



**BERMUDA**

**INVESTMENT FUNDS AMENDMENT ACT 2023**

**2023 : 25**

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### SCHEDULE

Amendments to Fourth Schedule to the Bermuda Monetary Authority Act 1969

WHEREAS it is expedient to amend the Investment Funds Act 2006 to clarify the obligations of operators of investment funds; to enable operators of investment funds to seek extensions to the timeframe for meeting statutory requirements that are time bound; to introduce a late fee payment for non-compliance with time bound requirements by operators of investment funds and a new offence to apply in the case where approved auditors fail to make requisite reports to the Authority; and for other connected matters;

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

### Citation

- 1 This Act, which amends the Investment Funds Act 2006 (the “principal Act”), may be cited as the Investment Funds Amendment Act 2023.

### Amends section 2

- 2 Section 2(1) of the principal Act is amended by—

- (a) deleting the definitions of “fund prospectus rules” and “participant”;
- (b) inserting in the appropriate alphabetical order the following definition—

“late fee” means the fee payable for non-compliance with requirements as provided under section 17A;”.

### Amends section 2B

- 3 Section 2B(1) of the principal Act is amended—

- (a) in paragraph (a), by inserting after “authorisation” the words “or registration”;
- (b) by repealing paragraph (c)(i);
- (c) in paragraph (c)(v), by inserting after “authorised” the words “or registered”.

### Amends section 5

- 4 Section 5(2) of the principal Act is amended by repealing paragraphs (a) and (b) and substituting the following—

“(a) the fund has been authorised under section 13; or

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- (b) the fund is registered under section 6, 6B, 8A or 8C; or”.

### **Amends section 5B**

5 The principal Act is amended in section 5B—

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

“(1) The operator of an Overseas Fund shall, after it has been designated by the Authority under section 5A(7), certify to the Authority—

- (a) annually within six months of its financial year end (or such longer period not exceeding nine months as the Authority may determine on application by the operator), that it continues to satisfy the requirements of section 5A(2); and

- (b) in accordance with the provisions of subsection (2).”.

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

“(4A) Where an operator of a designated overseas fund fails to comply with a duty imposed on it under section 5B(1), it shall be liable to pay a late fee.”.

### **Amends section 5E**

6 The principal Act is amended in the heading of section 5E by deleting “registration” and substituting the word “designation”.

### **Amends section 6**

7 The principal Act is amended in section 6—

- (a) in subsection (3D), by inserting after the words “financial year end” the words “(or such longer period not exceeding nine months as the Authority may determine on application by the operator)”;

- (b) by repealing subsection (3E)(c) and substituting the following—

“(c) a copy of the offering document consisting of all material changes that took place during the course of the year (reporting or accounting period).”;

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

“(4A) Where an operator of a private fund fails to comply with a duty imposed on it under subsections (3D) or (3E), it shall be liable to pay a late fee.”.

### **Amends section 6A**

8 The principal Act is amended in section 6A by deleting the section heading and substituting “Professional Class A Fund: qualification”.

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### **Amends section 6B**

9 The principal Act is amended in section 6B—

- (a) in subsection (2), by inserting after “financial year end” the words “(or such longer period not exceeding nine months as the Authority may determine on application by the operator)”;
- (b) in subsection (3)(a), by deleting “fund’s prospectus” and substituting the words “offering document”;
- (c) by repealing subsection (3)(b)(ii) and substituting the following—

“(ii) a copy of the offering document consisting of all material changes that took place during the course of the year (reporting or accounting period).”;

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

“(9) Where an operator of a Professional Class A fund fails to comply with a duty imposed on it under subsection (2) or (3)(b), it shall be liable to pay a late fee.”.

### **Amends section 8**

10 The principal Act is amended in section 8(2) by deleting “fund’s prospectus” and substituting the words “offering document”.

### **Amends section 8A**

11 The principal Act is amended in section 8A—

- (a) by repealing subsection (4);
- (b) in subsection (6) by inserting after “financial year end” the words “(or such longer period not exceeding nine months as the Authority may determine on application by the operator)”;
- (c) in subsection (7)—
  - (i) in paragraph (a), by deleting “fund’s prospectus” and substituting the words “offering document”;
  - (ii) by repealing paragraph (c) and substituting the following—

“(c) a copy of the offering document consisting of all material changes that took place during the course of the year (reporting or accounting period).”;

- (d) by inserting after subsection (7) the following new subsection—

“(7A) Where an operator of a Professional Class B fund fails to comply with a duty imposed on it under subsections (6) or (7), it shall be liable to pay a late fee.”.

