

ANTIGUA AND BARBUDA



INVESTMENT FUNDS BILL, 2020

No. of 2020

ANTIGUA AND BARBUDA
INVESTMENT FUNDS BILL, 2020
ARRANGEMENT OF CLAUSES

CLAUSES

PRELIMINARY

1. Short title and commencement	8
2. Interpretation	8

PART I

INVESTMENT FUNDS

DIVISION I

PROHIBITIONS AND EXEMPTIONS OF FUND

3. Prohibition against unlicensed and unregistered funds	15
4. Prohibition against promotion of investment funds	16
5. General Exemptions to promotion	17
6. Exemption period for registration as a professional fund	17

DIVISION II

PUBLIC FUNDS

7. Licensing of fund as public fund	18
8. Prohibition on invitation to public to subscribe for public fund	19
9. Circumstances in which invitation to subscribe not invitation to the public	19
10. Form and content of prospectus	19

DIVISION III

PRIVATE AND PROFESSIONAL FUNDS

11. Registration of private and professional fund 20
12. Obligation to act in accordance with constitutional documents 21

DIVISION IV

REGISTRATION OF A FOREIGN FUND

13. Registration of a foreign investment fund 22
14. Investment Fund Regulations may provide for registration of foreign investment funds 23

DIVISION V

GENERAL PROVISIONS APPLICABLE TO LICENSED AND REGISTERED FUNDS

15. Restriction on licensing or registration of investment fund 23
16. Grant of licence or approval of registration of an investment fund 23
17. Restricted names 24
18. Transfer to another jurisdiction 24
19. Transfer from another jurisdiction 25
20. Voluntary Surrender of licence by investment fund 25
21. Voluntary suspension of investment fund activity 26
22. Investment fund register 27
23. Mis-representation 27

PART II

LICENSING OF INVESTMENT FUND SERVICE-PROVIDERS

DIVISION I

24. Prohibition by service- provider..... 28

DIVISION II

INVESTMENT FUND MANAGER

25. Appointment of investment fund manager 28
26. Licensing or registration of investment fund manager 28
27. Grant of licence or approval of registration of an investment fund manager 29
28. General duties of an investment fund manager 29
29. Minimum Capital and professional indemnity insurance requirements 30

DIVISION III

INVESTMENT FUND ADMINISTRATOR

30. Appointment of investment fund administrator 31
31. Name of investment fund administrator restricted 31
32. Licensing or registration of an investment fund administrator 31
33. Grant of licence or approval of registration of an investment fund administrator 31
34. Obligations of an investment fund administrator 32
35. Chief Executive Officer of an investment fund administrator 32
36. Requirements for paid up capital and professional indemnity insurance 32
37. Compliance officer of an investment fund administrator 33

DIVISION IV

CUSTODIAN

38. Appointment of custodian 33
39. Licensing or registration of custodian 34
40. Independence of custodian 34
41. Segregation of investment fund assets – custodian appointed 34
42. Segregation of investment fund assets – exempt from appointment of custodian..... 34

PART III

GENERAL REGULATORY MATTERS

43. Application for licensing or registration of licence 35
44. Imposition, variation or revocation of terms and conditions of licence or registration 35
45. Renewal of licence 35
46. Service provider register 36
47. Offence..... 36

PART IV

ADMINISTRATIVE AND FINANCIAL MATTERS

48. Due diligence by licensed service- provider 36
49. Delegation of tasks 37
50. Service- provider to give notice of certain matters 37
51. Auditor to be appointed..... 37
52. Obligations of auditors 38
53. Instructions to audit accounts 38
54. Reporting to the Commission..... 38
55. Compliance with directions..... 39
56. Approval by the Commission..... 39

57. Ongoing statutory reporting obligations 39
58. Commission to administer law 39

PART V

MISCELLANEOUS PROVISIONS

59. General offence 40
60. Regulations 40
61. Rules 40
62. Winding up, dissolution and termination 40
63. Recognised country 40
64. Repeal **Error! Bookmark not defined.**
65. Transitional provisions 41

ANTIGUA AND BARBUDA
INVESTMENT FUNDS BILL, 2020

No. of 2020

AN ACT to provide for the regulation of investment funds and their administrators, managers and custodians, operating in or from within the Eastern Caribbean Currency Union, and for matters incidental and related thereto.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Investment Funds Act 2020.

(2) This Act shall come into operation on a date appointed by the Minister by Notice published in the *Gazette*.

