



**THE FOLLOWING LEGISLATION
HAS BEEN REPEALED
BY**

ACT NO. 2 OF 2019

CHAPTER 369A
INVESTMENT FUNDS

LIST OF AUTHORISED PAGES

1 – 6	LRO 1/2008
7 - 42	LRO 1/2006
43 - 44	LRO 1/2008
45 - 49	LRO 1/2006

ARRANGEMENT OF SECTIONS

PART I
SHORT TITLE AND APPLICATION

SECTION

1. Short title.
2. Interpretation.

PART II
INVESTMENT FUND REGULATION

3. Regulated Investment Funds.
4. Professional and standard Fund.
5. Smart Fund.
6. Recognized Foreign Fund.
7. Certain Funds may elect to be standard fund
8. Self Administered Fund.
9. Offering document.
10. Directors of Fund.
11. Applications for licensing and registration.
12. Misrepresentation.
13. Licensing by unrestricted investment fund administrator.
14. Refusal to license or register an investment fund.
15. Restriction on licensing or registration.
16. Conditions on licensing or registration.
17. Non-Bahamas based investment fund.
18. Surrender of licence or registration.
19. Transfer to and from another jurisdiction.
20. Transfer of investment fund administration.
21. Termination of administration agreement.
22. Dormant investment funds.
23. Books and records.

24. Representation as investment fund.
25. Compliance with directions.
26. Administrator to ensure investment fund compliance.
27. Renewal of licence or registration and annual fees.
28. Winding up, etc. of investment fund.
29. Register of regulated investment funds.
30. Material change reporting.
31. Annual audits of regulated investment fund.

**PART III
INVESTMENT FUND ADMINISTRATION**

32. Investment fund administrator.
33. Applications for licensing.
34. Unrestricted and restricted licences.
35. Refusal to grant licence.
36. Principal office and annual fees.
37. Requirements for paid up capital.
38. Requirements for provisions of principal office.
39. Requirements to report certain matters.
40. Transfer or disposal of shares.
41. Name of investment fund administrator restricted.
42. Annual audits of investment fund administrator.
43. Minimum number of Directors.
44. Approval to change Directors etc. required.

**PART IV
APPROVED AUDITORS**

45. Auditors to be approved and report.

**PART V
REGULATORY AUTHORITY OF THE COMMISSION**

46. Commission to review operations of investment funds.
47. Authority to regulate.
48. Compliance with Financial Transactions Reporting Act.

**PART VI
ON-SITE AND OFF-SITE EXAMINATIONS**

49. Duty of Commission to conduct examinations and review.

**PART VII
SUPERVISORY AUTHORITY OF THE COMMISSION**

50. Instructions to audit accounts.
51. Requirement of information or explanation.
52. Access to Records.
53. Authority to revoke licence.

**PART VIII
INVESTIGATIVE AND DISCIPLINARY AUTHORITY OF THE
COMMISSION**

- 54. To conduct regulatory hearings.
- 55. To impose sanctions, remedies, etc.
- 56. Disciplinary proceedings.

**PART IX
ENFORCEMENT AUTHORITY OF THE COMMISSION OVER
UNREGULATED INVESTMENT FUNDS AND UNLICENSED
INVESTMENT FUND ADMINISTRATORS**

- 57. Instruction to investment fund to provide information or explanation.
- 58. Disciplinary authority of Commission.

**PART X
MISCELLANEOUS PROVISIONS**

- 59. Confidentiality.
- 60. Right to appeal to Court.
- 61. Offences.
- 62. Minister to make regulations.
- 63. Application for exemption from certain provisions of this Act.
- 64. Waiver of provisions.

**PART XI
TRANSITIONAL PROVISIONS**

- 65. Licensed and Authorized Mutual Funds under the Mutual Funds Act.
- 66. Funds exempt pursuant to section 3(4) of Mutual Funds Act.
- 67. Funds exempt pursuant to section 3(6) of the Mutual Funds Act.
- 68. Mutual Fund Administrators.
- 69. Extensions.
- 70. Application of Fees.
- 71. Penalty – Investment Funds.
- 72. Penalty – Investment Fund Administrators.

CHAPTER 369A

INVESTMENT FUNDS

An Act to provide for the regulation of investment funds in The Bahamas and for matters connected thereto. *20 of 2003
16 of 2007*

[Assent 11th July, 2003]

[Commencement 15th December, 2003] *S.I. 93/2003.*

**PART I
PRELIMINARY**

- 1.** This Act may be cited as the Investment Funds Act. Short title.
- 2.** In this Act — Interpretation.
- “auditor” means a person who is —
- (a) a professionally qualified accountant; or
 - (b) an accountant licensed to practice as such under the Public Accountants Act; Ch. 364.
- “Commission” means the Securities Commission of The Bahamas established by section 3 of the Securities Industry Act; Ch. 363.
- “company” means a body corporate incorporated or registered under the laws of The Bahamas or of any other jurisdiction;
- “constitutive documents” means the principal documents governing the formation of the investment fund, and includes the trust deed in the case of a unit trust, the memorandum and articles of association in the case of a company and the partnership agreement in the case of a partnership and all material agreements;
- “counsel and attorney” has the same meaning as in section 2 of the Legal Profession Act; Ch. 64.
- “court” means the Supreme Court of The Bahamas;
- “dormant fund” means an investment fund to which section 22 of this Act applies;
- “equity interest” means a share, a trust unit or a partnership interest that carries an entitlement to

participate in the profits or gains of the issuer thereof and that is redeemable or re-purchasable at the option of the investor;

Ch. 363.

“Executive Director” means the person appointed as such under section 16 of the Securities Industry Act;

“general partner” means —

- (a) in respect of a partnership constituted under the laws of The Bahamas, a general partner as defined under such law; or
- (b) in respect of a partnership constituted under the laws of a jurisdiction other than The Bahamas, a person equivalent to a general partner under the laws of The Bahamas;

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

“investment fund” or “fund” means —

- (a) a unit trust, that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains arising from the acquisition, holding, management or disposal of investments —
 - (i) of which the trustee, the administrator, the investment advisor or the investment manager is either a company incorporated or registered in The Bahamas or a person who has a place of business in The Bahamas or uses an address in The Bahamas; or
 - (ii) the trust instrument of which is governed by the laws of The Bahamas; or
- (b) a company (including a limited duration company) that issues or has equity interests

the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits and gains arising from the acquisition, holding, management or disposal of investments —

- (i) which is incorporated or registered in The Bahamas; or
 - (ii) of which the administrator, the investment advisor or the investment manager is either a company or companies incorporated or registered in The Bahamas or one or more companies or individuals any one of whom has a place of business in The Bahamas or which uses an address in The Bahamas; or
 - (iii) the administration or management, of which (including the control of substantially all of its assets) is carried on in or from The Bahamas;
- (c) a partnership that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits and gains arising from the acquisition, holding, management or disposal of investments —
- (i) of which one or more of the general partners is incorporated or registered in The Bahamas or is a person residing in The Bahamas or uses an address in The Bahamas; or
 - (ii) whose partnership articles are governed by the laws of The Bahamas; or
 - (iii) of which the administrator, the investment advisor or the investment manager is either a company incorporated or registered in The Bahamas or a person who has a place of business in The Bahamas or uses an address in The Bahamas,

and in this Act a reference to investment fund means a “Bahamas based investment fund” but does not include —

Ch. 313.

