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### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Code of Conduct Group (Business Taxation)  
Subject: The EU list of non-cooperative jurisdictions for tax purposes  
– Bahamas: final legislation and assessment under criterion 2.2  
= Bahamas: final legislation on collective investment funds and  
assessment under criterion 2.2  
= Investment Funds Act, 2019 (Part 2)

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**“regulated investment fund”** means an investment fund that is licensed under this Act to carry on business in or from the Bahamas;

**“regulated person”** includes a person licenced or registered under this Act;

**“restricted investment fund administrator’s licence”** means an investment fund administrator’s licence issued under section 35.(1)(b);

**“self-administered investment fund”** means an investment fund that has not appointed an external investment fund administrator but is administered by its own operators who are responsible for the functions of the investment fund administrator;

**“share”** means the interest of a member in a company limited by shares and 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 or a SMART fund;

**“suspended investment fund”** means an investment fund to which section 22 of this Act applies;

**“trade”** includes —

- (a) any purchase or sale of an equity interest in an investment fund for valuable consideration; or
- (b) any participation as a regulated person or agent in any transaction involving an equity interest in an investment fund;

**“trust unit”** means a unit of ownership interest 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;

**“unleveraged closed-ended investment fund”** means a closed-ended investment fund that does not use borrowed money to acquire assets;

**“unleveraged investment fund”** means an investment fund that does not use borrowed money to acquire assets;

**“unrestricted investment fund administrator”** means an investment fund administrator licensed under section 35.(1)(a);

“**valuer**” means an AIFM who performs a valuation of the assets of an EU AIF or an investment fund that is marketed in the EU or a person appointed by an AIFM to perform an independent valuation of the assets of an EU AIF or an investment fund that is marketed in the EU.

**4. Application.**

This Act applies to all persons who carry on or intend to carry on investment fund business in or from The Bahamas.

## **PART II - LICENCING AND REGISTRATION**

### **INVESTMENT FUND**

**5. Licensing requirement for an investment fund.**

- (1) An investment fund shall not carry on or attempt to carry on business in or from The Bahamas unless it is licensed as —
- (a) a professional fund;
  - (b) a standard fund;
  - (c) a SMART fund; or
  - (d) a master fund.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine of up to five hundred thousand dollars or imprisonment of two years or both.

**6. Professional and standard fund.**

Notwithstanding section 5, a professional fund or standard fund shall not carry on or attempt to carry on business in or from The Bahamas unless —

- (a) it has appointed an investment fund administrator and an investment fund manager or AIFM;
- (b) if it is a unit trust, it has as its trustee —
  - (i) a trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) with an unrestricted licence;
  - (ii) a bank licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) 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 that complies with section 10; and
- (d) the prescribed fees have been paid in respect of the investment fund.

**7. SMART fund.**

- (1) Notwithstanding section 5, a SMART fund shall not carry on or attempt to carry on business in or from The Bahamas 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 of each category, class or type of investment fund that it approves as a SMART Fund.

**8. Self-Administered fund.**

- (1) Notwithstanding section 6(a), an investment fund may operate and conduct business as a self-administered investment fund.
- (2) A reference to an investment fund administrator of a self-administered investment fund shall be deemed to be a reference to the operator of the self-administered investment fund who is performing the function of an investment fund administrator.
- (3) An operator of a self-administered fund shall not deal with the fund as principal.
- (4) A self-administered fund shall be licensed by the Commission only.

**9. Non-Bahamas based fund.**

Where a Non-Bahamas based investment fund —

- (a) is being administered in or from The Bahamas, the investment fund administrator;
- (b) is being managed in or from The Bahamas, the investment fund manager,



shall notify the Commission in writing of the nature of the fund's 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.

