

A BILL

entitled

INVESTMENT FUNDS AMENDMENT ACT 2019

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WHEREAS it is expedient to amend the Investment Funds Act 2006 to provide enhanced supervisory and regulatory requirements to apply to registered, authorised or designated investment funds that operate segregated accounts; provide for the designation requirements for overseas investment funds that are managed or carry on promotion in or from within Bermuda; provide for the classification requirements for Professional Closed Funds; provide for enhanced supervisory and regulatory requirements to apply to “closed ended funds”; provide for the enhancement of fit and proper requirements; and provide for other consequential and related matters;

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Investment Funds Act 2006 (the “principal Act”), may be cited as the Investment Funds Amendment Act 2019.

Amends section 2

2 (1) The principal Act is amended in section 2 by inserting in the appropriate order the following definitions—

- “closed-ended investment fund” has the meaning given in section 3(5);
- “company fund” means a fund under which the property is held for the participants by a company within the meaning of section 2(1) of the Companies Act 1981, and includes a mutual fund company within the meaning of section 156A of that Act;
- “fund administrator” means a person carrying on one or more of the fund administration provider business services specified in section 2(2) of the Fund Administration Provider Business Act 2019 in compliance with that Act and other applicable laws in Bermuda or in compliance with the applicable rules and requirements of the relevant overseas regulatory authority;
- “fund offering document rules” means rules made by the Authority under section 38 relating to the issuance and content of an offering document;

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“offering document” means a fund prospectus or other document setting out the terms and conditions upon which units or shares in an investment fund are offered, as may be applicable, and prepared in accordance with fund offering document rules;

“open-ended investment fund” has the meaning given in section 3(5);

“Overseas Fund” means an overseas investment fund that has been designated by the Authority as an Overseas Fund under section 5A(7), following its compliance with requirements under section 5A(2);

“overseas investment fund” means an investment fund incorporated or established in a jurisdiction outside Bermuda;

“overseas regulatory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act;

“Professional Closed Fund” means a fund that has been classified by the Authority as a Professional Closed Fund under section 8B(1), following its compliance with requirements under section 8B(2);

“promotion” means the following activities initiated by or on behalf of an overseas investment fund—

- (a) advertising;
  - (b) issuing an offering document, application form or proposal form and stating the method of issue;
  - (c) circulating or making available promotional material, including describing the general nature of the material and the persons to whom, and the manner in which, it is to be circulated or made available.
- (2) The principal Act is further amended in section 2—
- (a) in the definition of “constitution” in paragraph (b), by deleting “mutual fund company” and substituting “company fund”;
  - (b) by deleting the definition of “fund prospectus” and substituting the following—

“fund prospectus” means particulars of a fund prepared in accordance with fund offering document rules and “prospectus” has a corresponding meaning;”;
  - (c) by deleting the definition of “mutual fund company”;
  - (d) in the definition of “operator”—
    - (i) by deleting paragraph (b) and substituting the following—

“(b) a company fund, means the board of directors”;”;

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- (ii) in paragraph (d), by deleting the words “that limited liability company” and substituting the words “the manager”;
- (e) in subsection (2), by deleting the word “prospectus” in each place where it occurs and substituting the words “offering document”.

### Amends section 3

3 The principal Act is amended in section 3—

- (a) by repealing subsection (2)(b);
- (b) by inserting the following new subsection after subsection (3)—

“(3A) The arrangements shall be an open-ended investment fund or a closed-ended investment fund. ”;

- (c) by inserting after subsection (4) the following—

“(5) In this Act—

“open-ended investment fund” means an arrangement in which the participants are entitled to have their units redeemed in accordance with the fund’s constitution and offering document at a price determined in accordance with such constitution and offering document;

“closed-ended investment fund” means an arrangement in which the participants are not, at their election, entitled to have their units redeemed.”.

### Repeals and replaces section 4

4 The principal Act is amended by repealing section 4 and substituting the following—

“Registered and authorised funds: segregated accounts

4 (1) This section applies to a registered or authorised investment fund which is permitted under the terms of its constitution to operate segregated accounts.