- (aa) a person enrolled under the Friendly Societies Act; or
- (bb) a company, unit trust or partnership, where the holder of an equity interest does not have the option to redeem his equity interest or require the issuer to repurchase his equity interest;

“investment fund administration” means —

- (a) to administer the operations and administrative affairs of an investment fund;
- (b) to provide the administrative services for an investment fund including the accounting, valuation or reporting services; or
- (c) to provide the principal office of an investment fund;

but does not include —

- (d) the provision of a registered office to an investment fund where the usual corporate secretarial and related services are provided;
- (e) in relation to an investment fund, the maintenance of any register of equity interests or the registration and payment of fees;
- (f) the provision of investment advice or investment management or trading execution services;

“investment fund administrator” or “administrator” means a person licensed under section 34 or authorized under section 32(2)(b) to provide investment fund administration in or from The Bahamas or a person exempted under section 32(3) from obtaining an investment fund administrator’s licence;

“investment fund administrator’s licence” means a licence granted under section 34;

“investment fund licence” means a licence granted under section 3;

“investment manager” means a person, not being an officer or an employee of an investment fund who for valuable consideration, provides or is entitled to provide an investment fund with investment management services, and may include providing investment advice;

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

“licensed investment fund” means an investment fund licensed pursuant to section 3 or section 7;

“licensee” means a person to whom a licence is granted under this Act;

“licensor” means the Commission or an investment fund administrator licensed under section 34(1);

“material change” means any change that is reasonably expected to have a significant effect on an investment fund or its investors;

“Minister” means the Minister of Finance;

“non-Bahamas based investment fund” means a unit trust, company or partnership that issues or has equity interest the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits and gains arising from the acquisitions, holding, management or disposal of investments which —

(i) does not satisfy any of the requirements of (a)(i) – (ii), (b)(i) – (iii) or (c)(i) – (iii) of an investment fund as defined in this Act; and

(ii) which has some form of nexus to The Bahamas including but not limited to it being sold in or from The Bahamas or having appointed a custodian in The Bahamas;

“offering document” in respect of an investment fund, means a document or series of documents on the basis of which —

(a) equity interests in the investment fund are offered for sale; or

- (b) persons are invited to subscribe for or purchase equity interests in the investment fund, but does not include any other notice, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the investment fund or the invitation to any person to subscribe for or purchase any equity interest in the investment fund if before the offer or invitation is accepted or taken up the prospective investor is given the opportunity to consider an offering document containing the information prescribed by section 9;

“operator” in respect of the investment fund, means —

- (a) where the investment fund is a unit trust, a trustee of that trust;
- (b) where the investment fund is a partnership, a general partner in that partnership; or
- (c) where the investment fund is a company, a director of that company;

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

“partnership” means a partnership, general or otherwise constituted, under the laws of The Bahamas or any other jurisdiction;

“principal office” means the place of business of an investment fund which has ultimate responsibility for the investment fund;

“professional advisor” means —

- (a) an investment advisor or investment manager;
- (b) a counsel and attorney; or
- (c) an accountant;

“professional fund” means an investment fund that is offered to any person who comes within any of the following categories at the time of issue of the equity interest —

- (a) any bank or trust company licensed under the Banks and Trust Companies Regulation Act or licensed in a prescribed jurisdiction,

whether acting in its individual or fiduciary capacity;

- (b) any registered broker-dealer or firm registered as a securities investment advisor under the Securities Industry Act which maintains a minimum of one hundred and twenty thousand dollars (\$120,000) of regulatory capital or is a broker-dealer or firm of Securities Investment Advisors registered in a prescribed jurisdiction; Ch. 363.
- (c) any insurance company licensed under the Insurance Act or licensed in a prescribed jurisdiction; Ch. 347.
- (d) any investment fund licensed or registered under this Act or regulated in a prescribed jurisdiction;
- (e) any natural person whose individual net worth, or joint net worth with the person's spouse exceeds one million dollars (\$1,000,000);
- (f) any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (g) any trust with total assets in excess of five million dollars (\$5,000,000);
- (h) any entity in which all the equity owners satisfies one of the requirements in paragraph (a) to (h);

“promoter” in respect of an investment fund or proposed investment fund, means any person whether within or outside The Bahamas who directly or indirectly is responsible for the formation of an investment fund and who causes the preparation or distribution of an offering document in respect of the investment fund or proposed investment fund but does not include a professional advisor or underwriter acting for or on behalf of such a person;

“recognized foreign fund” means an investment fund where —

- (a) the equity interests are listed on a securities exchange (including an over-the-counter market) prescribed by the Commission by notice in the Gazette and the fund is not licensed in The Bahamas; or
- (b) it is licensed or registered, in a jurisdiction prescribed by the Commission by notice in the Gazette and not suspended from operation;

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

“registered office” means —

- Ch. 308. (a) in respect of a company incorporated under the Companies Act, an office registered in accordance with section 17 of that Act;
- Ch. 308. (b) in the case of a foreign company registered under section 172 of the Companies Act, an office registered in accordance with section 181 of that Act;
- Ch. 309. (c) in the case of a company incorporated under the International Business Companies Act, an office registered in accordance with section 37 of that Act;
- Ch. 312. (d) in the case of a partnership registered under the Exempted Limited Partnership Act, the registered office of that partnership for the purposes of that Act; or
- (e) in the case of a unit trust the registered office of the trustee in The Bahamas or the place of business of an individual trustee;

“regulated investment fund” means an investment fund that is carrying on or attempting to carry on business in compliance with section 3;

“restricted investment fund administrator’s licence” means an investment fund administrator’s licence issued under section 34(2);

“self-administered investment fund” means an investment fund administered by its own operators who are responsible for the functions of the investment fund administrator;

“share” in the case of a company limited by guarantee, includes an interest of a member of that company;

“SMART fund” means an investment fund established by the Commission as a Specific Mandate Alternative Regulatory Test Fund that satisfies certain prescribed parameters and requirements of a category, class or type of investment fund previously approved by the Commission;

“standard fund” means an investment fund that does not satisfy the requirements of a professional fund, a SMART fund or a recognized foreign fund;

“unit” means a unit of participation in a unit trust;

“unit trust” means a trust which, for valuable consideration, issues units in the undertaking of the trust entitling the holder thereof to a share in the profits or gains arising from the acquisition, holding, management or disposal of investments;

“unregulated investment fund” means an investment fund that is carrying on or attempting to carry on business in or from The Bahamas and is doing so without complying with section 3;

“unrestricted investment fund administrator” means an investment fund administrator licensed under section 34(1).

PART II

INVESTMENT FUND REGULATION

3. An investment fund shall not carry on or attempt to carry on business unless —

- (a) it is licensed as —
 - (i) a professional fund;
 - (ii) a SMART fund; or
 - (iii) a standard fund; or
- (b) it is registered as a recognized foreign fund.

Regulated
Investment
Funds.

Professional
and standard
Fund.

4. (1) Notwithstanding section 3, a professional or standard investment fund shall not carry on or attempt to carry on business unless —

- (a) it has appointed an investment fund administrator to provide its principal office;
- (b) if it is a unit trust, it has as its trustee —

Ch. 316.

- (i) a trust company licensed under the Banks and Trust Companies Regulation Act, with an unrestricted license;

Ch. 316.

- (ii) a bank licensed under the Banks and Trust Companies Regulation Act, with an unrestricted licence;

- (iii) such other bank or trust company as shall have a minimum paid-up capital and non-distributable reserves of two million dollars and is otherwise acceptable to the Commission; or

- (iv) a person approved by the Commission; and

- (c) a current offering document of the investment fund has been filed with the Commission which complies with section 9; and

- (d) the prescribed fees have been paid in respect of the investment fund.

Smart Fund.

5. (1) Notwithstanding section 3, a SMART fund shall not carry on or attempt to carry on business unless —

- (a) it complies with any written rule of the Commission establishing the parameters or requirements in respect of the category, class or type of investment fund; and

- (b) the prescribed fees have been paid in respect of the investment fund.

(2) The Commission may establish such parameters and requirements as to the administration of a SMART Fund or the contents of the constitutive documents and offering documents of the SMART fund as it deems fit.

(3) The Commission shall make rules establishing parameters and requirements in respect to each category, class or type of investment fund that it approves as a SMART Fund.

6. A recognized foreign fund shall not carry on or attempt to carry on business unless it has been registered with the Commission and it —

Recognized
Foreign Fund.

