

A BILL

entitled

INVESTMENT BUSINESS AMENDMENT ACT 2024

TABLE OF CONTENTS

1	Citation
2	Amends section 2
3	Amends section 12
4	Amends section 13
5	Repeals section 13D
6	Amends section 41
7	Amends section 45
8	Amends section 49A
9	Amends section 52
10	Amends section 55A
11	Repeals and replaces section 65(1)
12	Amends section 66
13	Amends section 67
14	Amends section 68
15	Amends section 69
16	Inserts section 70A
17	Amends section 71
18	Amends section 73
19	Inserts sections 73A to 73E
20	Amends section 74
21	Amends section 75
22	Inserts sections 75A to 75J
23	Amends section 76
24	Amends section 77
25	Inserts sections 77A to 77I
26	Amends section 87
27	Consequential amendments
28	Commencement

SCHEDULE
CONSEQUENTIAL AMENDMENTS TO THE BERMUDA MONETARY AUTHORITY
ACT 1969

INVESTMENT BUSINESS AMENDMENT ACT 2024

WHEREAS it is expedient to amend the Investment Business Act 2003 in relation to Part IV to provide further for matters concerned with the supervision and regulation of recognised investment exchanges and recognised clearing houses, and for the purposes connected and consequential to the foregoing;

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

Citation

1 This Act, which amends the Investment Business Act 2003 (the "principal Act"), may be cited as the Investment Business Amendment Act 2024.

Amends section 2

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

Amends section 12

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

- (a) in paragraph (b), by deleting "or";
- (b) in paragraph (c), by—
 - (i) deleting "section 13D" and substituting "section 13(1)(b)"; and
 - (ii) deleting the period and substituting "; or"; and
- (c) by inserting after paragraph (c) the following new paragraph—
 - "(d) designated as a recognised body under Part IV."

Amends section 13

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

Repeals section 13D

5 Section 13D of the principal Act is repealed.

Amends section 41

6 Section 41 of the principal Act is amended by—

- (a) repealing subsection (1A) and substituting the following—

"(1A) The financial statements of an investment provider shall be audited by an approved auditor in accordance with—

- (a) generally accepted auditing standards for Canada, the United Kingdom or the United States of America;

INVESTMENT BUSINESS AMENDMENT ACT 2024

- (b) International Standards on Auditing; or
- (c) such standards as the Authority may recognise,

and the approved auditor shall be required to provide an auditor's report in respect thereof.”;

- (b) inserting after subsection (1C) the following new subsection—

“(1D) The financial statements of an investment provider shall be prepared in accordance with any one of the following standards—

- (a) International Financial Reporting Standards (“IFRS”);
- (b) Generally Accepted Accounting Principles (“GAAP”) in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise.”.

Amends section 45

7 Section 45(1) of the principal Act is amended by repealing paragraph (a) and substituting the following—

- “(a) require the investment provider to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for ensuring the investment provider is complying with the provisions of this Act and any code of conduct or practice, and for safeguarding the interests of clients and potential clients of the investment provider;”.

Amends section 49A

8 Section 49A(1) of the principal Act is amended by inserting after paragraph (b) the following new paragraph—

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

Amends section 52

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

- (a) in paragraph (a), by deleting “section 13D” and substituting “section 13(1)(b)”;
- (b) in paragraph (b), by deleting “section 49” and substituting “sections 49 and 75E”.

INVESTMENT BUSINESS AMENDMENT ACT 2024

Amends section 55A

10 Section 55A of the principal Act is amended by inserting after subsection (8) the following new subsection—

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

Repeals and replaces section 65(1)

11 Section 65 of the principal Act is amended by repealing subsection (1) and substituting the following—

“(1) In this Part—

“applicant” means a body corporate or a firm which has applied for a recognition certificate;

“application” means an application for a recognition certificate made under section 68 or 69;

“approved auditor” means an auditor who is a person entitled to practise as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Part;

“recognised body” means a recognised investment exchange or a recognised clearing house incorporated in or domiciled in Bermuda;

“recognised clearing house” means a clearing house in relation to which the Authority has issued a recognition certificate;

“recognised investment exchange” means an investment exchange in relation to which the Authority has issued a recognition certificate;

“recognition certificate” has the meaning given in section 71;

“recognition requirements” has the meaning given in section 67;

“revocation” has the meaning given in section 76.”.