2. Interpretation

(1) In this Act, unless the context otherwise requires -

“accredited investor” has the meaning given in the Securities Act 2020;

“affiliate” has the meaning given in the Securities Act 2020;

“applicant” means a person who makes an application under this Act;

“associate” when used to indicate a relationship with any person, means—

- (a) an entity of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, carrying 10 per cent or more of the voting rights;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate, in which that person has substantial beneficial interest or in respect of which he serves as a trustee, legal representative or in a similar capacity; or

(d) a relative of that person;

“approved auditor” means an auditor approved by the Commission;

“closed-end investment fund” means 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 fund to repurchase his equity interest;

“Commission” means in the Eastern Caribbean Securities Regulatory Commission Act;

“company” includes a body corporate, limited partnership or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory or the laws of a foreign 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, the governing regulations in the case of an investment condominium, the partnership agreement or articles of partnership in the case of a partnership and all other material agreements;

“Currency Union” means the Eastern Caribbean Currency Union and refers collectively to the territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as the official currency;

“custodian” means a person to whom the property of the investment fund is entrusted for safe keeping;

“distribution” has the meaning given in the Securities Act, 2020 and “distribute” shall be construed accordingly;

“document” has the meaning given in the Securities Act, 2020;

“equity interest” means a share, a trust unit, a participation interest or a partnership interest that carries an entitlement to participate in the profits or gains of the issuer thereof and that, except where the issuer is a closed-end fund, is redeemable or repurchasable at the option of the investor;

“feeder fund” means an investment fund that conducts more than fifty-one per cent of its investing in a master fund either directly or through an intermediary entity;

“foreign investment fund” means an investment fund that is incorporated, constituted, formed or organised in a jurisdiction other than in the Currency Union.

“foreign jurisdiction” means a territory outside of the Currency Union;

“foreign regulatory authority” has the meaning given in the Securities Act;

“general partner” means –

(a) in respect of a business registered as a Partnership under the Business Names Act, a named partner of that business;

- (b) in respect of a partnership constituted under the laws of a foreign jurisdiction, a person who would be a general partner of the partnership if the partnership were constituted under the laws of the Currency Union;

“generally accepted accounting principles” has the meaning given in the Securities Act;

“generally accepted auditing standards” has the meaning given in the Securities Act;

“independent” for the purposes of this Act, means a person which is not a subsidiary, affiliate or associate of another person or otherwise meets the conditions as prescribed by the Commission;

“investment fund” or “fund” means

- (a) a company which –

(i) collects and pools investor funds for the purpose of collective investment;

(ii) issues equity interests that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company or other body, partnership or unit trust, as the case may be; and

- (b) a company or other body, partnership or unit trust registered as an investment fund for the purpose of the securities laws, and includes a closed end fund;

but does not include the issue of a type or description that has been prescribed as not being an investment fund;

“investment fund administration” includes –

- (a) the administration of the operations and administrative affairs of an investment fund;

- (b) the provision of administrative services for an investment fund including the accounting, valuation or reporting services; or

- (c) the provision of the services of the principal office of an investment fund; but does not of include –

(i) the provision of a registered office to an investment fund where the usual corporate secretarial and related services are provided;

(ii) in relation to an investment fund, the maintenance of any register of equity interests or the registration and payment of fees;

“investment fund administrator” means the person who, provides investment fund administration;

“investment fund administrator licence” means a licence referred to under section 32;

“investment fund adviser” means a person not being an officer or 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 licence” means a licence granted to a fund under this Act;

“investment fund manager” means a person who controls or directs the assets of the investment fund or provides the investment fund with advice or information relating to investment opportunities;

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

“licensed investment fund administrator” means the holder of an investment administration licence;

“licensee” means a person licensed under this Act;

“master fund” means a company, partnership, unit trust or investment condominium that

—

- (a) has as its investors other investment funds or feeder funds;

- (b) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the feeder funds; and

- (c) has as its investors one or more feeder funds either directly or through an intermediary entity established to invest in the master fund,

and for the purposes of this Act such master fund shall be deemed to be an investment fund;

“member territory” means a territory that is a member of the Currency Union;

“misrepresentation” means—

- (a) an untrue statement of a material fact or material change;

- (b) an omission to state a material fact or material change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made; or

- (c) in any other circumstance, a statement about something that a reasonable investor would consider important-

- (i) in making a decision to trade a security; or

- (ii) in relation to a trading or advising relationship with a person, if the statement is untrue or omits information necessary to prevent that statement from being false or misleading in the circumstances“misrepresentation” means—

- (a) an untrue statement of a material fact or material change;
- (b) an omission to state a material fact or material change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made; or
- (c) in any other circumstance, a statement about something that a reasonable investor would consider important-
 - (i) in making a decision to trade a security; or
 - (ii) in relation to a trading or advising relationship with a person, if the statement is untrue or omits information necessary to prevent that statement from being false or misleading in the circumstances

“Monetary Council” has the meaning given in the Securities Act;

“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 as set out under section 10;

“operator”, means the person responsible for the day to day oversight of the operations of the investment fund, including the prevention of conflicts of interest, and -

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

“own funds” means assets that are set aside to cover risks and includes paid-up share capital, reserves and undistributed profits;

“partnership” means a contractual relationship which subsists between two or more persons carrying on a business in common with a view of profit and includes a partnership formed and registered under the laws of a member territory of the Currency Union or the laws of such other country or jurisdiction notwithstanding any statutory definition to the contrary;

“party related to an investment fund” or its derivatives means an investment fund administrator, operator, promoter, custodian, valuer, investment fund manager, investment fund advisor;

“participating government” means a government of a member territory;

“person” includes a company, partnership, association and any other legal entity, organised or incorporated, as well as, the personal or other legal representative of any person to whom the context can apply;