**10. Offering document.**

- (1) An offering document of an investment fund shall —
  - (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 with respect to subscribing for or purchasing such equity interests.
- (2) Subsection (1) shall be without prejudice to any duty of disclosure under the common law or any other law.
- (3) Every investment fund, including a Non-Bahamas based investment fund, where the equity interests are being sold in The Bahamas, shall be required to have filed with the Commission a current offering document of the investment fund.
- (4) An investment fund shall not have satisfied the requirement under subsection (3), where there is a continuing offering of equity interests and any promoter, operator or the investment fund 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.
- (5) An investment fund is not in compliance with subsections (3) and (4) if it has —
  - (a) changed its principal office;
  - (b) changed its operators; or
  - (c) amended documents or offering documents, and it has failed to inform the Commission.

**11. Application for licensing.**

- (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 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, all documents 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 under sections 6 or 7;
  - (e) the prescribed fee; and
  - (f) such other information and documentation as the licensor may reasonably require for the purpose of determining the application.
- (2) An application for licensing as a master fund shall be in the prescribed form and shall be accompanied by —
- (a) such 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 master fund; and
  - (b) the prescribed application fee.

**12. Licensing of investment fund by unrestricted investment fund administrator.**

- (1) Subject to subsection (4), an unrestricted investment fund administrator may licence an investment fund that it administers subject to all rules or regulations as may be prescribed by the Commission.
- (2) An unrestricted investment fund administrator shall, in respect of any investment fund that it licenses, within thirty days of such licensing, file with the Commission —
- (a) the offering document of the investment fund as applicable accompanied by written certification from the investment fund administrator of the investment fund or from 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 investment fund administrator of the investment fund or from a counsel and attorney that the constitutive documents are in compliance with this Act;
  - (c) documentation establishing the identity and fitness and propriety of the promoter, operator, investment fund advisor or investment fund manager or both, the EU AIFM, the AIFM and the AIFMD custodian if applicable, the custodian and auditor of the investment fund;
  - (d) a copy of the licence issued by the licensor; and

- (e) the prescribed fee.
- (3) Subject to subsection (4) an unrestricted investment fund administrator may licence professional and SMART and master funds only.
- (4) An unrestricted investment fund administrator may licence a master fund where —
  - (a) the master fund and feeder fund are part of the same master fund and feeder fund structure, that it administers; or
  - (b) the master fund is a Bahamas based fund that it administers and the feeder funds are Non-Bahamas based funds.
- (5) An unrestricted investment fund administrator may only licence investment funds for which it is the investment fund administrator and for which it provides the principal office.
- (6) An unrestricted investment fund administrator may not licence an investment fund until it has been satisfied that —
  - (a) each promoter, operator, investment fund advisor, investment fund manager, auditor, custodian, EU AIFM, AIFM and AIFMD custodian if applicable, is fit and proper as prescribed by the Commission; and
  - (b) the business of the investment fund and any offer of equity interests in it will be carried out in a proper manner.
- (7) 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 twice the amount of the annual registration fee payable by the fund.
- (8) The Commission may, for good cause, waive the fine imposed under subsection (7).

**13. Conditions on licensing.**

- (1) The Commission may license an investment fund subject to such conditions as it considers appropriate.
- (2) The operator of an investment fund shall use all 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.
- (3) The Commission may at any time, by notice in writing, waive, vary or revoke any condition attached to an investment fund licence granted under section 5.



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

**14. Grant or refusal of licence.**

On application for an investment fund licence made under this Act, the Commission, may —

- (a) grant the application and issue the relevant licence;
- (b) refuse to grant the application and serve a notice in writing of its decision on the applicant.

**15. Refusal to license an investment fund.**

- (1) The Commission may refuse to license an investment fund where —
  - (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
  - (c) the name of the investment fund is —
    - (i) identical to that of any other investment fund that is licensed under this Act or which so nearly resembles the name of an investment fund licensed under this Act so as to be likely to deceive or cause confusion in the investment funds 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 of The Bahamas.
- (2) No person other than a regulated investment fund shall carry on or attempt to carry on business 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.

**16. Duty to provide reasons.**

The Commission shall provide reasons for decisions made in respect of an application for licensing of its refusal to license an investment fund.