Amends section 66

12 Section 66 of the principal Act is amended—

- (a) by deleting the section heading and substituting “No requirement for licence or registration for recognised investment exchanges and clearing houses”;
- (b) in subsections (1) and (2), by deleting “is exempt from” and substituting the words “is able to carry on, or purport to carry on, investment business in or from Bermuda in accordance with section 12 of the Act without”.

INVESTMENT BUSINESS AMENDMENT ACT 2024

Amends section 67

13 Section 67(1) of the principal Act is amended—

- (a) in paragraph (a), by deleting “make a recognition order” and substituting the words “issue a recognition certificate”;
- (b) in paragraph (b), by deleting “order is made” and substituting the words “certificate is issued”.

Amends section 68

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

Amends section 69

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

Inserts section 70A

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

“Fees

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

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

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

Amends section 71

17 Section 71 of the principal Act is amended—

- (a) by deleting the section heading and substituting “Recognition Certificates”;
- (b) in subsection (1), by deleting “make a recognition order declaring” and substituting the words “issue a recognition certificate designating”;
- (c) in subsection (4), by deleting “order” and substituting the word “certificate”;
- (d) in subsection (5)—

INVESTMENT BUSINESS AMENDMENT ACT 2024

- (i) in the chapeau of the subsection, by deleting “make a recognition order” and substituting the words “issue a recognition certificate”;
- (ii) in paragraph (a), by deleting “an order” and substituting the words “a certificate”;
- (e) in subsection (6), by deleting—
 - (i) “make a recognition order” and substituting the words “issue a recognition certificate”;
 - (ii) “making of the order” and substituting the words “issuance of a recognition certificate”.

Amends section 73

18 Section 73 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by deleting “and”;
 - (ii) in paragraph (b), by deleting the period and substituting “; and”;
 - (iii) by inserting after paragraph (b) the following new paragraph—
 - “(c) information relating to the financial soundness of the recognised body, including any material changes to capital and liquidity resources.”;
- (b) by inserting after subsection (1) the following new subsections—

“(1A) The Authority may make rules, which shall be complied with by recognised bodies as applicable, prescribing prudential and technical standards in relation to—

- (a) capital; and
- (b) liquidity.

(1B) The Authority may in the rules made under subsection (1A) prescribe standards that impose different requirements to be complied with by recognised bodies in different situations or in respect of different activities.”;

- (c) by inserting after subsection (8) the following new subsections—

“(9) Not later than 45 days after the end of June and December in each year every recognised body shall file with the Authority any information or documents required in relation to any applicable rule or statutory return required to be prepared by it under prudential standards rules made by the Authority under subsection (1A).

(10) A recognised body that fails to file information or documents required by the Authority in accordance with rules made under this section, is liable to a

INVESTMENT BUSINESS AMENDMENT ACT 2024

civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

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

Inserts sections 73A to 73E

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

“Notification of change of controller or officer

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

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the recognised body becomes aware of the relevant facts.

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

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

Duty to prepare annual audited financial statements

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

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

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

(4) Financial statements of recognised bodies shall be audited by the approved auditor in accordance with—

- (a) generally accepted auditing standards for Canada, the United Kingdom or the United States of America;
- (b) International Standards on Auditing; or
- (c) such standards as the Authority may recognise,

and the approved auditor shall be required to provide an auditor’s report in respect thereof.

INVESTMENT BUSINESS AMENDMENT ACT 2024

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

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

(7) Notwithstanding subsection (9), the Authority may require a recognised body to prepare financial statements in such manner as it may direct.

(8) Every recognised body that fails to file audited financial statements within the time specified by the Authority is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

(9) The financial statements of a recognised body shall be prepared in accordance with any one of the following standards—

- (a) International Financial Reporting Standards ("IFRS");
- (b) Generally Accepted Accounting Principles ("GAAP") in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) any such other GAAP as the Authority may recognise.

Appointment of auditors

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

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

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

- (a) proposes to remove an auditor before the expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

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

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

Auditor to communicate certain matters to Authority

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

(2) The circumstances referred to in subsection (1) are—

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

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

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

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

Notice of certain changes to be given to the Authority

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

- (a) constitution; and
- (b) market or listing rules.