(2) In this section, “segregated account” means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a registered or authorised fund, relating to an identified or identifiable pool of assets and liabilities of such registered or authorised fund which are segregated or distinguished from other assets and liabilities of the registered or authorised fund.

(3) Subject to the Segregated Accounts Companies Act 2000, the constitution of a registered or authorised fund to which this section applies may make provision for any of the matters set out in subsections (4) to (7).

(4) The operator of a registered or authorised fund which operates segregated accounts shall hold the assets of each segregated account for the benefit of the participants of such segregated account exclusively.

(5) Any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account.

(6) Where a liability arises from a transaction or matter relating to, or is otherwise imposed or attributable to, a particular segregated account, that liability shall—

- (a) extend only to the assets linked to that segregated account; and
- (b) not extend to the assets linked to any other segregated account.

(7) Any assets of the registered or authorised fund not readily identifiable as belonging to any particular segregated account shall be allocated by the operator between all of the segregated accounts on the basis of the respective net asset values of each segregated account or, subject to the terms of the registered or authorised fund's constitution, on such other basis as the operator may in its absolute discretion determine.”.

Inserts section 4A and 4B

5 The principal Act is amended by inserting after section 4 the following—

“Fit and Proper”

4A (1) For the purposes of this Part, paragraph 1(2) and (3) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator, officers or service providers are fit and proper persons to act as such in relation to any fund.

(2) Paragraph 2(1) and (2) of the Schedule shall apply with respect to a determination by the Authority as to whether an operator will conduct or is conducting business as the case may be, in a prudent manner.

Codes of Conduct

4B (1) The Authority may issue codes of conduct for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by operators of, or service providers to, an investment fund.

(2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(3) Every registered, authorised or designated investment fund shall in the conduct of its business have regard to any code of conduct issued by the Authority.

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(4) A failure on the part of an investment fund to comply with the provisions of such code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by section 5(2A).”.

Amends title and section 5

6 (1) The principal Act is amended by deleting the title appearing before section 5 and substituting “Prohibition of unauthorised, unregistered and undesignated funds”.

(2) The principal Act is amended in section 5—

(a) by deleting the section heading and substituting “Prohibition of unauthorised, unregistered and undesignated funds”;

(b) by repealing subsection (1) and substituting the following—

“(1) This section applies to investment funds and overseas investment funds.”;

(c) in subsection (2)(a), by deleting the words “section 6, 6B or 8A” and substituting the words “section 6, 6B, 8A or 8C”;

(d) in subsection (2)(b), by deleting the words “sections 6, 6A and 7” and substituting the words “sections 6, 6A, 7 or 8B.”;

(e) in subsection (2), by deleting the period at the end of paragraph (b) and substituting a comma, and by inserting after paragraph (b) the following new paragraph—

“(c) the fund is designated under section 5A.”;

(f) by inserting after subsection (2)—

“(2A) Every fund operator, or person or body of persons, by whatever name called, authorised by an overseas regulatory authority to perform functions relating to any activity carried on by an operator, shall operate a fund in a prudent manner in accordance with the minimum criteria for licensing.””.

Inserts sections 5A to 5E

7 The principal Act is amended by inserting after section 5—

*“Designation*

Overseas Fund: designation

5A (1) Subject to this Act and notwithstanding any other Act, no overseas investment fund shall be managed or carry on promotion in or from within Bermuda, unless it is designated as an Overseas Fund by the Authority under subsection (2).

(2) An investment fund qualifies for designation by the Authority as an Overseas Fund if it—

- (a) is an overseas investment fund;
- (b) complies with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established; and
- (c) complies with—
  - (i) all requirements of this section; and
  - (ii) any conditions imposed on it by the Authority.

(3) The Authority may impose such conditions on an Overseas Fund as it determines necessary.

(4) The Authority may delete, vary or modify a condition imposed on an Overseas Fund under subsection (3).

(5) An operator of an overseas investment fund shall notify the Authority in writing prior to the overseas investment fund being managed or promoted in or from within Bermuda, and such notification shall be in such form as may be determined by the Authority and shall contain such information as the Authority may require.