- (a) is licenced or registered in a prescribed jurisdiction; or
- (b) has submitted evidence of its listing on a prescribed securities exchange; and
- (c) has submitted to the Commission, within thirty days of the beginning of its operations as a Bahamas-based investment fund the prescribed details of the investment fund; and
- (d) the prescribed fees have been paid in respect of the investment fund.

7. (1) A company, unit trust or partnership, where the holder of an equity interest does not have the option to redeem his equity interest or require the issuer to repurchase his equity interest may elect to be licensed by the Commission as an investment fund and if it so elects shall from the date of licensing be deemed an investment fund for the purposes of this Act.

Certain Funds
may elect to be
standard fund.

(2) An investment fund which qualifies to be licensed as a professional or SMART fund or registered as a recognized foreign investment fund may elect to be licensed as a standard fund.

8. (1) Notwithstanding section 4(1)(a) an investment fund may operate and conduct business as a self-administered investment fund and in such case a reference to an investment fund administrator shall be deemed to be a reference to the operator of the self-administered investment fund who is performing the function of an administrator.

Self -
Administered
Fund.

(2) An operator of a self-administered fund shall not deal with the fund as a principal.

(3) A self-administered fund shall be licensed by the Commission only.

9. (1) An offering document of an investment fund shall —

Offering
document.

- (a) describe the equity interests in all material respects;
- (b) contain the prescribed details; and
- (c) contain such other information as is necessary to enable the prospective investor in the investment

fund to make an informed decision as to whether or not to subscribe for or purchase such equity interests.

(2) Subsection (1) shall be without prejudice to any duty of disclosure under the common law or any other law.

(3) Unless exempted from this provision, every investment fund other than a recognized foreign fund shall be required at all times to have filed with the Commission a current offering document of the investment fund and shall not have satisfied this requirement where there is a continuing offering of equity interests and any promoter, operator or the administrator of the investment fund —

- (a) is aware of any material information that affects the offering document of the investment fund filed with the Commission; and
- (b) has not, within twenty-one days of becoming so aware, filed with the Commission an amended offering document of the investment fund, incorporating the amendment, which may be in the form of a sticker or a supplement.

(4) An investment fund is not in compliance with subsection (3) if it has —

- (a) changed its registered or its principal office;
- (b) changed its operators; or
- (c) amended its constitutive or offering documents and it has failed to inform the Commission.

Directors of Fund.

10. The Commission shall prescribe the minimum number of directors required by an investment fund which is a company.

Applications for licensing and registration.

11. (1) An application for an investment fund licence as a standard fund, professional fund or SMART fund shall be made to the licensor in the prescribed form and shall be accompanied by —

- (a) in the case of a standard or professional investment fund, the current offering document, or if one has not been finally settled, the latest draft of the offering document;
- (b) in the case of a SMART fund, such document as required by the Commission for the relevant approved structure;
- (c) a certified copy of the constitutive documents of the investment fund;

- (d) details necessary to satisfy the licensor that the applicant is a fund as provided for in sections 4 or 5;
- (e) the prescribed fees; and
- (f) such other information and documentation as the licensor may reasonably require for the purpose of determining the application.

(2) An application for registration with the Commission as a recognized foreign fund shall be in the prescribed form and shall be accompanied by —

- (a) the prescribed details;
- (b) a copy of its licence from a prescribed jurisdiction or evidence of its listing on a recognized securities exchange, as applicable;
- (c) such other information and documentation as may be required for the purpose of satisfying the Commission that the investment fund meets the conditions for being classified as a recognized foreign fund; and
- (d) the prescribed application fee.

12. (1) A person who applies for an investment fund licence or registration shall not supply the licensor with information that he knows or should reasonably know is false or misleading.

Misrepresentation.

(2) Where an unrestricted investment fund administrator acting in its capacity as a licensor becomes aware that an applicant has provided it with false or misleading information, it shall immediately notify the Commission in writing.

13. (1) An unrestricted investment fund administrator shall, in respect of any investment fund that it licenses, within thirty days of the licensing file with the Commission —

Licensing by unrestricted investment fund administrator.

- (a) the offering document of the investment fund as applicable accompanied by written certification from the administrator of the investment fund or a counsel and attorney that the offering document is in compliance with this Act;
- (b) a certified copy of the constitutive documents of the investment fund accompanied by written certification from the administrator of the fund or a counsel and attorney that the constitutive documents are in compliance with this Act;

- (c) documentation establishing the identity and fitness and properness of the promoter, operator, investment advisor or investment manager or both, the custodian and auditor of the investment fund;
- (d) a copy of the licence issued by the licensor; and
- (e) the prescribed fees.

(2) An unrestricted investment fund administrator may license professional and SMART funds only.

(3) An unrestricted investment fund administrator may only license investment funds for which it is the administrator and for which it provides the principal office.

(4) An unrestricted investment fund administrator may not license an investment fund until it has been satisfied by the applicant that —

- (a) each promoter, operator, investment advisor or investment manager or both, the auditor and custodian is “fit and proper”; and
- (b) the business of the investment fund and any offer of equity interests in it will be carried out in a proper manner.

(5) An unrestricted investment fund administrator who fails to file the prescribed documents of an investment fund which it has licensed on or before the thirtieth day following the date of the licence shall pay to the Commission a fine equal to double the amount of the annual registration fee payable by the fund.

(6) The Commission may, for good cause, waive the fine imposed under subsection (5).

Refusal to
license or register
an investment
fund.

14. (1) The Commission may refuse to license or register a fund if —

- (a) the investment fund has not satisfied the provisions of this Act;
- (b) for reasons of public interest, the Commission determines that the investment fund should not be licensed or registered; or
- (c) the name of the investment fund is —
 - (i) identical to that of any other investment fund that is regulated under this Act or which so nearly resembles the name of an investment fund regulated under this Act

so as to be likely to deceive or cause confusion in the investment fund industry;

- (ii) likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or
- (iii) likely to suggest falsely, that the fund has a special status in relation to or derived from the Government.

(2) Unless exempted by the Commission no person other than an investment fund shall carry on or attempt to carry on business as an investment fund with the words “fund” or “investment fund” in its name.

(3) If, in the opinion of the Commission, an investment fund is carrying on business in a name that the Commission would have refused by virtue of subsection (1) (c), the Commission may direct the investment fund to change its name to a name approved by the Commission.

(4) An unrestricted investment fund Administrator may refuse to license an investment fund for any reasons stated in subsection 1(a) or (b).

15. The Commission shall not license or register an investment fund until it is satisfied by the applicant that —

Restriction on licensing or registration.

- (a) each promoter, operator, investment advisor, manager, auditor and custodian is fit and proper;
- (b) the administration of the investment fund will be undertaken by persons who have sufficient expertise to administer the investment fund; and
- (c) the business of the investment fund and any offer of equity interests in it will be carried out in a proper manner.

16. (1) The Commission may license or register an investment fund subject to such conditions as it considers appropriate.

Conditions on licensing or registration.

(2) The administrator of an investment fund shall use reasonable efforts to ensure that, when carrying on or attempting to carry on business in or from The Bahamas, the investment fund complies with all conditions under which it was licensed or registered.

(3) The Commission may waive, vary or revoke any condition attached to an investment fund licence granted under section 3.

(4) An investment fund may request in writing that the Commission waive, revoke or alter any condition attached to its licence or registration.

Non-Bahamas
based investment
fund.

17. (1) A non-Bahamas based investment fund which intends to sell its equity interest in or from The Bahamas shall not offer its equity interest for sale unless it has appointed a representative approved by the Commission after the applicant has applied in the prescribed form and paid the prescribed fee.

(2) A non-Bahamas based mutual fund which has a nexus to The Bahamas other than being sold in or from The Bahamas shall notify the Commission in writing of the nature of its nexus to The Bahamas within fourteen days of the start of such relationship and the fund shall advise the Commission within fourteen days of the termination of such relationship.

(3) No person shall do business with a non-Bahamas based investment fund that has not appointed a representative in The Bahamas pursuant to subsection (1) or notified the Commission pursuant to subsection (2).