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

Amends section 74

20 Section 74 of the principal Act is amended by deleting the chapeau of subsection (1) and substituting the following—

“(1) The Authority may as it deems fit, or on the application or with the consent of a recognised body, direct that rules made under section 73 or any requirement under this Part—”.

Amends section 75

21 Section 75 of the principal Act is amended—

INVESTMENT BUSINESS AMENDMENT ACT 2024

(a) by inserting after subsection (1) the following new subsection—

“(1A) The Authority may issue directions where it has made a determination that it is desirable to protect members or potential members of the recognised body or it is necessary to preserve financial stability.”;

(b) by inserting after subsection (4) the following new subsections—

“(5) A direction made for the purposes of subsection (1)(a) may be modified or revoked.

(6) A recognised body may make written representations to the Authority in respect of a direction made pursuant to subsection (1)(a) and where such representations have been made, the Authority shall take them into account in deciding whether to modify or revoke its direction.

(7) Notwithstanding section 77(1), no notice shall be given by the Authority in connection with a direction issued in accordance with subsection (1A).”.

Inserts sections 75A to 75J

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

“Information Gathering

Power to obtain information and reports

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

(a) require the recognised body to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for ensuring the recognised body is complying with the provisions of this Act and any code of conduct or practice, and for safeguarding the interests of members and potential members of the recognised body;

(b) require the recognised body to provide the Authority with a report, in such form as may be specified in the notice, by the recognised body’s auditor, or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the recognised body to provide information under paragraph (a).

(2) The person appointed by a recognised body to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of

INVESTMENT BUSINESS AMENDMENT ACT 2024

material significance for the discharge, in relation to the recognised body, of the Authority's functions under this Part.

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

Power to require production of documents

75B (1) The Authority may—

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

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

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a recognised body, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a recognised body or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that recognised body or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the recognised body in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the members or potential members of a recognised body ("A") to do so, it may also exercise the powers conferred by section 75A and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been—

INVESTMENT BUSINESS AMENDMENT ACT 2024

- (a) a member of A's group;
- (b) a controller of A; or
- (c) any other member of a partnership of which A is a member.

(5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of a recognised body require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

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

Right of entry to obtain information and documents

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

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

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

Communication with Authority

- 75D (1) No duty to which—
- (a) an auditor of a recognised body;
 - (b) an auditor, accountant or other person appointed to make a report under section 75A(1)(b),

INVESTMENT BUSINESS AMENDMENT ACT 2024

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

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

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

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

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

Investigations

Investigations on behalf of the Authority

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

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

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

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

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

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant or barrister and attorney of a recognised body which is under investigation by virtue of subsection (1) or a

INVESTMENT BUSINESS AMENDMENT ACT 2024

person who is under investigation under subsection (2) or any person appointed to make a report in respect of that recognised body under section 75A(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as such persons may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give,

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

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

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

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

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a recognised body which is under investigation or a person who is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

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

Disciplinary Measures

Power to impose civil penalties for breach of requirements

75F (1) Subject to sections 73(1), 73A(3) and 73B(8), a recognised body that fails to comply with any requirement or contravenes any prohibition by or under this Part shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a penalty under subsection (1) where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

Civil penalties procedures

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

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

Public censure

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

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

Proposal to censure publicly

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

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

Terms of statement

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

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

Amends section 76

23 Section 76 of the principal Act is amended—

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

Amends section 77

24 Section 77 of the principal Act is amended—

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

Inserts sections 77A to 77I

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

“Objections to controllers

Notification of new or increased control

77A (1) No person shall become a ten per cent or majority shareholder controller of a recognised body unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the recognised body; and
- (b) either the Authority has, before the end of the period of ninety days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the recognised body, or that period has elapsed without the Authority having served him under section 77B a written notice of objection to his becoming such a controller of the recognised body.

(2) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

Objection to new or increased control

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

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the recognised body;
- (b) that the interests of members or potential members of the recognised body would not be in any other manner threatened by that person becoming a controller of that description of the recognised body; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person’s likely influence on the recognised body as a controller of the description in question the recognition requirements would continue to be fulfilled in the case of the recognised body or, if any of those requirements is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that

INVESTMENT BUSINESS AMENDMENT ACT 2024

the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied.