**17. Restriction on licensing.**

The Commission or an unrestricted investment fund administrator shall not license an investment fund until it is satisfied by the applicant that —



- (a) each promoter, operator, investment fund advisor, investment fund manager, investment fund administrator, auditor, custodian, EU AIFM or AIFM and AIFMD custodian if applicable, 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;
- (c) the investment management of the investment fund will be undertaken by persons who have sufficient expertise to manage the investment fund;
- (d) the business of the investment fund and any offering of equity interests in it will be carried out in a proper manner.

**18. Representation as investment fund.**

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

**19. Transfer from The Bahamas.**

- (1) A regulated investment fund may transfer from The Bahamas to a foreign jurisdiction and shall notify the Commission in the prescribed form of such transfer within fourteen days of the issue of the licence from the foreign jurisdiction.
- (2) Where notification is given under subsection (1), the investment fund shall at the same time —
  - (a) surrender to the Commission the original certificate issued as evidence of its being licensed in The Bahamas; or
  - (b) in the event the original certificate is lost, submit to the Commission an affidavit attesting to the fact of such loss.
- (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 licensed in The Bahamas.

**20. Transfer to The Bahamas.**

- (1) An investment fund that intends to transfer to The Bahamas from another jurisdiction shall notify the Commission in the prescribed form of such transfer and shall apply to the Commission to be licenced not later than twenty-one days prior to transferring to The Bahamas.
- (2) An investment fund under subsection (1) shall submit to the Commission, the information prescribed by the Commission in support of its application for licensing.

- (3) The Commission may upon the written application of the investment fund transferring to The Bahamas, extend the period within which the fund must obtain an investment fund licence.

**21. Voluntary surrender of licence by investment fund.**

- (1) An investment fund shall not voluntarily surrender its licence without the prior approval of the Commission.
- (2) An investment fund shall notify the Commission in writing of its intention to surrender its licence, at least twenty one days prior to the intended date of the surrender.
- (3) The Commission may, on receiving notification by an investment fund under subsection (2) —
- (a) approve the voluntary surrender of the licence of the investment fund if the Commission is satisfied that the surrender of the licence would not be prejudicial to the public interest and the surrender shall not take effect until twenty one days after the notice has been received by the Commission;
  - (b) approve, subject to such terms and conditions as it may impose, the voluntary surrender of the licence of the investment fund if the Commission is satisfied that the surrender of the licence would not be prejudicial to the public interest and the surrender of the licence shall not take effect until all conditions imposed by the Commission have been complied with; or
  - (c) without providing an opportunity to be heard, suspend the licence or impose any condition or restriction on the licence that the Commission deems appropriate.
- (4) On the effective date of the surrender, where the Commission has approved the voluntary surrender of a licence, the investment fund shall —
- (a) surrender to the Commission the original certificate issued as evidence of its being licensed in The Bahamas; or
  - (b) in the event the original certificate is lost, submit to the Commission an affidavit attesting to the fact of such loss.
- (5) The Commission shall within fourteen days of approval of the investment fund's voluntary surrender of its licence under subsection (3)(a) and (b), cause to be published in the Gazette a notice that the investment fund is no longer licensed in The Bahamas.

**22. Voluntary suspension of investment fund activity.**

- (1) An investment fund that has not commenced its operation, or that ceases trading and liquidates and distributes its assets without formally

liquidating its structure, within one year of licensing, shall inform the Commission of the voluntary suspension of its activity.

- (2) An investment fund shall inform the Commission in writing within fourteen days of suspending its activity.
- (3) Upon being notified that an investment fund has suspended its activity under subsection (1), the Commission shall suspend the licence of the investment fund and cause to be published in the Gazette a notice that the licence of the fund has been suspended.
- (4) An investment fund whose licence has been suspended under subsection (3) may resume its operation within one year from the date of suspension failing which the Commission may revoke the licence of such suspended investment fund.
- (5) An investment fund whose licence has been suspended under subsection (3) that intends to resume its operation shall apply to the Commission to have the suspension of its licence 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 suspension of a licence to a period not exceeding eighteen months.
- (7) 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 of the investment fund imposed under subsection (3) and cause to be published in the Gazette a notice that the investment fund has been re-launched.