(4) A non-Bahamas based investment fund shall renew the appointment of its representative in The Bahamas on an annual basis by submitting to the Commission on or before the 31st day of January of each year —

- (a) a written declaration in the prescribed form; and
- (b) the prescribed annual fee.

Surrender of
licence or
registration.

18. (1) An investment fund shall in the prescribed manner notify the Commission in writing of its intention to surrender its licence or registration, at least fourteen days prior to the effective date of the surrender and shall also surrender to the Commission any certificate issued as evidence of its being licensed or registered.

(2) The Commission shall within fourteen days of receipt of notice of the investment fund's surrender of its licence or registration cause to be published in the Gazette a notice that the investment fund is no longer regulated in The Bahamas.

Transfer to and
from another
jurisdiction.

19. (1) A licensed investment fund may transfer from The Bahamas to another jurisdiction and shall advise the Commission in the prescribed form of such transfer at least fourteen days prior to the effective date of the transfer, and at such time of notice it shall surrender to the

Commission any certificate issued as evidence of it being licensed or registered.

(2) Without prejudice to subsection (1), an investment fund shall be deemed to have transferred from The Bahamas to another jurisdiction upon the severance of all contractual relationships with any investment fund administrator, investment manager and investment advisor operating in or from The Bahamas.

(3) The Commission upon being satisfied that the provisions of this section have been met, shall cause to be published in the Gazette a notice that the investment fund is no longer regulated in The Bahamas.

(4) An investment fund that transfers to The Bahamas from another jurisdiction shall notify the Commission within seven days of the transfer supplying to the Commission, the following information —

- (a) name of the fund;
- (b) name of the Administrator;
- (c) address of registered or principal office in The Bahamas;
- (d) name and address of the operators;
- (e) the current offering memorandum;
- (f) evidence that the investment fund has complied with the laws of the jurisdiction outside The Bahamas for transfer of the investment fund.

(5) An investment fund transferring into The Bahamas shall within thirty days of the transfer obtain an investment fund licence from a Licensor.

(6) The investment fund administrator of an investment fund transferring into The Bahamas which has licensed the investment fund is required to satisfy section 13 of this Act.

(7) The Commission may upon the written application of the investment fund extend the period within which the fund must obtain an investment fund licence.

20. An investment fund which transfers from one investment fund administrator to another shall notify the Commission in writing within fourteen days of the effective date of the transfer.

Transfer of investment fund administration.

21. (1) An investment fund administrator shall inform the Commission in writing of its intention to

Termination of administration agreement.

terminate its administration agreement with an investment fund at least thirty days prior to the date of the proposed termination.

(2) An investment fund shall be required to appoint a new investment fund administrator at least seven days prior to the date of termination under subsection (1) and shall immediately notify the Commission in writing of such appointment.

(3) An investment fund that receives notice of the intention of its administrator to terminate its administration agreement, and fails to appoint a new administrator under subsection (2), shall be liquidated and have its licence revoked by the Commission.

Dormant
investment
funds.

22. (1) An investment fund which ceases trading and liquidates its assets, without formally liquidating its structure shall be deemed to be a dormant investment fund.

(2) An investment fund shall inform the Commission in writing within fourteen days of such investment fund becoming dormant.

(3) Upon being notified that an investment fund is dormant the Commission shall suspend the licence or registration of the investment fund and cause to be published in the Gazette a notice that the licence or registration of the fund has been suspended for dormancy.

(4) A dormant investment fund may re-launch its operation within one year from the date of it becoming dormant failing which the Commission may revoke the licence or registration of such dormant investment fund.

(5) A dormant investment fund which intends to re-launch its operation within one year shall apply to the Commission to have its licence or registration lifted, and such application shall be made in the prescribed manner, and the investment fund shall pay the prescribed fee.

(6) The Commission may upon the written application of the investment fund extend the period of dormancy to a total period not exceeding eighteen months.

(7) A dormant investment fund to which subsection (6) applies that intends to re-launch its operation shall apply to the Commission in the prescribed manner and shall pay the prescribed re-launching fee.

(8) Upon being satisfied that the investment fund is in compliance with all provisions of this Act, the

Commission shall lift the suspension of the licence or registration of the investment fund imposed thereon pursuant to subsection (3) and cause to be published in the Gazette a notice that the investment fund has been re-launched.

23. An investment fund shall —

- (a) keep and maintain proper books of accounts, records and documents in such manner as to —
 - (i) explain its transactions and disclose at any point in time the financial position of the investment fund; and
 - (ii) in particular, fairly present, in all material respects, the financial position, results of operations, changes in owners equity and cash flows of the investment fund;
- (b) not destroy, conceal or alter books of accounts, records and other documents relating to its operations, required to be kept under this section for the purpose of an audit or examination by the Commission or its staff or agents.

Books and records.

24. No person other than a regulated investment fund shall represent in any way that it is an investment fund.

Representation as investment fund.

25. The investment fund administrator or operator of an investment fund shall use reasonable efforts to ensure that the investment fund complies with any direction given to it by the Commission in accordance with the provisions of this Act.

Compliance with directions.

26. The administrator of an investment fund shall use reasonable efforts to ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to provisions of this Act.

Administrator to ensure investment fund compliance.

27. (1) An investment fund shall renew its licence or registration, as applicable, on an annual basis by submitting to the Commission on or before the 31st day of January of each year —

Renewal of licence or registration and annual fees.

- (a) a written declaration in the prescribed form stating that all of the information filed with the Commission is current and applicable; and
- (b) the prescribed annual licence or registration fee.

(2) If the prescribed annual fee referred to in subsection (1) is not paid on or before the 31st day of

January, the investment fund shall be required to pay an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed under this subsection remains unpaid, up to the 1st day of April of the relevant year.

(3) Where the investment fund has failed to pay the required fee and any additional fee imposed pursuant to subsection (2) on or before the 1st day of April, of the relevant year, the Commission may revoke the licence or registration of the investment fund.

(4) The Commission may, for good cause, waive any additional fee imposed under subsection (2).

Winding up, etc.
of investment
fund.

28. An investment fund that has commenced winding up, dissolution or other termination procedures shall notify the Commission, in writing, of such winding up, dissolution or other termination procedures within fourteen days after such commencement, and shall upon the conclusion of the winding up, dissolution or other termination procedures submit to the Commission within fourteen days, such evidence of winding up, dissolution or other termination as the Commission may reasonably require.

Register of
regulated
investment funds.

29. (1) The Commission shall keep a register of regulated investment funds.

(2) It shall be the duty of the Commission to keep the register current.

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

Material change
reporting.

30. (1) An investment fund shall be required to advise the Commission within twenty-one days of the occurrence of any material change to the investment fund or its investors which the investment fund considers not to require an amendment to the offering or constitutive documents.

(2) The Commission may require that details of any material change be reported to the investors as stipulated by the Commission.

Annual audits of
regulated
investment fund.

31. (1) Except where exempted by the Commission a licensed investment fund shall have its financial statements audited annually by an auditor approved by the Commission pursuant to Part IV of this Act.

(2) Except where exempted by the Commission, a licensed investment fund shall send its audited financial statements in respect of a financial year of the investment fund to the licensor within four months of that financial year or within such extension of the period as the Commission may allow.

(3) Where the licensor is the investment fund administrator of the investment fund, and the investment fund has failed to submit its audited financial statements within the specified time, the administrator shall advise the Commission of such failure immediately upon the expiration of such time.

PART III

INVESTMENT FUND ADMINISTRATION

32. (1) An investment fund administrator shall be either a company incorporated or registered under the Companies Act, or incorporated under the International Business Companies Act.

Investment fund
administrator.

Ch. 308.
Ch. 309.

(2) A company shall not carry on or attempt to carry on business as an investment fund administrator unless it is —

- (a) the holder of an investment fund administrator's licence; or
- (b) acting with and in accordance with the authorization of the Commission in extraordinary circumstances.