(5) Subsections (2)(a) and (4) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 77A in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

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

Objection to existing controller

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

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

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

INVESTMENT BUSINESS AMENDMENT ACT 2024

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall, subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1).

(5) Subsections (2)(a) and (4) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controller

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

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

shall be guilty of an offence.

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

(3) A person who—

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.

(5) A person guilty of an offence under subsection (3) shall be liable—

- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

Restriction on and sale of shares

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

- (a) has contravened section 77B by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
- (b) having become a controller of any description in contravention of section 77B continues to be one after such a notice has been served on him; or
- (c) continues to be a controller of any description after being served under section 77C with notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation, no payment shall be made of any sums due from the recognised body on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time

INVESTMENT BUSINESS AMENDMENT ACT 2024

being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 77B or 77C—

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the recognised body of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the recognised body; and
- (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that recognised body.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the recognised body or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

Notices

Warning notices

77F (1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make

INVESTMENT BUSINESS AMENDMENT ACT 2024

representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice about public censure given under section 75H must set out the terms of the statement.

Decision notices

77G (1) A decision notice must—

- (a) be in writing;
- (b) give the Authority's reasons for the decision to take the action to which the notice relates; and
- (c) give its decision.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 77F was given; and if no notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 77H.

(3) A decision notice about the imposition of a civil penalty under section 75F must state the date of payment.

(4) A decision notice about public censure under section 75H must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(5) A decision notice shall state the day on which it is to take effect.

(6) The Authority may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to a different action in respect of the same matter.

Notices of discontinuance

77H (1) Subject to section 77G(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

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

Publication

77I Subject to section 75H, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate."

INVESTMENT BUSINESS AMENDMENT ACT 2024

Amends section 87

26 Section 87 of the principal Act is amended by repealing subsections (5) and (6) and substituting the following—

“(5) On the commencement of this subsection, the recognition order made under the provisions of the repealed subsections (5) and (6) of this section (which subsections were repealed upon the commencement of this subsection) declaring the Bermuda Stock Exchange Company to be a recognised investment exchange shall be deemed to satisfy the recognition requirements under section 71 of this Act in order to cause the Bermuda Stock Exchange Company to—

- (a) continue to be a recognised investment exchange under this Act; and
- (b) be entitled to be issued the recognition certificate.”.

Consequential amendments

27 The Schedule, which makes consequential amendments to the Bermuda Monetary Authority Act 1969, has effect.

Commencement

28 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

INVESTMENT BUSINESS AMENDMENT ACT 2024

SCHEDULE

(section 27)

**CONSEQUENTIAL AMENDMENTS TO THE BERMUDA MONETARY
AUTHORITY ACT 1969**

Amends Fourth Schedule

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

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

INVESTMENT BUSINESS AMENDMENT ACT 2024

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Investment Business Act 2003 (the “principal Act”) in relation to Part IV to provide further for matters concerned with the supervision and regulation of recognised investment exchanges and recognised clearing houses, and for the purposes connected and consequential to the foregoing.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 2 of the principal Act in the definition of “Non-registrable person” by deleting the reference to “section 13D” and substituting a reference to “section 13(1)(b)” in order to remove the duplication of the requirement that existed in both sections for persons to be designated by order of the Minister as a “Non-registrable person”.

Clause 3 amends section 12(1) of the principal Act by deleting reference in paragraph (c) to “section 13D” and substituting the reference to “section 13(1)(b)” to remove the duplication of the requirement that existed in both sections for persons to be designated by order of the Minister as a “Non-registrable person” and to provide for an additional restriction of not carrying on investment business unless “designated as a recognised body under Part IV of the Act.”

Clause 4 amends section 13(1)(b) of the principal Act by inserting a clarification that the section applies to those “for whom there is no requirement to be licensed or registered under this Act.”

Clause 5 amends the principal Act by repealing section 13D.

Clause 6 amends the principal Act by repealing and replacing section 41(1A) in order to reformat the provision and replace reference to “Financial Reporting” with “on Auditing”. Section 41 is further amended to insert a new subsection “(1D)” which introduces the requirements for investment providers to prepare financial statements in accordance with “International Financial Reporting Standards (“IFRS”); Generally Accepted Accounting Principles (“GAAP”) in Bermuda, the United Kingdom or the United States of America; or any such other GAAP as the Authority may recognise.”