### **23. Misrepresentation.**

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



## INVESTMENT FUND MANAGER

### 24. Appointment of investment fund manager.

- (1) Subject to subsection (3) and section 26(1), an investment fund shall appoint an investment fund manager upon commencement of operations as a regulated investment fund.
- (2) An investment fund manager appointed under subsection (1) shall provide or is entitled to provide an investment fund with investment management services and may provide investment advice for valuable consideration.
- (3) Where an investment fund appoints an investment fund manager, the investment fund shall be required to be licensed or registered as an investment fund manager.

### 25. Conditions for licensing or registration of an investment fund manager.

An investment fund manager shall satisfy the Commission that the investment fund manager —

- (a) is capable of complying with the capital, assets and organizational requirements;
- (b) has sufficient experience;
- (c) is suitably qualified for the performance of its functions; and
- (d) is of good repute,

to the standard prescribed by the Commission.

### 26. Licensing or registration requirement for an investment fund manager.

- (1) A person shall not act as the investment fund manager of an investment fund unless it is licensed or registered as such by the Commission.
- (2) The Commission may licence a person as an investment fund manager where that investment fund manager intends to manage —
  - (a) a standard fund; or
  - (b) any other investment fund in any jurisdiction, other than the EU, whose equity interests are not limited to being offered to accredited investors.
- (3) Subject to subsection (4), a person shall apply to the Commission for a licence to operate as an investment fund manager.
- (4) The Commission may register a person as an investment fund manager where that investment fund manager —
  - (a) intends to manage professional funds or SMART funds;



- (b) intends to manage any investment fund in a jurisdiction, other than the EU, whose equity interests are offered to accredited investors only; or
- (c) is licensed or registered in a prescribed jurisdiction.

#### AIFM

#### 27. Licensing requirement of AIFM.

- (1) Subject to subsection (3), an investment fund that intends to offer its equity interests for sale in the EU shall appoint no more than one AIFM.
- (2) A person that intends to —
  - (a) market an investment fund or an EU AIF in the EU with an EU passport; or
  - (b) manage an EU AIF with an EU passport irrespective of where the EU AIF is marketed,shall apply for a licence as an AIFM in the manner prescribed by the Commission.

#### 28. Power to grant AIFM licence.

Where an application is made under subsection 27(2), the Commission may grant an AIFM licence where the applicant has satisfied all requirements as prescribed by the Commission.

#### 29. Restriction on licensing.

- (1) The Commission shall not grant a licence under this Part unless —
  - (a) it is satisfied that the applicant will be able to meet the conditions of this Sub Part;
  - (b) the applicant has sufficient capital, own funds and professional indemnity insurance in accordance with section 74;
  - (c) the persons who effectively conduct the business of the applicant are of good repute and are experienced in relation to the investment strategies pursued by the investment funds to be managed by the applicant, and the conduct of the business of the applicant is decided by at least two persons meeting such conditions;
  - (d) the shareholders or members of the applicant that have qualifying holdings are suitable, taking into account the need to ensure the sound and prudent management of the applicant; and
  - (e) the principal office and the registered office of the applicant are located in The Bahamas.

- (2) The names of the persons referred to in subsection (1)(c) shall be communicated to the Commission prior to the grant of a licence and the names of every person succeeding them in office shall be communicated to the Commission.
- (3) The Commission in granting a licence under this Part may restrict the scope of the licence, with respect to the investment strategies of investment funds and EU AIFs the AIFM is allowed to manage or market.

**30. Notification of changes in information provided.**

- (1) An AIFM shall notify the Commission of any changes that are material to the conditions for the initial granting of a licence prior to implementing any changes.
- (2) The Commission shall, within thirty days of receipt of the notification referred to in subsection (1), inform the AIFM of—
  - (a) any restrictions imposed by the Commission; or
  - (b) any proposed changes rejected by the Commission.
- (3) The proposed changes under subsection (1) shall be implemented where the Commission does not oppose the changes within the period referred to in subsection (2).