(6) At the time of notification under subsection (5), the operator shall also submit the following to the Authority—

- (a) a copy of the offering document;
- (b) details of any regulatory approval given by, or notification given to the overseas regulatory authority in the country or territory in which the overseas investment fund is incorporated or established;
- (c) the prescribed notification fee.

(7) Where the Authority is satisfied that an overseas investment fund has met the requirements of subsection (2), the Authority shall designate such fund as an Overseas Fund.

#### Overseas Fund: annual declaration

5B (1) The operator of an Overseas Fund shall certify to the Authority annually on or before 30th of June, that it continues to satisfy the requirements of section 5A(2), after it has been designated by the Authority under section 5A(7).

(2) A certificate under subsection (1) shall be in such form as the Authority may prescribe and shall include the following information—

- (a) material changes to the offering document during the relevant year previously provided by it to the Authority;

- (b) a statement in such form as the Authority may direct confirming that the Overseas Fund has at all times during the preceding financial year been in compliance with the applicable rules and requirements of the overseas regulatory authority in the country or territory in which it is incorporated or established;
  - (c) a statement in such form as the Authority may direct confirming that the fund has at all times during the preceding financial year been in compliance with the provisions of this Act.
- (3) The Authority may consider an incomplete certificate where it determines it appropriate to do so.
- (4) An Overseas Fund that is not in compliance with this Act, shall furnish the Authority with a statement setting out the particulars of noncompliance.
- (5) For the purposes of this section—
- “relevant year” means the most recent accounting period of the Overseas Fund;
- “material change” means a change that would, if known, reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund.

Overseas Fund: cancellation of designation other than by way of consent

5C The Authority may cancel the designation of an Overseas Fund, if it appears to the Authority that—

- (a) one or more requirements for designating the Overseas Fund are no longer satisfied;
- (b) the operator of the Overseas Fund—
  - (i) has contravened or is likely to contravene a requirement imposed on the operator or under this Act; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular.

Overseas Fund: procedure on cancellation of designation

5D (1) If the Authority proposes to cancel a designation under section 5C it shall give a warning notice to the operator of the Overseas Fund.

(2) If the Authority decides to cancel a designation, it shall without delay give the operator a decision notice and the operator may refer the matter to the Tribunal.



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### Overseas Fund: request for cancellation of registration

5E (1) A designation may be cancelled by the Authority at the request in writing of the operator of the Overseas Fund.

(2) If the Authority cancels a designation under subsection (1), it shall give written notice of the cancellation to the operator of the Overseas Fund.

(3) The Authority may refuse a request to cancel a designation under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether a designation should be cancelled.”.

### Amends title and section 6

8 (1) The principal Act is amended by inserting, before section 6, the following title— “Registration”.

(2) The principal Act is amended in section 6—

(a) by inserting after subsection (2A) the following—

“(2AA) The operator of the fund shall be fit and proper to perform the function of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such. ”;

(b) by repealing subsections (2B) and (2C) and substituting the following—

“(2B) The operator of an open-ended investment fund shall appoint a custodian with regard to ensuring safekeeping of the fund’s assets.

(2C) The operator of an open-ended investment fund shall appoint a fund administrator. ”;

(c) in subsection 6(3B)(b), by inserting, before the word “offering”, the word “fund”;

(d) by repealing subsection (7);

(e) by repealing subsection (9) and substituting the following—

“(9) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.”.

### Amends section 6A

9 (1) The principal Act is amended by deleting the title “Professional Funds” appearing before section 6A.

(2) The principal Act is amended in section 6A—

(a) by deleting the section heading and substituting “Professional funds”;

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- (b) in subsection (1), by deleting the word “designated” and substituting the word “classified”;
- (c) by repealing subsection (2A).

Amends section 6B

10 The principal Act is amended in section 6B—

- (a) by inserting after subsection (3) the following—

“(3A) The operator of the fund shall be fit and proper to perform the function of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such.”;

- (b) in subsection (4), by deleting the words “qualification criteria” and substituting the word “requirements”;
- (c) in subsection (7), by deleting the word “registered” and substituting the words “Professional Class A”.