(3) Notwithstanding subsection (2) the Commission may exempt an investment fund administrator from obtaining an investment fund administrator's licence if, upon application made to it in the prescribed form accompanied by the prescribed fee, it is satisfied that the applicant —

- (a) would otherwise be granted a restricted investment fund administrator's licence;
- (b) will not be administering more than one specified investment fund; and
- (c) complies with the prescribed financial requirements.

(4) An exemption granted under subsection (3) may be revoked in the same circumstances as an investment fund administrator's licence.

(5) An investment fund administrator exempted by virtue of subsection (3) of this section shall pay the prescribed annual exemption fee.

(6) The Commission may in its discretion withdraw the authorization for any investment fund administrator to operate under extraordinary circumstances granted pursuant to subsection (2)(b).

Applications for
licensing.

33. (1) An application for an investment fund administrator's licence shall be made to the Commission in the prescribed form and shall be accompanied by —

- (a) such information as the Commission requires to determine the application; and
- (b) the prescribed fees.

(2) The Commission may grant an investment fund administrator's licence if it is satisfied that the applicant —

- (a) is a company incorporated or registered under the Companies Act, or incorporated under the International Business Companies Act;
- (b) has sufficient expertise to administer investment funds;
- (c) is of sound reputation;
- (d) will administer investment funds in a proper manner;
- (e) has directors, officers, and senior management who meet the fit and proper requirements of the Commission; and
- (f) complies with prescribed financial requirements.

Ch. 308.
Ch. 309.

(3) An investment fund administrator shall notify the Commission within fourteen days of any change of its principal office, registered office and any individuals acting as its agents.

(4) A person shall not, in connection with an application for an investment fund administrator's licence, supply to the Commission information which he knows or should reasonably know is false or misleading.

(5) An investment fund administrator shall comply when carrying on or attempting to carry on business as an investment fund administrator, with any conditions contained in its investment fund administrator's licence.

Unrestricted
and restricted
licences.

34. (1) The Commission may grant, subject to such conditions as it deems fit, an unrestricted investment fund

administrator's licence which authorizes the holder thereof to act or carry on business as an investment fund administrator in respect of an unlimited number of investment funds.

(2) The Commission may grant, subject to such conditions as it deems fit, a restricted investment fund administrator's licence that authorizes the holder thereof to act or carry on business as an investment fund administrator solely in respect of the investment funds specified by the Commission from time to time.

(3) An applicant for an unrestricted investment fund administrator's licence shall have —

- (a) a place which will be its principal office in The Bahamas; and
- (b) two persons residing in The Bahamas to be its agents in The Bahamas.

(4) An applicant for a restricted investment fund administrator's licence shall have —

- (a) a registered office in The Bahamas; and
- (b) a place in The Bahamas where administration records of the investment funds under its administration are available unless the applicant has a physical place of business in The Bahamas.

(5) Where, in accordance with subsection (3)(b), an investment fund administrator has appointed two individuals resident in The Bahamas to act as its agents, the administrator may appoint them to act either separately or jointly.

35. (1) The Commission may refuse to grant an investment fund administrator's licence authorizing a person to carry on business as an investment fund administrator in a name that is —

Refusal to grant licence.

- (a) identical to that of any licensed investment fund administrator or which so nearly resembles the name of a licensed investment fund administrator as to be likely to deceive or cause confusion in the investment fund industry;
- (b) likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or

(c) likely to suggest, falsely, that the investment fund administrator has a special status in relation to or derived from the Government.

(2) If subsequent to granting an investment fund administrator's licence, the Commission discovers that the licensed investment fund administrator is authorized to carry on business as an investment fund administrator in or from The Bahamas in a name which, in the opinion of the Commission, it would have refused by virtue of subsection (1), the Commission may direct the licensed investment fund administrator to change its name to a name approved by the Commission.

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

Principal office
and annual fees.

36. (1) An investment fund administrator shall immediately upon starting to provide the principal office to a licensed investment fund pay the prescribed principal office fee and thereafter on or before the 31st day of January in each year.

(2) An investment fund administrator shall be deemed to be providing the principal office of the investment fund immediately upon the licensing of such investment fund.

(3) Where an investment fund is licensed by an unrestricted investment fund administrator, the principal office fee may be paid at the time that the investment fund documents are filed under section 13.

(4) A licensed investment fund administrator shall on or before the 31st day of January in each year pay the prescribed annual licence fee for its own licence, and submit to the Commission, in writing, a declaration that all information filed with the Commission is current and applicable.

(5) If an annual fee referred to in subsection (1) or (4) is not paid on or before the 31st day of January, there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid, up to the 1st day of April of the relevant year.

(6) Where the investment fund administrator has failed to pay the fee required by subsection (1) and (4) and

the additional fee imposed pursuant to subsection (5) on or before the 1st day of April, of the relevant year, the Commission may revoke the licence of the investment fund administrator.

(7) The Commission may, for good cause, waive any additional fee imposed under subsection (5).

37. (1) If the Commission is satisfied that there is reasonable cause to do so or if the shareholders' equity of an investment fund administrator is less than any amount prescribed by the Commission, it may direct the investment fund administrator to —

Requirements
for paid up
capital.

- (a) provide such guarantees or insurance coverage or other financial support as the Commission shall think fit; or
- (b) increase its shareholders' equity to such amount as the Commission shall consider appropriate.

(2) An investment fund administrator shall comply with a direction given under subsection (1).

38. An investment fund administrator shall not provide a principal office to a licensed investment fund unless it is satisfied that —

Requirements for
provisions of
principal office.

- (a) each operator and promoter of the investment fund is of sound reputation;
- (b) if applicable, the administration of the investment fund will be undertaken by persons who —
 - (i) have sufficient expertise to administer the investment fund; and
 - (ii) are fit and proper; and
- (c) that the business of the investment fund and any offer of equity interest in it will be carried out in a proper manner.

39. If an investment fund administrator knows or has reason to believe that an investment fund for which it provides a principal office, or a promoter or operator of such an investment fund —

Requirements
to report certain
matters.

- (a) is or is likely to become unable to meet any of its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with this Act or any other applicable legislation; or

- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund,

the investment fund administrator shall immediately give the Commission written notice of its knowledge or belief giving its reason for such knowledge or belief.

Transfer or disposal of shares.

40. An investment fund administrator shall not issue shares and no person owning or having an interest in shares in the investment fund administrator shall transfer or otherwise dispose of such shares or deal in such shares or such interest unless —

- (a) the Commission has given its approval to the issue, transfer, disposal or dealing as the case may be; or
- (b) the Commission has waived the obligation to obtain that approval, and any conditions of the approval or waiver are complied with; and
- (c) the prescribed fee has been paid.

Name of investment fund administrator restricted.

41. No person other than a licensed investment fund administrator shall carry on or attempt to carry on investment fund business in or from The Bahamas with the words “fund administrator” in its name or title and shall not represent in any way that it is carrying on or attempting to carry on business in or from The Bahamas as an investment fund administrator unless exempted or otherwise authorized to do so by the Commission.

Annual audits of investment fund administrator.

42. (1) An investment fund administrator shall have its financial statements audited annually by an auditor approved by the Commission.

(2) An investment fund administrator shall submit its audited financial statements in respect of the financial year of the administrator to the Commission within four months of the end of that financial year or within such extension of that period as the Commission may reasonably allow.

Minimum number of Directors.

43. The Commission shall prescribe the minimum number of directors required by an investment fund administrator.

Approval to change Directors etc. required.

44. (1) An investment fund administrator shall not appoint or change a director or chief executive officer (or the equivalent position) as the case may be, unless —

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- (a) the prior written approval of the Commission to the appointment has been obtained; or
 - (b) the Commission has exempted the investment fund administrator from the obligation to obtain the Commission's approval; and
 - (c) the prescribed fee has been paid.
- (2) An investment fund administrator shall notify the Commission immediately of any material change in the information furnished to the Commission in support of its application.