**31. Revocation of AIFM licence.**

The Commission may revoke a licence issued to an AIFM under this Sub Part where that AIFM —

- (a) does not commence its operation within one year of the grant of its licence;
- (b) expressly requests that the licence be revoked;
- (c) has ceased the activity for which the licence was obtained for the preceding six months;
- (d) obtained the licence by making false statements or by any other unlawful conduct;
- (e) no longer meets the conditions under which the licence was granted; or
- (f) has failed to comply with the provisions of this Act.

**32. Commission to inform ESMA.**

The Commission shall, on a quarterly basis, inform ESMA of the licences granted or revoked in accordance with this Sub Part.

**33. Compliance with this Act.**

An AIFM that is licensed under section 29. shall comply with the applicable provisions of this Act.

**INVESTMENT FUND ADMINISTRATOR**

**34. Appointment of investment fund administrator.**

Subject to section 8, an investment fund shall appoint an investment fund administrator prior to the commencement of operations as a regulated investment fund.

**35. Licensing requirement of investment fund administrator.**

- (1) The Commission may, subject to such conditions as it deems fit, grant —
  - (a) an unrestricted investment fund administrator's licence that authorizes the holder to licence an unlimited number of investment funds that it administers;
  - (b) a restricted investment fund administrator's licence that authorizes the holder to administer only the investment funds specified by the Commission from time to time.
- (2) An investment fund administrator shall not act on behalf of an investment fund unless it is —
  - (a) the holder of an unrestricted investment fund administrator's licence under this Act;
  - (b) the holder of a restricted investment fund administrator's licence under this Act;
  - (c) established and operating in accordance with the laws of a prescribed jurisdiction.
- (3) An investment fund administrator who contravenes subsection (2) commits an offence and is liable on conviction to a fine of up to two hundred thousand dollars.

**36. Conditions for licensing of an investment fund administrator.**

- (1) 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 (*Ch. 308*) or incorporated under the International Business Companies Act (*Ch. 309*);
  - (b) has sufficient expertise to administer investment funds;

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- (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 as prescribed by the Commission;
  - (f) has a principal office in The Bahamas;
  - (g) has a minimum of two senior officers residing in The Bahamas who shall include —
    - (i) the Chief Executive Officer;
    - (ii) the Compliance Officer; and
  - (h) complies with prescribed financial requirements.
- (2) An investment fund administrator shall notify the Commission within fourteen days of any change of its principal office, registered office or any individuals acting as its agents.

**37. Refusal to grant licence.**

- (1) The Commission may refuse to grant an investment fund administrator's licence where the applicant's name is —
  - (a) identical to that of any investment fund administrator or which so nearly resembles the name of an investment fund administrator as to be likely to deceive or cause confusion in the investment funds industry;
  - (b) likely to suggest falsely, 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 investment fund administrator is carrying on business as an investment fund administrator in or from The Bahamas in a name that, in the opinion of the Commission, it would have refused by virtue of subsection (1), the Commission may direct the 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).

**38. Chief Executive Officer of an investment fund administrator.**

- (1) Subject to subsection (3), an investment fund administrator shall appoint an individual as a Chief Executive Officer.
- (2) An investment fund administrator shall not appoint an individual as a Chief Executive Officer under subsection (1) unless it is satisfied that the



individual is fit and proper and has satisfied the requirements established by the Commission.

- (3) A person shall not act as the Chief Executive Officer unless approved by the Commission.
- (4) The Commission may, by notice in writing to the Chief Executive Officer, attach conditions to the approval under subsection (3) that appear to the Commission to be necessary.

**39. Appointment and responsibilities of Compliance Officer of investment fund administrator.**

- (1) Subject to subsection (4), an investment fund administrator shall appoint a person as a Compliance Officer, subject to such conditions as prescribed by the Commission.
- (2) A Compliance Officer is responsible for ensuring that an investment fund administrator complies with all applicable laws.
- (3) An investment fund administrator shall not appoint a person as Compliance Officer under subsection (1) unless it is satisfied that the person is fit and proper and has satisfied the requirements established by the Commission.
- (4) A person shall not act as a Compliance Officer unless approved by the Commission.
- (5) The Commission may, by notice in writing to the Compliance Officer, attach conditions to the approval under subsection (4) that appear to the Commission to be necessary.