Amends section 7

11 The principal Act is amended in section 7—

- (a) in subsection (1), by deleting the word “designated” and substituting the word “classified”;
- (b) by repealing subsection (2A).

Amends section 8A

12 The principal Act is amended in section 8A—

- (a) by repealing subsection (2);
- (b) by repealing subsection (5);
- (c) in subsection (8), by inserting after “fund” the words “shall be fit and proper to perform the functions of operator of the fund and”;
- (d) by repealing and replacing subsection (11) as follows—

“(11) An operator may apply to the Authority for a change of classification of a Professional Class B fund.

“(12) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.”

Inserts sections 8B and 8C

13 The principal Act is amended by inserting after section 8A the following—

“Professional Closed Fund: qualification

8B (1) A fund that satisfies the requirements of subsection (2) is classified as a Professional Closed Fund.

(2) The requirements referred to under subsection (1) are that—

- (a) the fund shall be a closed-ended investment fund;
- (b) the fund is open only to qualified participants;
- (c) all qualified participants shall be provided with an investment warning prior to the time of the purchase of units, which shall be in such form and contain such statements and information as the Authority deems appropriate;
- (d) the operator of the fund has appointed—
  - (i) a local service provider who is licensed by the Authority; or
  - (ii) an officer, trustee or representative resident in Bermuda, who has authority to access the books and records of the fund;
- (e) the operator of the fund has appointed an auditor;
- (f) the financial statements of the fund are prepared in accordance with any one of the following standards—
  - (i) International Financial Reporting Standards (“IFRS”);
  - (ii) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
  - (iii) any such other GAAP as the Authority may recognise.

(3) In this section, “qualified participants” has the meaning given in section 9(2) and 9(3).

Professional Closed Fund: procedure for registration

8C (1) The operator of a Professional Closed Fund shall, on or before the date of commencement of the fund’s business, apply to the Authority for registration, in such form as the Authority may direct, and certify to the Authority that the requirements for registration specified in section 8B(2) are satisfied.

(2) The operator shall also certify to the Authority annually on or before 30th June in such form as the Authority may direct that the fund satisfies the requirements for registration specified in section 8B(2) and will continue to satisfy them.

(3) The operator of a Professional Closed Fund shall—

- (a) at the time of filing the certificate required by subsection (1) also file with the Authority an offering document for the fund, which

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shall contain such information and be in such form as the Authority may determine;

- (b) at the time of filing the annual certificate required by subsection (2), also file with the Authority—
  - (i) information on the net asset value of the fund and its underlying assets;
  - (ii) a copy of the fund's audited financial statements for the preceding year; and
  - (iii) a statement of material changes to the fund's terms of offering.

(4) The operator of a Professional Closed Fund shall be fit and proper to perform the functions of operator of the fund and shall appoint officers and service providers that are fit and proper persons to act as such.

(5) If, on an application under subsection (1) above in respect of a Professional Closed Fund, the Authority is satisfied that the fund complies with the requirements of section 8B, the Authority may grant the application for the fund to be registered as a Professional Closed Fund.

(6) The Authority may determine an incomplete application if it considers it appropriate to do so.

(7) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.

(8) An operator may apply to the Authority for a change of classification of a Professional Closed fund.

(9) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.”.

### Amends section 9

14 The principal Act is amended in section 9(3) by deleting the definition of “high net worth private investor” and substituting the following—

“ “high net worth private investor” means an individual whose net worth or joint net worth with that person's spouse in the year in which he purchases an investment exceeds \$1,000,000, excluding the value of that person's residence and any benefits or rights under a contract of insurance; and net worth means the excess of the total assets at fair market value over total liabilities;”.

### Amends section 10

15 The principal Act is amended in section 10 by repealing and replacing subsection (1) as follows—

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“(1) An investment fund registered under sections 6, 6B, 8 or 8C may make an application under section 12 for authorisation.”.