PART IV

APPROVED AUDITORS

45. (1) The auditors of an investment fund or an investment fund administrator shall be approved by the Commission.

Auditors to be approved and report.

(2) The approved auditor of an investment fund or a investment fund administrator shall prepare —

- (a) a report on the financial statements prepared in respect of each year of the investment fund or investment fund administrator pursuant to subsection (3)(a);
 - (b) a report on the results of the procedures performed by the auditors pursuant to subsection (3)(b).
- (3) The auditor shall issue —
- (a) a report on the audit of the financial statements stating whether or not the financial statements present fairly, in all material respects, the financial position of the investment fund or investment fund administrator and the results of its operation, changes in its owners' equity and its cash flow in accordance with standards accepted by The Bahamas Institute of Chartered Accountants or any other international accounting body recognized by the Commission; and
 - (b) a report on whether or not the business of the investment fund or investment fund administrator has been conducted in accordance with the provisions of this Act relating to the record keeping, filing requirements, and the

financial affairs of the investment fund or investment fund administrator.

(4) Where in the course of performing the duties required by subsection (3) the auditor comes to the view that a matter could give rise to a qualification in the audit report on the financial statements or that a major deficiency, weakness or non-compliance should be reported to the Commission, the auditor shall request the investment fund or the investment fund administrator, as the case may be, to notify the Commission accordingly and, if the investment fund or investment fund administrator fails or refuses to do so, the auditor shall notify the Commission immediately in writing and shall supply a copy of the notification to the investment fund or investment fund administrator.

PART V

REGULATORY AUTHORITY OF THE COMMISSION

Commission to review operations of investment funds.

- 46.** (1) It shall be the duty of the Commission —
- (a) to maintain a general review of the operations of investment funds and parties related to investment funds in The Bahamas;
 - (b) to monitor, by way of receipt of regular reports or in such other manner as it thinks necessary the affairs or business of any investment fund or party related to an investment fund in The Bahamas.

(2) The Commission may make rules providing for such matters as may be necessary or expedient for giving effect to its duties.

Authority to regulate.

47. (1) The Commission shall have the authority to regulate the investment fund industry and the operations and duties of investment funds and parties related to the investment fund.

(2) Without prejudice to the generality of the foregoing the Commission shall have the authority to establish by rules the standards or educational criteria, if any, which govern the suitability of a party related to an investment fund or contracted to provide any of the services of a party related to an investment fund.

48. In the exercise of its functions under this Act the Commission shall satisfy itself that the provisions of the Financial Transactions Reporting Act are being complied with.

Compliance with
Financial
Transactions
Reporting Act.
Ch. 368.

PART VI

ON-SITE AND OFF-SITE EXAMINATIONS

49. (1) The Commission shall on a regular basis or whenever it thinks fit conduct on-site and off-site examinations of the business of investment funds and parties related to an investment fund under this Act for the purpose of satisfying itself that —

Duty of
Commission to
conduct
examinations and
review.

- (a) the provisions of this Act or any regulations made hereunder are being complied with; and
- (b) the provisions of the Financial Transactions Reporting Act, or any regulations made thereunder are being complied with,

Ch. 368.

and after the conclusion of such examination to prepare a report on its findings.

(2) In any case where the Commission is unable to conduct an examination described in subsection (1), it may appoint an auditor, at the expense of the investment fund or party related to the investment fund, to conduct such examination and to report thereon to the Commission.

(3) The Commission may assess charges to recover the cost of such examination.

(4) The Commission shall examine, consider and make recommendations on any information or report prepared as a result of such examination.

(5) The Commission shall be entitled at all reasonable times to exercise its authority under sections 51 and 52, to have access to or to request the books, records or any information of or from the investment fund or parties related to an investment fund.

PART VII

SUPERVISORY AUTHORITY OF THE COMMISSION

50. (1) The Commission may at any time instruct an investment fund or investment fund administrator to have

Instructions to
audit accounts.

its accounts audited other than as required in section 31(1) and to submit its audited financial statements to the Commission within such time as the Commission shall specify.

(2) The operator or investment fund administrator of an investment fund shall ensure that an instruction given to an investment fund in accordance with subsection (1) is complied with within the specified time.

Requirement of information or explanation.

51. (1) If requested to do so by the Commission a party related to an investment fund shall give the Commission such information or such explanation in respect of the investment fund as the Commission may reasonably require to enable it to carry out its duties under this Act.

(2) If requested to do so by the Commission, an investment fund administrator shall give the Commission such information or such explanation in respect of its investment fund administration or its operations as the Commission may reasonably require to enable it to carry out its duties under this Act.

(3) A person giving information or an explanation for the purpose of subsection (1) or (2) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

Access to Records.

52. (1) If requested to do so by the Commission, a party related to an investment fund shall give the Commission access to or provide at any reasonable time all records relating to the investment fund.

(2) When requested to do so by the Commission, an investment fund administrator shall give the Commission access to, or provide within a reasonable time —

- (a) the records of the administrator; and
- (b) any records under the control of the administrator, relating to the investment fund administration carried out by the investment fund administrator.

(3) The Commission may copy or take an extract of a document it is given access to, or provided with in accordance with this section.

Authority to revoke licence.

53. (1) Without prejudice to the Commission's authority in section 55(1)(e) and (f) the Commission may —

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- (a) by order, revoke the licence or registration of an investment fund —
 - (i) where the investment fund has ceased to carry on or attempt to carry on its business; or
 - (ii) if the investment fund becomes insolvent or goes into liquidation or is wound up or otherwise dissolved;
 - (b) by order, revoke the licence of an investment fund administrator where —
 - (i) the investment fund administrator has ceased to carry on or attempt to carry on its business; or
 - (ii) the investment fund administrator becomes insolvent or goes into liquidation or is wound up or otherwise dissolved;
 - (c) apply to the Court for an order compelling a person —
 - (i) where that person has failed to comply with the direction of the Commission to comply with the direction;
 - (ii) where that person is contravening this Act to cease contravening it; or
 - (iii) where that person has omitted to do anything required under this Act to rectify the omission.

(2) Whenever the Commission is of the opinion that any action under subsection (1) (a) or (b) should be taken, it may attach conditions to the licence or registration of such investment fund or investment fund administrator but before taking such action the Commission shall give that investment fund or investment fund administrator notice in writing of its intention so to do setting out in the notice the grounds on which it proposes to act and shall afford such investment fund or investment fund administrator, within such time as may be specified therein, not being less than seven days, an opportunity to respond in writing to such action, and thereafter the Commission shall advise the investment fund or investment fund administrator of its decision.

(3) Whenever the Commission attaches conditions to a licence or registration under subsection (2) it shall cause notice of the conditions to be published in the Gazette.

(4) Any condition attached to a licence or registration under subsection (2) shall be for a period of ninety days, or until the Commission takes action under subsection (1) or until the Commission notifies the licensee that the conditions have been removed, whichever period is shorter.

(5) Where the Commission deems it necessary it may apply to the Court for an order that the investment fund or investment fund administrator, as the case may be, shall be wound up, dissolved, liquidated or otherwise terminated, as appropriate.

(6) The Commission may, in the case of an investment fund or investment fund administrator that is or has been licensed or registered under this Act apply to the Court for directions if it considers that the winding up is not being conducted in the best interests of the investors or creditors of such investment fund or investment fund administrator and the court shall make such order as it considers fit.

PART VIII

INVESTIGATIVE AND DISCIPLINARY AUTHORITY OF THE COMMISSION

54. The Commission shall have authority to conduct regulatory hearings to determine whether —

- (a) there has been or there is likely to be a failure to comply with the provisions of this Act or any regulations or rules made hereunder;
- (b) an investment fund or investment fund administrator is carrying on its business in a manner detrimental to the public interest;
- (c) an investment fund or investment fund administrator is carrying on or attempting to carry on business or is winding up, dissolving, liquidating or terminating its investment fund or investment fund administration business voluntarily in a manner that is prejudicial to —
 - (i) the investors in the investment fund; or
 - (ii) any investment fund being administered by an investment fund administrator; or
 - (iii) the creditors of the investment fund; or

To conduct regulatory hearings.