Clause 7 amends section 45(1)(a) of the principal Act to make the language in the provision clearer.

Clause 8 amends section 49A of the principal Act by inserting a new paragraph (ba) to allow the Authority to conduct an investigation if “a recognised body has contravened a condition imposed by the Authority on it in relation to the manner in which it may conduct any investment activity”.

Clause 9 amends section 52(1) of the principal Act in paragraph (a) by deleting reference to “section 13D” and substituting “section 13(1)(b)” and in paragraph (b) by inserting reference to section 75E to extend penalties for the obstructions of investigations to a recognised body that is being investigated on behalf of the Authority.

INVESTMENT BUSINESS AMENDMENT ACT 2024

Clause 10 amends section 55A of the principal Act by inserting a new “section 55A(8A)” to extend prohibition orders to the performance of functions in relation to a recognised body as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

Clause 11 amends the principal Act by repealing and replacing section 65(1) in order to provide in accordance with the revised terms for purposes of recognised investment exchanges and recognised clearing houses.

Clause 12 amends the heading of section 66 of the principal Act to reflect that there is no requirement for recognised investment exchanges and clearing houses to be licensed or registered under the Act. The section is further amended in subsections (1) and (2) by removing reference to “exempt from” and providing that a recognised body is able to carry on, or purport to carry on, investment business in or from Bermuda without a licence or registration, in respect of an investment activity carried on for the purposes of, or in connection with, firstly, the provision of exchange services, where the recognised body is an investment exchange, and, secondly, the provision of clearing services, where the recognised body is a clearing house.

Clause 13 amends section 67(1) of the principal Act in paragraphs (a) and (b) to make provision for the issuance of a recognition certificate.

Clause 14 amends section 68(1) of the principal Act to make provision for an investment exchange to apply to the Authority for a recognition certificate designating it to be a recognised investment exchange.

Clause 15 amends section 69(1) of the principal Act to make provision for a clearing house to apply to the Authority for a recognition certificate designating it to be a recognised clearing house.

Clause 16 amends the principal Act by inserting a new section 70A to impose fees to be prescribed by the Authority for an application for a recognition certificate; for a fee to be paid to the Authority “on or before 31st March in every year after the year in which the recognition certificate was issued”; and for an additional fee in the form of a late penalty fee to be paid “of an amount equal to ten percent of the fee due for every month or part thereof during which the fee remains unpaid.”

Clause 17 amends the heading of section 71 of the principal Act to align with the issuance of “Recognition Certificates” and amends subsections (1),(4),(5), and (6) by deleting reference to “order” to reflect the issuance of a recognition certificate by the Authority.

Clause 18 amends section 73 of the principal Act to insert subsection (1)(c) to empower the Authority to make a rule requiring a recognised body to provide it with “information relating to the financial soundness of the recognised body, including any material changes to capital and liquidity resources”. A new subsection (1A) is inserted to empower the Authority to make rules prescribing prudential and technical standards in relation to a recognised body’s capital and liquidity requirements. A new subsection (9) is inserted to provide for filing by a recognised body of information and documents required in connection with a rule or statutory return no later than 45 days after the end of June and December yearly. A new subsection (10) is inserted to provide for a late penalty fee to

INVESTMENT BUSINESS AMENDMENT ACT 2024

be imposed on a recognised body for failure to file information or documents in accordance with the rules. A new subsection (11) is inserted to allow for the Schedule to the rules to be published on the Authority's website and be available for public inspection at the Authority's offices.

Clause 19 amends the principal Act by inserting the following new sections:

- section 73A provides for a recognised body to give notification of a change of officer or controller and for a recognised body to be liable to a penalty if it fails to comply with the requirement to give notification to the Authority;
- section 73B provides for a recognised body to prepare annual audited financial statements, make provision for the time-frame to file a copy of the audited financial statements and auditor's reports with the Authority and, amongst other matters, make provision for the financial statements to be prepared in accordance with IFRS or GAAP;
- section 73C provides for the appointment of an approved auditor to audit a recognised body's financial statements, to make provision for a recognised body to give notice to the Authority if it proposes to remove an auditor before the expiration of the auditor's term of office or replace an auditor at the expiration of the term of the auditor's office and to provide for failure to comply with section 73C to be an offence with a fine of \$25,000 upon summary conviction;
- section 73D provides for an auditor to communicate certain matters to the Authority, which include (a) an auditor's resignation before the expiration of the auditor's term of office, (b) the auditor's intention to not seek to be re-appointed and (c) the auditor's decision to include a modification of his report on the recognised body, and (d) to provide for failure to comply with section 73D to be an offence with a fine of \$25,000 upon summary conviction;
- section 73E provides for a recognised body to give written notice to the Authority of any proposal to amend its bye-laws and market or listing rules and to provide that no effect is to be given to the proposed amendment unless the Authority approves the matter.