Inserts sections 10A, 10B, 10C and 10D

16 The principal Act is amended by inserting after section 10 the following—

“Revocation of registration of a registered fund other than by way of consent  
10A The Authority may revoke the registration of a registered fund, if it appears to the Authority that—

- (a) one or more requirements for registering the fund are no longer satisfied;
- (b) the operator of the registered fund or any of the registered fund’s service providers—
  - (i) has contravened or is likely to contravene a requirement imposed on the operator or service provider by or under this Act; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
- (c) no investment activity has been carried on in relation to the registered fund for the previous twelve months.

Procedure on revocation of registration

10B (1) If the Authority proposes to revoke a registration under section 10A it shall give separate warning notices to the operator and service providers of the registered fund.

(2) If the Authority decides to revoke a registration, it shall without delay give each of the persons referred to in subsection (1) a decision notice and either of them may refer the matter to the Tribunal.

Request for cancellation of registration

10C (1) A registration may be cancelled by the Authority at the request in writing of the operator of the registered fund.

(2) If the Authority cancels a registration under subsection (1), it shall give written notice of the cancellation to the operator of the registered fund.

(3) The Authority may refuse a request to cancel a registration under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether a registration should be cancelled.

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### Registered Funds: exemption from requirements

10D (1) The Authority may, on the application of the operator of a registered fund, grant a modification of or an exemption from any requirement of sections 6(2A), 6(2B), 6(2C), 6A(2), 7(2) or 8B(2) if it is satisfied that—

- (a) appropriate arrangements are in place to safeguard the interests of participants in the fund;
- (b) compliance with the requirements would be unduly burdensome or would not achieve the purpose for which the requirements were made; and
- (c) the exemption would not result in undue risk to persons whose interests the requirements are intended to protect.

(2) A modification or an exemption may be granted subject to such conditions as the Authority deems appropriate.”.

### Amends section 11

17 The principal Act is amended in section 11 by deleting, in each place where it occurs, the word “prospectus” and substituting in each place, the words “offering document”.

### Amends section 14

18 The principal Act is amended in section 14—

- (a) in subsection (1)(d)(iii)(A) by deleting the words “mutual fund company” and substituting the words “company fund”;
- (b) in subsection (1)(g) by deleting the word “prospectus” and substituting the words “offering document”;
- (c) in subsection (4)(b) by deleting the words “mutual fund company” and substituting the words “company fund”.

### Repeals and replaces section 16

19 The principal Act is amended by repealing section 16 and substituting the following—

“List of authorised, registered and designated funds to be on Authority's website

16 The Authority shall establish and maintain a list of all investment funds authorised, registered or designated by it to operate in or from within Bermuda on its website at [www.bma.bm](http://www.bma.bm).”.

### Amends section 17

20 The principal Act is amended in section 17—

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- (a) in subsection (1)(ba), by deleting the words “sections 6, 6B and 8A” and substituting the words “sections 6, 6B, 8A and 8C”;
- (b) in subsection (1), by inserting after paragraph (bc) the following—
  - “(bd) on the filing of notification under section 5A;”;
- (c) in subsection (2), by deleting the word “authorisation” and substituting the words “investment funds”.

### Amends section 21

21 The principal Act is amended in section 21, in the section heading and section, by deleting the words “mutual fund companies” and substituting the words “company funds.”

### Amends section 24

22 The principal Act is amended in section 24(1) by deleting the word “prospectus” and substituting the words “offering document”.

### Amends section 25

23 The principal Act is amended in section 25(1)—

- (a) in paragraph (a), by deleting the word “prospectus” and substituting the words “offering document”;
- (b) paragraphs (d) and (f), by deleting the words “mutual fund company” and substituting the words “company fund”.

### Amends section 30

24 The principal Act is amended in section 30—

- (a) by deleting the section heading and substituting the following “Directions to an authorised, registered or designated fund”;
- (b) in subsection (1) by inserting after “specified in” the words “, section 10A, section 5C or”;
- (c) in subsection (2), by inserting after “section 27” the words “, or section 10A or section 5C ”;
- (d) in subsection (3), by inserting “or Overseas Fund” after “provider” in each place where it occurs”;
- (e) in subsection (4) by deleting “authorised or registered” in each place where it occurs and substituting “authorised, registered or overseas”;

### Amends section 31A

25 The principal Act is amended in section 31A, by deleting the section heading and substituting “Directions in cases of urgency – authorised, registered or designated”.

