclosure of documents or other evidence;**
 - (iii) requiring parties or witnesses to answer questions; and**
 - (iv) conducting its proceedings in a proper and orderly manner; and**
- (q) exercise such other powers as are necessary to enable it to effectively discharge its functions under this Act, its statutory instruments or any of the specified enactments.”; and**

(b) *by inserting the following new subsections immediately after subsection (3)*

“(4) No person shall, without reasonable excuse, refuse or fail to comply with an order or instruction of the Commission made or given under subsection (1)(p).

(5) A person who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Insertion of new sections 9A, 9B and 9C in Act 2010-21

7. *The principal Act is amended by inserting the following new section immediately after section 9:*

“Administrative penalty notice

9A.(1) Where the Commission intends to impose an administrative penalty, it shall issue an administrative penalty notice in the form approved by the Commission.

(2) An administrative penalty notice shall

- (a) specify the nature of the act constituting the breach or contravention;**
- (b) the penalty to be paid to the Commission; and**
- (c) require the person to whom it is addressed to pay the penalty within 30 days of the date of the notice.**

(3) A person who is in receipt of an administrative penalty notice issued pursuant to subsection (1) shall pay the amount of the penalty set out in the notice on or before the date specified in the notice.

(4) Notwithstanding subsection (3) where the Commission is satisfied on grounds of undue hardship or for any other reason that it would be just and equitable to do so, it may arrange with the person who is the subject of the penalty notice to pay the penalty set out in the notice in instalments.

Procedure for challenging an administrative penalty

9B. A person to whom an administrative penalty notice is addressed may appeal to the Tribunal.

Administrative penalty to constitute a debt to the State

9C. The amount of an outstanding administrative penalty constitutes a debt to the State and is recoverable in civil proceedings before a magistrate's court."

Amendment of section 10 of Act 2010-21

8. *The principal Act is amended by deleting section 10 and substituting the following:*

"Submission of information

10.(1) Subject to section 8(1)(f), a financial institution shall submit to the Commission, within 30 days of the end of each quarter, interim unaudited financial statements and any information relating to the financial statements.

(2) In addition to the furnishing of the financial statement pursuant to subsection (1), every financial institution shall furnish to the Commission at such time as the Chief Executive Officer of the Commission may fix in writing, such time being reasonable in all the circumstances; and in such manner as may be specified, the following information relating to its business operations:

- (a) any information relating to the financial statements or any information relating to the financial returns of the financial institution;

- (b) any information the Commission considers necessary in respect of any holding company, subsidiary or affiliate of the financial institution; and
- (c) any other information, records or documents the Commission considers necessary for the purpose of carrying out its functions under section 4(1)(b).
- (3) Notwithstanding subsection (1), the Commission may grant an extension of time for the submission of interim unaudited financial statements and any information relating to the financial statements.
- (4) Where the Commission is satisfied that a document submitted under this section is incomplete, inaccurate, unclear or not prepared in accordance with the provisions of the Act, the Commission shall, by notice in writing, require a financial institution to complete, amend, submit or prepare in accordance with the provisions of the Act, as the case may be, a document.
- (5) A person who contravenes subsection (1) or (2) is liable to an administrative fine.”.

Amendment of section 11 of Act 2010-21

9. Section 11 of the principal Act is amended

- (a) *in subsection (6) by deleting paragraph (b) and substituting the following:*

“(b) the financial institution to submit to the Commission a copy of the audited annual financial statement and a copy of the report referred to in paragraph (a), within 4 months of the end of the financial year, and in the case of an occupational pension plan, within 6 months of the end of the financial year.”; and

(b) *inserting the following new subsection after subsection (6):*

“(6A) Notwithstanding subsection (6)(b), the Commission may grant an extension of time for the filing of audited annual financial statement, reports or other information.”.