- (iv) the creditors of the investment fund administrator; or
- (d) an investment fund or an investment fund administrator is carrying on or attempting to carry on its investment fund or investment fund administration business without complying with any of the conditions of its investment fund licence or its investment fund administration licence.

55. (1) The Commission shall have authority to impose one or more of the following sanctions, remedies or other relief as the result of any settlements of disputes between persons or decisions of the Commission as a result of regulatory hearings —

To impose sanctions, remedies, etc.

- (a) censure;
- (b) fine, not to exceed three hundred thousand dollars;
- (c) disgorgement of profits or other unjust enrichment plus a penalty not to exceed twice the amount of such profits or unjust enrichments;
- (d) restitution;
- (e) suspension of licence or registration;
- (f) revocation of licence or registration;
- (g) reclassification of an investment fund administrator's licence;
- (h) revocation of approval or authorization;
- (i) to require the substitution of any party related to the investment fund or any similar senior officer of an investment fund or investment fund administrator;
- (j) to appoint a person to advise an investment fund on the proper conduct of its affairs or to advise an administrator on the proper conduct of its investment fund administration;
- (k) to appoint a person to assume control of the investment fund's affairs or of an investment fund administrator's affairs relating to fund administration;
- (l) to apply to the court for an Order to take such other action as it considers necessary to protect the interests of —
 - (i) the investors in an investment fund;

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- (ii) any investment fund being administered by an investment fund administrator;
 - (iii) the creditors of the investment fund; or
 - (iv) the creditors of the investment fund administrator;
- (m) to impose any other sanctions or remedies as the justice of the case may require.

(2) Where it considers it necessary or appropriate to do so and if it is practical to do so the Commission may inform the investors of an investment fund of any action it is taking or intending to take in respect of the investment fund.

(3) A person appointed under subsection (1)(j) or (k) is appointed at the expense of the relevant investment fund or investment fund administrator and any expenses reasonably incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the investment fund or investment fund administrator.

(4) A person appointed under subsection (1)(k) has all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver), to administer the affairs of the relevant investment fund or the affairs of an investment fund administrator relating to its investment fund administration business in the best interest of the —

- (a) investors and creditors of the investment fund; or
- (b) investors or creditors of investment funds administered by the investment fund administrator; or
- (c) the creditors of any such investment fund administrator.

(5) The powers referred to in subsection (4) include the power to terminate the business of the investment fund or investment fund administrator if it is adjudged insolvent.

(6) A person appointed in respect of an investment fund or investment fund administrator under subsection (1)(j) or (k) shall —

- (a) when requested to do so by the Commission, supply the Commission with such information in respect of —
 - (i) the investment fund; or

-
- (ii) the administration of investment funds by the investment fund administrator as is specified by the Commission;
 - (b) within three months of his appointment, or within such other period as the Commission may specify, prepare and supply to the Commission a report on —
 - (i) the affairs of the investment fund; or
 - (ii) the affairs of the investment fund administrator relating to its investment fund administration; andwhere appropriate make recommendations in respect of the investment fund or investment fund administrator; and
 - (c) if his appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission shall require.
- (7) If a person appointed under subsection (1)(j) or
- (k) —
- (a) fails to comply with an obligation under subsection (6); or
 - (b) in the Commission’s opinion, is not carrying out his obligation in respect of the relevant investment fund or investment fund administrator satisfactorily,

the Commission may revoke the appointment and appoint some other person in his place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment.

- (8) On receipt of any information or report pursuant to subsection (6) in respect of an investment fund or investment fund administrator, the Commission may —
 - (a) require the investment fund or investment fund administrator to reorganize its affairs in a manner specified by the Commission; or
 - (b) apply to the court for an order to wind up, dissolve, liquidate or otherwise terminate (as appropriate) the investment fund or investment fund administrator upon such terms and conditions as the court thinks fit;

- (c) take such action in respect of the appointment or continued appointment of the person appointed under subsection (1)(j) or (k) as the Commission considers appropriate.
- (9) If the Commission takes action under subsection (8) it may —
 - (a) apply to the court for an Order to take such other action as it considers necessary to protect the interests of —
 - (i) the investors in the investment fund; or
 - (ii) an investment fund administered by an investment fund administrator;
 - (iii) the creditors of an investment fund; or
 - (iv) an investment fund administrator;
 - (b) take any other action provided for in subsection (1) or subsection (2).

Disciplinary proceedings.
Ch. 363.

56. Sections 34 to 42 of the Securities Industry Act, shall *mutatis mutandis* apply to any investigations, sanctions, decisions or appeals in relation to any disciplinary proceedings carried on by the Commission under this Act.

PART IX

ENFORCEMENT AUTHORITY OF THE COMMISSION OVER UNREGULATED INVESTMENT FUNDS AND UNLICENSED INVESTMENT FUND ADMINISTRATORS

Instruction to investment fund to provide information or explanation.

57. (1) Where the Commission has reasonable grounds for believing a person is carrying on or attempting to carry on business as an investment fund or investment fund administrator in contravention of this Act, the Commission may instruct that person to give it such information or explanation as it may reasonably require to enable it to carry out its duties under this Act.

(2) A person shall comply with an instruction given to him in accordance with subsection (1).

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

58. (1) Where it appears to the Commission that an investment fund or investment fund administrator is carrying on or attempting to carry on business as an investment fund or an investment fund administrator as the case may be in breach of this Act, the Commission shall have authority to —

Disciplinary
authority of
Commission.

- (a) take any action provided in Part VI, VII, VIII and X; and
- (b) impose any one or more of the sanctions or remedies in section 55(1)(b).

(2) Without prejudice to the Commission's authority in subsection (1) the Commission shall also have the authority to apply to the court for such Order —

- (a) requiring the investment fund or investment fund administrator to reorganize its affairs in a manner specified by the Commission; or
- (b) to wind up, dissolve, liquidate or otherwise terminate (as appropriate) the investment fund or investment fund administrator upon such terms and conditions as the court thinks fit; or
- (c) to preserve the assets of the investors in the investment fund or to protect the creditors of the investment fund, as the court thinks fit.

PART X

MISCELLANEOUS PROVISIONS

59. (1) Subject to subsections (2) and (3), licensees, recognized foreign funds or persons exempted from licensing under this Act (in this section collectively referred to as “regulated persons”) or any officer, employee, agent or technical advisor of the Commission or such regulated person who discloses any information relating to —

Confidentiality.

- (a) the affairs of the Commission or a regulated person;
- (b) any application made to the Commission or a licensor; or
- (c) the affairs of a customer or client of a regulated person,

that was acquired in carrying out any duty or exercising any function under this or any other law, is guilty of an offence and is liable on summary conviction to a fine not

exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

- (2) Subsection (1) shall not apply to a disclosure —
- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Commission or a regulated person to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
 - (c) in respect of the affairs of a regulated person or of a customer or client of a regulated person, with the consent of the regulated person, customer or client, as the case may be, which consent has been voluntarily given;
 - (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is of a type or is disclosed in a manner that does not enable the identity of any beneficial owners of a regulated person or of any customer or client of the regulated person to which the information relates to be ascertained;
 - (f) to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, director, officer or a member or employee of the Commission, or regulated person of his duties; or
 - (g) in any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a regulated person; or
 - (ii) the appointment or duties of a receiver of a regulated person.

(3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory

functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Commission may take into account —

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no equivalent provision in The Bahamas or involves the assertion of a jurisdiction not recognized by The Bahamas; and
- (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Commission may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(6) Nothing in subsection (3) authorizes a disclosure by the Commission unless —

- (a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and
- (c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
- (d) the Commission is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a stipendiary and circuit magistrate in obtaining information requested by the overseas regulatory authority, the Commission shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

16 of 2007, s. 2.