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Amends section 33

26 The principal Act is amended in section 33(1) by inserting after “service providers” the words “or Overseas Fund”.

Amends section 36

27 The principal Act is amended in section 36(3) by deleting the words “mutual fund company” and substituting the words “company fund”.

Inserts section 36A

28 The principal Act is amended by inserting after section 36 the following new section—

“Overseas Fund: notification of windup

36A (1) The operator of an Overseas Fund st, within 14 days of the winding up of the fund, notify the Authority in writing.

(2) The Authority shall, within 30 days upon being notified by the operator of an Overseas Fund under subsection (1), remove the fund from the list of investment funds maintained by the Authority.”.

Amends section 37

29 The principal Act is amended in section 37(1)(b)(iii) by deleting the words “mutual fund company” and substituting the words “company fund”.

Amends section 38

30 The principal Act is amended in section 38—

(a) in the section heading by deleting “Fund prospectus rules” and substituting “Fund offering document rules”;

(b) by repealing subsection (1) and substituting the following—

“(1) The Authority may make fund offering document rules requiring the operator of an authorised or registered fund—

(a) to submit the offering document to the Authority; and

(b) to publish the offering document or make it available to the public on request.”

(c) in subsections (2) to (8), by deleting “prospectus” in each place where it occurs and substituting “offering document”

(d) in subsections (3) and (4) by deleting the words “Professional Class A and Professional Class B fund” and substituting the words “or registered fund”.



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### Amends section 40

31 The principal Act is amended in section 40(1) by deleting the word “prospectus” and substituting the words “offering document”.

### Amends section 55

32 The principal Act is amended in section 55(1) by—

- (a) deleting the words “authorised or registered” and substituting the words “authorised, registered or designated”
- (b) inserting after paragraph (a) the following—

“(aa) to revoke registration of the fund under section 10A;

(ab) to cancel a designation of an Overseas Fund under section 5C;”.

### Consequential amendments

33 (1) Schedule 1, which repeals and substitutes Schedule 1 to the Act to provide for enhanced fit and proper requirements, has effect.

(2) Schedule 2, which makes consequential amendments to the Companies Act 1981, has effect.

(3) Schedule 3, which makes consequential amendments to the Limited Liability Company Act 2016, has effect.

### Transitional

34 (1) Where immediately before the Commencement Date, a person was operating a fund which will, after the Commencement Date, fall within the definition of “closed-ended investment fund” or “Overseas Fund”, that person may continue to operate that fund without the fund being authorised, registered or designated under the Investment Funds Act 2006 during the period of six months beginning with the Commencement Date—

- (a) if within that period, application is made or notice is given to the Bermuda Monetary Authority for authorisation, registration or designation under the Investment Funds Act 2006 to operate a closed-ended investment fund or an Overseas Fund; and

- (b) until that application is finally disposed of or withdrawn.

(2) In this section, “Commencement Date” means the day appointed under section 35 for the coming into operation of this Act.

### Commencement

35 This Act shall come into operation on 1 January 2020.

SCHEDULE 1

(Section 33(1))

INSERTION OF SCHEDULE TO THE ACT

Insertion of Schedule to Act

1 The principal Act is amended by inserting the following Schedule—

“SCHEDULE

(Section 5(2A))

MINIMUM CRITERIA FOR LICENSING

Operators, officers and service providers to be fit and proper persons

1 (1) Every person who is, or is to be an operator or officer of, or service provider to, an investment fund that is authorised, registered or designated under this Act is a fit and proper person to act as such in relation to the fund.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed any offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

Business to be conducted in prudent manner

2 (1) The operator, officer or service provider conducts, or, in the case of a operator, officer or service provider which is not yet carrying on business shall conduct, its business in a prudent manner.

(2) In determining whether an operator, officer or service provider is conducting its business in a prudent manner, the Authority shall take into account any failure by the operator, officer or service provider to comply with the provisions of—

- (a) this Act;
- (b) any other enactment, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti- Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti- Terrorist Financing) Regulations 2008;
- (c) the code of conduct; and
- (d) international sanctions in force in Bermuda.”.