Repeal and replacement of section 15 of Act 2010-21

10. *The principal Act is amended by repealing section 15 and substituting the following:*

“Production of documents and information

15.(1) An auditor, officer or employee of a financial institution shall

- (a) produce for an examiner at such time as the examiner fixes, such time being reasonable in all the circumstances, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally; and
- (b) give the examiner such information concerning its affairs and business as the examiner may request orally or in writing.

(2) A financial institution shall retain all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally until the Commission has given written permission for their disposal.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Amendment of section 16 of Act 2010-21

11. Section 16 of the principal Act is amended

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

“(1) The Commission may authorize a suitably qualified person to conduct an investigation into the affairs of a financial institution or any person for the purpose of determining whether a person has contravened, is contravening or is likely to contravene a provision of the Act, **its statutory instruments or** a specified enactment.”;

(b) in subsection (2) by

(i) deleting paragraph (a) and substituting the following:

“(a) request information from the financial institution or any person; or”.

(ii) deleting the word “or” appearing immediately after the words “association with the financial institution;” in subparagraph (ii); and

(iii) inserting after subparagraph (iii) the following new subparagraph:

“(iv)any other person.”.

Insertion of section 19A into Act 2010-21

12. The principal Act is amended by inserting the following new section immediately after section 19:

“Fraudulent information and statements

19A.(1) No person shall intentionally provide any information or make a statement that is false or contains misleading or inaccurate information in pursuance of an order or request made under the Act or a specified enactment.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Amendment of section 20 of Act 2010-21

13. *Section 20 of the principal Act is amended in subsection (2) by deleting the words “subsection (1)(b)(ii)” and substituting the following words “subsection (1)(c)(ii)(A)”.*

Amendment of section 23 of Act 2010-21

14. *The principal Act is amended by deleting section 23 and substituting the following:*

“Obstruction

23. Any person who

- (a) obstructs the Commission or any person authorised in writing by the Commission while in the exercise of any power or authority given under this Act, its statutory instruments or a specified enactment; or**
- (b) in any way obstructs any proceeding, hearing, the examination or investigation of a financial institution, business or person under this Act or a specified enactment,**

is guilty of an offence and is liable on conviction on indictment to a fine of \$200 000 or imprisonment for 5 years or to both.”.

Amendment of section 25 of Act 2010-21

15. Section 25 of the principal Act is amended by

(a) deleting subsection (1) and substituting the following:

“(1) The Commission may, after consultation with the Minister, revoke the licence or cancel the registration of a financial institution **or intermediary** where

- (a) a licence or certificate of registration was obtained through misrepresentation, providing misleading or fraudulent information or concealing information;
- (b) a licence **or** certificate **of** registration was obtained through the mistake of the licensee, registrant, Commission or other person;
- (c) a financial institution or intermediary has ceased to carry on the business for which it was licensed or registered upon the expiration of one year after the licence or certificate of registration was issued;
- (d) a financial institution or intermediary has failed to satisfy a requirement or condition of a licence or certificate of registration;
- (e) a financial institution **or intermediary** has failed to make a payment under the Act or any other enactment;
- (f) a financial institution or intermediary has been convicted of an offence involving fraud or dishonesty;
- (g) a financial institution or intermediary is carrying on business in an unlawful manner;

- (h) a financial institution or intermediary has had final judgment ordered against it and that judgment remains unsatisfied for more than one month;
- (i) a financial institution **or intermediary** fails to maintain high standards of financial probity or follow sound business practices; or
- (j) there is a failure to comply with the provisions of the Act, its statutory instruments, a specified enactment, the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23)**or any relevant enactment.**”;

(b) ***deleting subsection (5) and substituting the following:***

“(5) The Commission may suspend the operation of a financial institution **or intermediary**

- (a) pending the determination of an appeal;
- (b) where a financial institution **or intermediary** is prosecuted for breaching the provisions of the Act or a specified enactment; or
- (c) where it is the opinion of the Commission that it is in the best interest of the public to suspend the operation of the financial institution **or intermediary.**”and

(c) ***inserting the following new subsection immediately after subsection (6):***

“(7) Notwithstanding **subsection (1)**, the Commission shall not revoke the licence or cancel the registration of a financial institution **or intermediary which has outstanding liabilities unless the**

Commission is satisfied that the financial institution made or will make adequate arrangement to discharge that liability.”.