(8) The Commission may cooperate with any other regulatory authority in The Bahamas, including, by sharing information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

(9) Where a regulated person receives a request to disclose information to an overseas regulatory authority such request shall be submitted to the Commission and the Commission shall decide whether or not to exercise its powers under this section in relation to such disclosure.

(10) In this section “overseas regulatory authority” means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

Right to appeal to Court.

60. A person aggrieved by any action taken by the Commission under this Act has a right of appeal to the court but the Commission’s decision on any matter of a purely administrative nature shall be final.

Offences.

- 61.** (1) Any person who contravenes —
- (a) sections 3, 6, 12, 17, 19(5), 24, 25, 26 or 32 is guilty of an offence and shall be liable on conviction on information to a fine of \$150,000 or to imprisonment for three years or to both such fine and imprisonment;
 - (b) sections 27, 30, 31, 36, 37, 39, 40, 42 is guilty of an offence and shall be liable on summary conviction to a fine of \$75,000 or to imprisonment for two years or to both such fine and imprisonment;

- (c) section 50, 51 (1) or (2), 52, 59 is guilty of an offence and shall be liable on summary conviction to a fine of \$20,000 plus \$500 in respect of each day during which the person failed to comply with the direction or to imprisonment for twelve months or to both such fine and imprisonment;
 - (d) section 14(3) and 35(3) is guilty of an offence and shall be liable on summary conviction to a fine of \$10,000 plus \$200 in respect of each day after the specified time during which the person failed to comply with the instruction or to imprisonment for six months or to both such fine and imprisonment.
- (2) Any person who —
- (a) refuses to do anything that is properly required to be done by him under this Act;
 - (b) fails to pay any fee that is due and payable under this Act; or
 - (c) without reasonable cause contravenes any section of this Act for which no other penalty is provided,

is guilty of an offence and shall be liable on summary conviction to a fine of \$20,000 or to imprisonment for two years or to both such fine and imprisonment.

- (3) A person who —
- (a) upon an examination, oath or affirmation required under this Act; or
 - (b) otherwise in or about any matter arising under this Act,

is guilty of the offence of perjury is liable on conviction to imprisonment for ten years.

62. (1) The Minister, after consultation with the Commission may make regulations for carrying out the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations relating to —

Minister to make regulations.

- (a) the operation of investment funds;
- (b) investment fund administrators in relation to their investment fund administration;
- (c) the role and obligation of any party related to an investment fund;

- (d) the requirements of non-Bahamas-based investment funds; and
- (e) any other matter or thing which may be or is required to be prescribed under this Act.

Ch. 2.

(2) Regulations made under this section may, notwithstanding the provisions of section 25(e) of the Interpretation and General Clauses Act, prescribe greater penalties than those specified in that section, provided that the maximum penalty that may be imposed by any such regulation shall be a fine of \$75,000 or imprisonment for two years or both such a fine and imprisonment.

Application for exemption from certain provisions of this Act.

63. An investment fund or an investment fund administrator on behalf of an investment fund may apply to the Commission in the prescribed manner accompanied by the prescribed fee, to be exempt from some or all of the regulations made under this Act and the Commission shall have the power to grant such exemption.

Waiver of provisions.

64. (1) The Commission may if satisfied that to do so would not be prejudicial to the public interest, direct that all or any of the provisions of this Act or the regulations shall —

- (a) not apply, or
 - (b) apply subject to such modifications as may be specified to any person or class of persons.
- (2) A direction under this section may be —
- (a) subject to any conditions as the Commission may see fit to specify; and
 - (b) revoked at any time at the discretion of the Commission.

PART XI

TRANSITIONAL PROVISIONS

Licensed and Authorized Mutual Funds under the Mutual Funds Act.

65. (1) A mutual fund in existence immediately before the commencement of this Act carrying on business as a licensed or authorized fund pursuant to section 3(1) or (3) of the Mutual Funds Act¹, is deemed to have complied with the requirements for licensing under this Act.

(2) A mutual fund described in subsection (1) shall submit the details required by the Commission regarding

¹ Mutual Funds Act, formerly Ch. 366, is repealed.

its classification and structure within nine months of the commencement of this Act.

66. (1) A mutual fund in existence immediately before the commencement of this Act carrying on business as an exempt mutual fund pursuant to section 3(4) of the Mutual Funds Act, may continue to carry on business for nine months after the promulgation of regulations made hereunder, if the mutual fund applies to a licensor in the prescribed manner within ninety days after the promulgation of regulations to be licensed as an investment fund and the application is not refused within the nine month period.

Funds exempt pursuant to section 3(4) of Mutual Funds Act.

(2) An unrestricted mutual fund administrator licensed under the Mutual Funds Act, shall provide the details required by the Commission of all applications for licensing submitted by investment funds exempt pursuant to section 3(4) of the Mutual Funds Act, within one hundred and twenty days of the promulgation of the prescribed regulations.

(3) An unrestricted investment fund administrator shall —

- (a) advise the Commission in writing of its refusal to license a mutual fund pursuant to subsection (1) within 7 days of such refusal; and
- (b) file with the Commission in accordance with section 13 of this Act any investment fund licensed by the investment fund administrator pursuant to subsection (1) within nine months of the promulgation of the prescribed regulations.

(4) Where an investment fund administrator fails to comply with subsections (2) or (3) the investment fund administrator shall pay a penalty of \$1,000 for each month or part of a month during which the investment fund fails to comply with subsections (2) or (3).

67. (1) A mutual fund in existence immediately before the commencement of this Act carrying on business as an exempt fund pursuant to section 3(6) of the Mutual Funds Act, may continue to carry on business for nine months after the promulgation of regulations provided that the investment fund applies to the Commission in the prescribed manner within ninety days after the promulgation of the regulations to be filed as a recognized foreign fund and the application is not refused within the nine month period.

Funds exempt pursuant to section 3(6) of the Mutual Funds Act.

(2) A mutual fund described in subsection (1) which had submitted its documents to the Commission for filing prior to the commencement of this Act, shall submit any further details required by the Commission along with the prescribed filing fee within three months of the promulgation of regulations.

Mutual Fund
Administrators.

68. A person who immediately before the commencement of this Act was carrying on business as a licensed mutual fund administrator pursuant to section 9 of the Mutual Funds Act, is deemed to have complied with the requirements for licensing under this Act, save that such mutual fund administrator shall be referred to as an investment fund administrator and shall be required to comply with the paid-up capital requirements established in regulations made hereunder and must provide the Commission with evidence of such compliance within nine months of the date of the promulgation of such regulations.

Extensions.

69. The Commission may upon written application grant an extension of the periods specified in sections 65 to 67, as it sees fit.

Application of
Fees.

70. A mutual fund or a mutual fund administrator in existence immediately before the commencement of this Act shall be subject to such fees prescribed in the regulations made hereunder.

Penalty –
Investment
Funds.

71. (1) Where an investment fund has failed to comply with sections 65 to 67 within the specified period or such extended period granted by the Commission, the investment fund shall be required to pay a penalty of \$3,000 per month for each month or part of a month during which the investment fund fails to comply with the relevant provisions.

(2) Where an investment fund has continued to fail to comply with sections 65 to 67 for a period of three months after the penalty in subsection (1) has been imposed the investment fund shall cease its operation and the Commission may revoke any licence or registration held by such investment fund.

(3) The Commission may waive for good cause any penalty imposed pursuant to subsection (1)

Penalty –
Investment Fund
Administrators.

72. (1) Where an investment fund administrator fails to comply with section 68 within the specified period or such extended period granted by the Commission, the investment fund administrator shall be required to pay a

penalty of \$20,000 for each month or part of a month during which the investment fund administrator continues to fail to comply with section 68.

(2) Where an investment fund administrator continues to fail to comply with section 68 for a period of three months after the penalty in subsection (1) has been imposed the Commission may revoke the licence of the investment fund administrator.

(3) The Commission may waive for good cause any penalty imposed pursuant to subsection (1).