SCHEDULE 2

(Section 33(2))

AMENDMENTS TO THE COMPANIES ACT 1981

The Companies Act 1981 is amended in—

- (a) section 98C, by repealing the definition of “closed-ended investment vehicle”;
- (b) section 98D, by repealing paragraph (b) of subsection (2).

INVESTMENT FUNDS AMENDMENT ACT 2019

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SCHEDULE 3

(Section 33(3))

AMENDMENTS TO THE LIMITED LIABILITY COMPANY ACT 2016

The Limited Liability Company Act 2016 is amended in section 65B by repealing paragraph (b) of subsection (2).

## INVESTMENT FUNDS AMENDMENT BILL 2019

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Investment Funds Act 2006 (the “Act”) to provide enhanced supervisory and regulatory requirements to apply to registered or authorised investment funds that operate segregated accounts; provide for the designation requirements for overseas investment funds that are managed or carry on promotion in or from within Bermuda; provide for the classification requirements for Professional Closed Funds; provide for enhanced supervisory and regulatory requirements to apply to “closed ended funds”; provide for the enhancement of fit and proper requirements; and provide for other consequential and related matters.

Clause 1 provides the citation for the Bill.

Clause 2 amends section 2 of the Act to insert definitions of “open-ended investment fund” and “closed-ended investment fund” for purposes of the newly inserted section 3(3A); “company fund” in substitution of the term “mutual fund company” throughout the Act; “offering document” in substitution of the term “prospectus” throughout the Act; “fund offering document rules” in substitution of the term “fund prospectus rules” in section 38; “overseas investment fund” and “Overseas Fund” for purposes of the newly inserted sections 5A to 5E; “Professional Closed Fund” for purposes of the newly inserted sections 8B and 8C; “promotion” for purposes of the newly inserted provisions regarding overseas investment funds.

Clause 3 amends section 3 of the Act to make provision for the repeal of subsection (2) (b), and for a new subsection (3A) to be inserted to provide for arrangements that clarify that “open” and “closed” ended funds are characteristics of an investment fund. A new subsection (5) inserts the definition of “open ended” and “closed ended” funds.

Clause 4 amends the Act by repealing and replacing section 4, to require that the obligations relating to the operation of segregated accounts (which previously applied solely to unit trusts), shall now apply to all registered or authorised funds;

Clause 5 amends the Act to insert two new provisions under sections 4A and 4B to provide for revised “fit and proper” requirements that are to apply to operators of funds and to empower the Authority to issue Codes of Conduct that operators will be required to comply with.

Clause 6 amends the Act in section 5 to clarify that no investment fund may operate in or from Bermuda without being authorised, registered or designated by the Authority, and to require that every operator of a fund operates the fund in a prudent manner according to minimum criteria for licensing;

Clause 7 amends the Act to insert five new provisions under sections 5A to 5E to provide the regulatory framework for the designation by the Authority of a new class of Overseas Funds and to require that such funds submit an annual certificate of declaration of continued compliance with designation requirements.

## INVESTMENT FUNDS AMENDMENT BILL 2019

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Clause 8 amends the Act in section 6, by inserting a new subsection (2AA) which provides for operators to be fit and proper and officers etc., appointed by them to the fund to also be fit and proper. Subsection (2B) is amended to provide that an operator of a “open-ended” fund shall appoint a custodian to safe keep fund assets and subsection (2C) will now require an operator of a “open-ended” fund to appoint a fund administrator.

Clause 9 amends the Act in section 6A by repealing subsection (2A).

Clause 10 amends section 6B of the Act, among other things, by inserting a new subsection (3A) which provides for operators to be fit and proper; and officers etc., appointed by them to the fund to also be fit and proper.

Clause 11 amends section 7 of the Act by deleting subsection (2A).