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### **Amends section 8C**

12 The principal Act is amended in section 8C—

- (a) in subsection (2), by inserting after “financial year end” the words “(or such longer period not exceeding nine months as the Authority may determine on application by the operator)”;
- (b) in subsection (3)(b), by inserting after subparagraph (iii) the following new subparagraph—
  - “(iv) a copy of the fund offering document consisting of all material changes that took place during the course of the year (reporting or accounting period).”;
- (c) by inserting the following new subsection after subsection (3)—

“(3A) Where an operator of a Professional Closed Fund fails to comply with a duty imposed on it under subsection (2) and (3)(b), it shall be liable to pay a late fee.”.

### **Amends section 9A**

13 The principal Act is amended in section 9A(1) by deleting “section 6A(2) or 7(2)” and substituting “section 6, 6A(2), 7(2) or 8B(2)”.

### **Amends section 10**

14 The principal Act is amended in section 10(1) by deleting “8” and substituting “8A”.

### **Amends section 17**

15 The principal Act is amended in section 17—

- (a) in subsection (1)—
  - (i) in paragraph (aa), by deleting “section 25(2)” and substituting the words “section 8A(8) or 25(2)”;
  - (ii) by inserting after paragraph (bd) the following new paragraph—
    - “(be) on the making of an application or complying with the requirements under sections 5B(1), 6(3D), 6B(2), 8A(6), 8C(2) and 26(1)(b);”;
- (b) by repealing subsection (8).

### **Inserts section 17A**

16 The principal Act is amended by inserting after section 17 the following new section—

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### **“Late fee payable for non-compliance**

17A (1) This section applies to an operator of a fund who fails to comply with any requirement imposed on it under section 5B(1), 6(3D), 6(3E), 6B(2), 6B(3)(b), 8A(6), 8A(7), 8C(2), 8C(3)(b), 25(1) or 26(1)(b), as the case may be.

(2) An operator of a fund to which this section applies shall, on failing to comply as provided in subsection (1), be liable to pay a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

(3) A late fee levied pursuant to this Act and the rules made under sections 37 and 38 may be recovered by the Authority as a civil debt.”.

### **Amends section 19**

17 The principal Act is amended in section 19(5)(a) by inserting after “authorised” the words “or registered”.

### **Amends section 25**

18 The principal Act is amended in section 25 by inserting after the repealed subsection (6) the following new subsections—

“(7) Subject to subsection (2), the reference to “forthwith” in subsection (1) means within 30 days of such material change taking effect.

(8) Where the operator fails to comply within the days stipulated in subsection (6A), it shall be liable to pay a late fee.”.

### **Amends section 26**

19 The principal Act is amended in section 26—

(a) in subsection (1)—

(i) in the chapeau of paragraph (b), by inserting after “financial year end” the words “(or such longer period not exceeding nine months as the Authority may determine on application by the operator)”;

(ii) in paragraph (b)(i), by deleting “prospectus” and substituting the words “offering document”;

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

“(1A) Where an operator of an authorised fund fails to comply with a duty imposed on it under subsection (1)(b), it shall be liable to pay a late fee.”;

(c) in subsection (3)(a), by deleting “prospectus” and substituting the words “offering document”;

(d) by—

(i) renumbering subsections (3), (3) and (4) as subsections (3), (4), and (5), respectively; and

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- (ii) deleting the repealed subsection (5).

### **Amends section 30**

20 The principal Act is amended in section 30—

- (a) by repealing subsections (1) and (2) and substituting the following—

“(1) The Authority may give an investment fund directions under this section at any time if it appears to the Authority that an investment fund is in breach of any provision of this Act or rules applicable to it.

(2) The Authority may also give an investment fund that is not in breach of any provision of this Act or rules applicable to it, directions where the Authority deems such to be desirable for safeguarding the interests of the investment fund’s participants or potential participants.”;

- (b) in the chapeau of subsection (3), by inserting after “relating to” the words “one or more of the following”;

- (c) in subsection (3)—

- (i) in paragraph (c) by deleting “or” after the word “fund”;

- (ii) in paragraph (d), by deleting “or” after the word “constitution”.

### **Amends section 37**

21 The principal Act is amended in section 37 by inserting after subsection (2) the following new subsection—

“(2A) Where the operator of a fund fails to comply with requirements imposed on it pursuant to fund rules made under subsection (2), it shall be liable to pay a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.”.

### **Amends section 38**

22 The principal Act is amended in section 38 by inserting after subsection (8) the following new subsection—

“(9) Every operator of an authorised or registered fund that fails to publish updated offering documents or make copies available to participants or potential participants pursuant to requirements under the fund offering document rules made under this section is liable to pay a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.”.

### **Inserts section 63A**

23 The principal Act is amended by inserting after section 63 the following new section—

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### **“Auditor to communicate certain matters to the Authority**

63A (1) An approved auditor of an investment fund shall forthwith give written notice to the Authority if—

- (a) the investment fund is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations as they fall due;
- (b) there is evidence to suggest fraud, theft or misappropriation of assets;
- (c) there are significant weaknesses in the governance framework that render the investment fund vulnerable to significant risks or exposures that have the potential to jeopardise the interests of the participants in the investment fund; or
- (d) the auditor has made the decision to include a modification of his report on the fund’s financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(2) Where a notice has been given pursuant to subsection (1) the auditor shall as soon as practicable thereafter furnish the Authority with a copy of his report.