Amendment of section 31 of Act 2010-21

16.*Section 31 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) The Commission may delegate, in writing, any power or function conferred on it by this Act to any member, committee or senior officer of the Commission, except the power to make regulations under this Act.”

Repeal and replacement of section 38 of Act 2010-21

17.*The principal Act is amended by repealing section 38 and substituting the following:*

“Liability

38.(1) No member, officer, employee or former member, officer, employee of the Commission, auditor, examiner or other person appointed or authorized, **in writing**, by or acting on behalf of the Commission, shall be liable to any person in any action or proceeding for anything done or omitted in the discharge or purported discharge of their functions under this Act **or its statutory instruments**, unless it is shown that the act or omission was done in bad faith.

(2) No person shall be liable to any person in any action or proceeding where he

(a) provides or discloses any information or material to the Commission or a regulatory authority in good faith in compliance with an order made under the Act;

- (b) makes a statement to the Commission in good faith in compliance with an order made under the Act;
- (c) does an act or omits to do any act in good faith in compliance with an order made under the Act of in the performance of his duties; or
- (d) complies with an order made under the Act.”.

Insertion of new sections 39A, 39B, 39C, 39D and 39E into Act 2010-21

18. *The principal Act is amended by inserting the following new sections immediately after section 39:*

“Cooperation with other authorities

39A.(1) The Commission may co-operate with

- (a) an entity involved in financial services and their operation in Barbados and the regulation, monitoring and supervision of financial services in Barbados;
- (b) a regulatory authority, foreign regulatory authority or international organization dealing with regulation and oversight of financial services.

(2) The Commission may for the purpose of co-operating with an entity or regulatory authority referred to in subsection (1), enter into a memorandum of understanding with that entity or authority.

(3) Subsection (2) does not prohibit the Commission from co-operating with an authority or entity referred to in subsection (1) in the absence of a memorandum of understanding with that authority or entity.

Disclosure of information and duty of confidentiality

39B.(1) The Commission shall not directly or indirectly disclose to any person any information or document obtained during the exercise of its functions under this Act, except

- (a) for the purpose of performing its functions under this Act;
- (b) where it is necessary to protect the financial integrity, effectiveness or security of the financial services sector;
- (c) where it is disclosed to a person who is lawfully authorized to receive the information;
- (d) when disclosure is ordered by a court of law;
- (e) for statistical purposes; or
- (f) where it is required for the purpose of satisfying an obligation under an international treaty, convention or an agreement to which Barbados is a party.

(2) Notwithstanding subsection (1), the Commission or a person employed or retained by the Commission may, in accordance with section 39A, disclose data or information obtained under this Act to a foreign regulatory authority if it is satisfied that

- (a) the purpose for which the data or information will be used is sufficiently specified;
- (b) the intended use of the data or information fits the framework of the supervision of financial institutions, services, products or markets;
- (c) the supply of the data or information would be compatible with the laws of Barbados or in the public interest;
- (d) the confidentiality of the data or information is adequately guaranteed;

- (e) the supply of the data or information will not come into conflict with the objects of this Act;
- (f) the request for assistance from the regulatory authority is in a form approved by the Commission; and
- (g) there is in place a reciprocal agreement for the exchange of information with the requesting regulatory authority.

Co-operation with regulatory authorities

39C.(1) The Commission may provide assistance to a regulatory authority in Barbados or a foreign regulatory authority.