Clause 12 amends section 8A of the Act by repealing subsection (5) to clarify that the Authority will always provide notification of registration. Such proposal would ensure that Bermuda meets international standards and best practices in this area. In addition, this clause provides for operators to be fit and proper, and officers etc. appointed by them to the fund to be fit and proper. This clause also inserts new subsections (11) and (12) which make provision for an application to be made to the Authority for a change of classification of a Professional Class B fund.

Clause 13 amends the Act to insert two new provisions under sections 8B and 8C to provide the regulatory framework for the classification by the Authority of a new class of Professional Closed Funds and to provide for the requirements and procedure for registration of such funds.

Clause 14 amends 9 of the Act to revise the definition of “high net worth private investor” under subsection (3) in relation to those investors having a net worth of at least \$1 million, to clarify that such threshold amount does not include the principal place of residence of the investor or any rights afforded to him under a contract of insurance.

Clause 15 amends section 10 of the Act by repealing paragraph (1) and inserting a new provision which allows for an application or authorisation to be made by a registered fund under section 12.

Clause 16 amends the Act to insert new provisions under sections 10A, 10B, 10C and 10D to empower the Authority to revoke the registration of a registered fund and to allow for a fund to seek cancellation of registration. The new section 10D establishes a new set of criteria to be used by the Authority when determining an application for exemption from requirements pursuant to an application submitted to it by a registered fund.

Clause 17 amends section 11 of the Act by deleting reference to “prospectus” and substituting the new term “offering document”;

Clause 18 amends section 14 of the Act by deleting reference to “prospectus” and substituting the term “offering document”; and by deleting reference in the section to “mutual fund company” and substituting “company fund”.

Clause 19 repeals and replaces section 16 of the Act to require the Authority to establish a list on its website at [www.bma.bm](http://www.bma.bm) of all investment funds authorised, registered or designated by it to operate in or from within Bermuda.

## INVESTMENT FUNDS AMENDMENT BILL 2019

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Clause 20 amends section 17 of the Act to make provision for an initial filing fee for Overseas Funds and to provide for the payment of fees by the new classes of funds to be regulated under the Act.

Clause 21 amends section 21 of the Act, by deleting reference where it occurs to “mutual fund company” and substituting “company fund”.

Clause 22 amends section 24 of the Act by deleting reference to “prospectus” and substituting the term “offering document”.

Clause 23 amends section 25 of the Act by deleting reference to “prospectus” and substituting the term “offering document”; and by deleting reference where it occurs to “mutual fund company” and substituting “company fund”.

Clause 24 amends section 30 to provide for the Authority to also issue directions to a new Overseas Fund, similarly to the manner currently provided for in relation to authorised or registered funds.

Clause 25 amends section 31A by changing the section heading to “Directions in cases of urgency - authorised, registered or designated” for the provisions of the section to also apply to Overseas Funds.

Clause 26 amends section 33(1) to extend the provisions of that section requiring the Authority to follow a notification procedure when revoking a direction to Overseas Funds.

Clause 27 amends section 36(3) by deleting reference to “mutual fund company” and substituting “company fund”.

Clause 28 amends section 36A to require Overseas Funds, within 14 days of a wind-up of the fund, to notify the Authority.

Clause 29 amends section 37 of the Act, by deleting reference to “mutual fund company” and substituting “company fund”.

Clause 30 amends section 38 by changing the section heading to “Fund offering document rules”, by deleting reference throughout to “fund prospectus” and substituting “offering document” and in subsections (3) and (4) by deleting the words “Professional Class A and Professional Class B fund” and substituting “or registered fund”.

Clause 31 amends section 40 by deleting reference to “prospectus” and substituting the new term “offering document”.

Clause 32 amends section 55 of the Act to clarify that an appeal may be made against revocation of registration under section 10A or cancellation of a designation of an Overseas Fund under section 5C.

Clause 33 and Schedules 1 to 3 make consequential amendments to the Act by inserting a Schedule to provide for enhanced fit and proper requirements for an operator, officer of, or service provider to, an investment fund; and to the Companies Act 1981 and the Limited Liability Company Act 2016, to repeal the definition of “closed ended vehicle”.

Clause 34 provides for transitional matters.

Clause 35 provides for the Act to come into operation on 1 January 2020