Clause 20 amends section 74(1) of the principal Act to provide that the Authority may seek to waive any requirement of the Act from applying to a recognised body.

Clause 21 amends section 75 of the principal Act to: (a) introduce the ability for the Authority to issue directions where it has made a determination that it is desirable to protect members or potential members or it is necessary to preserve financial stability, (b) to provide for a direction to be modified or revoked, (c) to provide for a recognised body to make written representations to the Authority.

Clause 22 amends the principal Act by inserting the following new sections:

- section 75A introduces a requirement for a recognised body to provide the Authority (or such person acting on behalf of the Authority as specified in notice), with such information or report as the Authority may reasonably require for the performance of the Authority's functions under the Act;

INVESTMENT BUSINESS AMENDMENT ACT 2024

- section 75B introduces the requirement for a recognised body to produce documents as may be specified in a notice and provides for any person who without reasonable excuse fails to comply with the requirement imposed on him to be guilty of an offence and liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both;
- section 75C provides for any officer, servant or agent of the Authority to have the right to enter premises and obtain information or documents, and further provides for any person who intentionally obstructs a person exercising such rights to be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both;
- section 75D provides to enable communication to the Authority in good faith by an auditor, accountant or other person required to make a report to the Authority to not contravene such person's duty;
- section 75E provides for the Authority to appoint a competent person to investigate and report to the Authority on the nature, conduct or state of the recognised body's business or the ownership or control of the recognised body;
- section 75F empowers the Authority to impose civil penalties for breach of requirements by a recognised body;
- section 75G provides for the Authority to give the person concerned a warning notice and a decision notice when imposing a civil penalty;
- section 75H empowers the Authority to publish a statement, if it considers it appropriate, that a recognised body has contravened a requirement of the Act;
- section 75I introduces the requirement for the Authority to give a recognised body a warning notice if the Authority proposes to publish a statement that a recognised body has contravened a requirement of the Act;
- section 75J introduces a requirement for the Authority to give a recognised body a decision notice with the terms of the statement if the Authority decides to publish a statement under section 75H.

Clause 23 amends section 76 of the principal Act to delete references to "order" and substitute "certificate" as appropriate.

Clause 24 amends section 77 of the principal Act to delete references to "revocation order" and substitute "issue a revocation", or similar wording, as appropriate.

Clause 25 amends the principal Act by inserting the following new sections:

- section 77A provides for notification of new or increased control by a shareholder controller of a recognised body;
- section 77B empowers the Authority to object to new or increased control of a recognised body;
- section 77C empowers the Authority to object to a controller of a recognised body that the Authority no longer deems as a fit and proper person to be a controller of that recognised body;

INVESTMENT BUSINESS AMENDMENT ACT 2024

- section 77D introduces an offence for a person that contravenes the notification requirement to the Authority of new or increased control as a shareholder controller of a recognised body;
- section 77E empowers the Authority to restrict the sale of shares of a person who has contravened the requirement to become a controller of a recognised body after the Authority has issued an objection;
- section 77F provides for the Authority to issue warning notices in respect of a recognised body;
- section 77G provides for the Authority to issue decision notices in respect of a recognised body;
- section 77H provides for the Authority to issue a notice of discontinuance in respect of a decision not to take an action proposed in a warning notice;
- section 77I empowers the Authority to publish such information about a matter to which a decision notice relates as it considers appropriate.

Clause 26 repeals and replaces section 87(5) and (6) so as to provide transitional provisions that are to apply to the Bermuda Stock Exchange Company in accordance with the revised requirements for recognised investment exchanges.

Clause 27 provides for consequential amendments to the Bermuda Monetary Authority Act 1969.

Clause 28 provides for the Minister to bring the Act into operation by notice published in the Gazette.