(3) An auditor who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.”.

### **Amends section 64A**

24 The principal Act is amended in section 64A—

- (a) in subsection (1)—
  - (i) in paragraph (a), by deleting the words “or section 41”;
  - (ii) by repealing paragraphs (b) and (c);
  - (iii) by repealing paragraph (d) and substituting the following—

“(d) the operator of an authorised or registered fund, or service provider appointed to an authorised or registered fund, may have failed to comply with any requirements under this Act or contravened any prohibition imposed by or under this Act or rules made by the Authority under section 37 or 38;”;
- (b) in subsection (2) by deleting the words “or, as the case may be, fund administrator,”;
- (c) in subsection (2)(a) and (b) by—
  - (i) deleting the words “or fund administrator”;
  - (ii) deleting the words “authorised, registered or licensed” and substituting “authorised or registered”.



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### **Amends section 65**

25 The principal Act is amended in section 65(1A) by deleting the words “authorised fund, registered fund or licensed fund administrator” and substituting the words “authorised fund or registered fund”.

### **Amends section 67**

26 The principal Act is amended in section 67(1)(a) by deleting the words “or 41”.

### **Amends section 67A**

27 The principal Act is amended in section 67A(1) by deleting the words “as provided in sections 9A, 17 and 45” and substituting the words “as provided for in section 17A”.

### **Amends section 67C**

28 The principal Act is amended in section 67C—

- (a) in subsection (1), by deleting the words “or a fund administrator”;
- (b) in subsection (2) by deleting the words “or, as the case may be, the fund administrator”.

### **Consequential amendments**

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

### **Commencement**

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

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### SCHEDULE

(section 29)

#### AMENDMENTS TO FOURTH SCHEDULE TO THE BERMUDA MONETARY AUTHORITY ACT 1969

##### **Amends entries under heading “Investment Funds Act 2006”**

1 The provisions of this Schedule amend the Fourth Schedule to the Bermuda Monetary Authority Act 1969 with respect to the entries under the heading “Investment Funds Act 2006” as set out in the following paragraphs.

##### **Inserts paragraph 7D under heading “Investment Funds Act 2006”**

2 The following new paragraph is inserting after paragraph 7C—

“7D	Extension application pursuant to section 17(1)(be)	\$300”.
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##### **Repeal and replaces paragraph 13 under heading “Investment Funds Act 2006”**

3 Paragraph 13 is repealed and substituted by the following—

“13	Late fee pursuant to section 17A of the Act:	
	(i) Overseas Fund: Failure to comply timely with the duty under section 5B(1)	\$1,000
	(ii) Private Fund: Failure to comply timely with the duty under section 6(3D)	\$1,000
	(iii) Private Fund: Failure to comply timely with the duty under section 6(3E)	\$1,000
	(iv) Professional Class A Fund: Failure to comply timely with the duty under section 6B(2)	\$1,000
	(v) Professional Class A Fund: Failure to comply timely with the duty under section 6B(3)(b)	\$1,000
	(vi) Professional Class B Fund: Failure to comply timely with the duty under section 8A(6)	\$1,000
	(vii) Professional Class B Fund: Failure to comply timely with the duty under section 8A(7)	\$1,000
	(viii) Professional Closed Fund: Failure to comply timely with the duty under section 8C(2)	\$1,000
	(ix) Professional Closed Fund: Failure to comply timely with the duty under section 8C(3)(b)	\$1,000
	(x) Authorised Fund: Failure to comply timely with the duty under section 25(1)	\$500
	(xi) Authorised Fund: Failure to comply timely with the duty under section 26(1)(b)	\$1,000”.

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### **Inserts paragraph 14 under heading “Investment Funds Act 2006”**

4 The following new paragraph is inserted after paragraph 13—

“14	Late fee pursuant to section 37(2A) of Act and the Investment Fund Rules 2019	
	(i) Failure to timely file valuations with the Authority in accordance with requirements	\$200
	(ii) Failure of an authorised investment fund to timely prepare financial report in accordance with requirements	\$1,000
	(iii) Failure of a registered investment fund (A, B and Closed) to timely prepare financial report in accordance with requirements	\$1,000
	(iv) Failure of a registered private fund to timely prepare financial report in accordance with requirements	\$1,000.”

### **Inserts paragraph 14 under heading “Investment Funds Act 2006”**

5 The following new paragraph is inserted after the new paragraph 14—

“15	Failure to timely publish updated offering documents and other similar requirements, pursuant to section 38(9) of the Act and the Investment Fund Offering Document Rules 2019	\$200”.
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[Assent Date: 07 August 2023]

[Operative Date: 29 September 2023]