**GENERAL REGULATORY MATTERS**

**40. Application for licensing, registration or approval.**

An application for a licence, registration or approval by the Commission shall be made by the applicant to the Commission in the prescribed form and shall be accompanied by —

- (a) such information as the Commission requires to determine the application;
- (b) the relevant prescribed form; and
- (c) the relevant prescribed fee.

**41. Requirement for licence, registration or approval.**

A licence, registration or approval is effective unless —

- (a) it is revoked;

- (b) it expires;
- (c) the conditions for continuing the licence, registration or approval have not been satisfied; or
- (d) the Commission accepts a surrender of the regulated person's licence under the provisions of this Act.

**42. Imposition, variation or revocation of terms and conditions of licence, registration or approval.**

- (1) The Commission may, if it thinks fit, by notice in writing served on the regulated person or party related to an investment fund, impose, vary or revoke a condition of a licence, registration or approval for a specified period, until the occurrence of a specified event or until specified conditions are complied with, where the regulated person or party related to an investment fund —
  - (a) has furnished misleading or inaccurate information to the Commission under or for the purposes of any provision of this Act;
  - (b) is in breach of the prescribed minimum regulatory capital requirement;
  - (c) has failed to maintain the prescribed own funds or professional indemnity insurance requirement;
  - (d) has become insolvent or goes into liquidation or is wound up or otherwise dissolved; or
  - (e) has been convicted of a criminal offence, except where the offence is a minor traffic offence or has been spent under the Rehabilitation of Offenders Act (*Ch. 100*);
- (2) Whenever the Commission is of the opinion that any action under subsection (1) should be taken, it may attach conditions to the licence, registration or approval of such person but before taking such action the Commission shall give that person notice in writing of its intention so to do setting out in the notice the ground on which it proposes to act and shall afford such person, within such time as may be specified, being not less than seven days, an opportunity to respond in writing to such action, and thereafter the Commission shall advise the person of its decision.
- (3) Where the Commission attaches a condition to a licence, registration or approval under subsection (2) it shall immediately cause notice of the condition to be published on the Commission's website.
- (4) Where the regulated person or party related to an investment fund is of the opinion that the publication required under subsection (3) would be unduly detrimental to its interests or that the publication should be withheld in the public interest, it must within the time provided under

subsection (2) advise the Commission in writing of the reasons why it is of the opinion that publication should be withheld.

- (5) The Commission shall consider the reasons given for withholding the publication of a condition under subsection (4) and shall advise the regulated person or party related to an investment fund of its decision.
- (6) Any conditions attached to a licence, registration or approval under subsection (2) shall remain until the Commission takes action under subsection (2) or until the Commission notifies the regulated person or party related to an investment fund that the conditions have been removed, whichever period is shorter.
- (7) Where the Commission deems it necessary it may apply to the court for an order that the investment fund, investment fund manager, AIFM or investment fund administrator, as the case may be, shall be wound up, dissolved, liquidated or otherwise terminated, as appropriate.
- (8) The Commission may, in the case of a person that is or has been licensed, registered or approved 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, investment fund manager, AIFM or investment fund administrator and the court shall make such order as it deems fit.

#### **43. Renewal of licence or registration.**

- (1) A regulated person shall renew its licence or registration, as applicable, on an annual basis by submitting to the Commission on or before the 31<sup>st</sup> day of January of each year —
  - (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 31<sup>st</sup> day of January, the regulated person 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 1<sup>st</sup> day of April of the relevant year.
- (3) Where the regulated person has failed to pay the required fee and any additional fee imposed under subsection (2) on or before the 1<sup>st</sup> day of April, of the relevant year, the Commission may revoke the licence or registration of the regulated person.