- (2) The Commission shall have the power to:
 - (a) provide any requested material or information in the possession of the Commission to the relevant regulatory authority;
 - (b) order a person to provide to the Commission any material or information requested by the relevant regulatory authority;
 - (c) provide any requested material or information to the relevant regulatory authority;
 - (d) order a person to render assistance to the Commission in relation to a request made by a regulatory authority; and
 - (e) record an oral or written statement of a person on any information requested by a regulatory authority and submit such statement to the regulatory authority.
- (3) The information or material referred to in subsection (2) shall include the following:
 - (a) auditing information including audit working papers, correspondence, documents and other information relating to the audit or review of financial statements;

- (b) banking records including statements and other documents or information relating to the identified account;
 - (c) subscriber information or records held or maintained by a telephone service provider located in Barbados that include:
 - (i) the identity of the subscriber including the name and address of the subscriber;
 - (ii) the billing and payment information;
 - (iii) incoming and outgoing communications with the date, time, duration and identification of telephone numbers from which communications are made or received; and
 - (iv) any other specified information; and
 - (d) subscriber information or records held or maintained by an internet service provider or other electronic communication provider located in Barbados that include:
 - (i) the identity of the subscriber including the name and address of the subscriber;
 - (ii) the billing and payment information;
 - (iii) **the** type of service;
 - (iv) **the** period of service;
 - (v) **the** network address;
 - (vi) **the** session times, dates and duration; and
 - (vii) any other specified information.
- (5) Notwithstanding anything contained in this section, a person shall not be in breach where he refuses or fails to disclose information or to produce a document on the grounds of legal privilege.

Participation of other regulatory authority in examination or investigation

39D. The Commission may request, approve or facilitate the participation of a regulatory authority in the examination or investigation of a person where the Commission is satisfied that such participation is necessary or beneficial for the purposes of the regulatory functions of the requesting regulatory authority or the administration or enforcement of this Act.

Assistance with court orders

39E.(1) The Commission may render assistance to a regulatory authority in the making an application to the court for an order to

- (a) freeze the assets of a person or provide information on how to freeze the assets of a person; or
 - (b) prohibit a person from withdrawing funds, securities or other property.
- (2) The Commission may render assistance
- (a) under its regulatory powers or pursuant to a request from a regulatory authority; or
 - (b) where it is satisfied that it is in the public interest.
- (3) A person who is aggrieved by an order of the court may appeal such order.”.

Amendment of section 40 of Act 2010-21

19. *Section 40 of the principal Act is amended*

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

“(1) No member, officer, employee or former member, officer, employee of the Commission or other person employed or retained by the Commission shall make use, either directly or indirectly, of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.”; and

(b) *in subsection (2) by*

- (i) *deleting the word “or” appearing immediately after the words “Government of Barbados;” in paragraph (a);*
- (ii) *deleting the full stop appearing after the words “law of Barbados” and substituting the following words “; or” immediately after the words “law of Barbados” in paragraph (b); and*
- (iii) *inserting the following new paragraph immediately after paragraph (b):*

“(c) a foreign regulatory authority **where such disclosure of confidential information is provided pursuant to the provisions of this Act.**”.

Amendment of section 54 of Act 2010-21

20. *The principal Act is amended by deleting section 54 and substituting the following:*

“Regulations

54. The Commission, after consultation with the Minister, may make the following regulations:

- (a) to make provision for any exemptions granted under section 8 (1)(f) relating to a particular financial services sector;**
- (b) prescribing any matter or thing required by this Act to be prescribed;**
- (c) to make forms;**
- (d) respecting any matter required to carry out the purposes of this Act; and**
- (e) generally for the proper administration of this Act.”**

Insertion of 54A into Act 2010-21

21. *The principal Act is amended by inserting the following new section immediately after section 54:*

“Rules

54A. The Commission may make rules

- (a) to establish standards and practices for innovating and emerging services and products.**
- (b) to impose requirements or conditions on financial institutions of new services and products;**
- (c) to regulate new products and services;**
- (d) relating to the sectors which it regulates or supervises; and**

(e) relating to any other matter under this Act.”.