“prescribed” means prescribed by regulations made under this Act and “prescribe” shall be construed accordingly;

“private investment fund” means a fund that-

(a) is lawfully incorporated, constituted, or organised under the laws of a member territory of the Currency Union or under the laws of a foreign jurisdiction; and

(b) specifies in its constitutional documents that-

(i) it is not authorised to have more than fifty investors; or

(ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only;

“professional investment 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 banking business licensed under the Banking Act 2015 or a trust registered or operating under any law in a member territory or licensed under the laws of another jurisdiction; whether acting in its individual or fiduciary capacity;

(b) any registered firm under the Securities Act, 2020 or under the laws or another jurisdiction;

(c) any insurance company licensed under the Insurance Act, of a member territory or licensed under the laws of another jurisdiction;

(d) any investment fund licensed or registered under this Act or regulated under the laws of another jurisdiction;

(e) an individual whose individual net worth at the time of the purchase exceeds EC\$500,000 or whose individual annual income has been in excess of EC\$200,000 in each of the two most recent years, and has reasonable expectation of reaching the same income level in the current year;

(f) an individual whose joint net worth together with that of his or her spouse, at the time of the purchase exceeds EC\$1,000,000 or whose joint income together with his or her spouse has been in excess of \$600,000 in each of

the two most recent 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 where all the equity owners satisfy one of the requirements in paragraphs (a) to (g); or

(i) any entity with net assets in excess of five million dollars (\$5,000,000);

“professional investor” means a person –

(a) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, of the fund; or

(b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of such sum as shall be prescribed or its equivalent in any other currency and that he consents to being treated as a professional investor;

“promoter” in relation to an investment fund or proposed investment fund, means any person whether within or outside the Currency Union 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 exclude a professional advisor or underwriter acting for or on behalf of such a person;

“public investment fund” means an investment fund that distributes its equity interests to the public in or from within the Currency Union;

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

“recognised country” means a country recognised by the Commission under section 63 of this Act;

“register” means the registers required to be maintained by the Commission under sections 22 and 46;

“registered foreign fund” means a foreign fund that is registered by the Commission under section 13 of this Act;

“registered office” means -

(a) in respect of a company formed under the Companies Act, the registered office of the company for the purposes of that Act ;

(b) in the case of an external company registered under the Companies Act, an office registered in accordance with that Act as the registered office of the external company;

“registration” means the process of registering an investment fund under this Act;

“regulated investment fund” means an investment fund that is licensed or registered under this Act to carry on business in or from within the Currency Union;

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

“regulations” has the meaning given in the Securities Act 2020

“Securities Act” means the Securities, Act 2020;

“securities laws” has the meaning given in the Securities Act 2020;

“service-provider” in relation to an investment fund, means—

- (a) the investment fund manager, administrator, investment adviser or custodian of the fund;
- (b) in the case of a fund that is a unit trust, the trustee;
- (c) a broker-dealer acting for, or in relation to, a fund; or
- (d) a person undertaking such other function with respect to the fund as may be prescribed;

“trust deed” means the written instrument establishing a trust;

“trustee”, in relation to a unit trust, means the person holding the property of the fund on trust for the investors;

“unit trust” means a trust established by a trustee which, for valuable consideration, issues trust units in, or distributes profits or gains arising from the acquisition, holding, management or disposal of investments of the trust.

PART I

INVESTMENT FUNDS

DIVISION I

3. Prohibition of unlicensed and unregistered funds

(1) A person shall not carry on the business of an investment fund in or from within the Currency Union unless the investment fund concerned is-

- (a) a licensed public investment fund;
- (b) a registered private investment fund;
- (c) a registered professional investment fund; or
- (d) a registered foreign investment fund.

(2) A person shall not act as a service provider, or otherwise be concerned with the management or administration, of an investment fund that carries on business in or from within the Currency Union, unless the investment fund concerned satisfies the requirements of subsection (1).

(3) For the purposes of this section—

(a) an investment fund, whether incorporated, formed or organised within the Currency Union or in a foreign jurisdiction, is deemed to carry on business in the Currency Union, if –

- (i) it operates from a place of business in the Currency Union; or
- (ii) it distributes its equity interests to a person within the Currency Union;
- (iii) it targets persons within the Currency Union;

(b) an investment fund that carries on business in a foreign jurisdiction, is deemed to be carrying on business from within the Currency Union, if it is -

- (i) a company incorporated under the laws of a member territory of the Currency Union;
- (ii) a partnership formed under the laws of a member territory of the Currency Union; or
- (iii) a unit trust established and governed by the trust laws of a member territory and is managed from within the Currency Union.

(4) A foreign fund does not carry on business in the Currency Union as an investment fund solely by reason of the appointment of a licensee as its fund administrator, fund manager, investment advisor or custodian.

4. Prohibition against promotion of investment funds

(1) A person, including the investment fund, shall not, whether in or from within the Currency Union, promote an investment fund unless—

- (a) the investment fund is
 - (i) a public fund
 - (ii) a professional or private fund, or
 - (iii) a registered foreign fund, and
 - (iv) the fund is promoted as permitted by this Act; or

the communication or advice is exempted by the Investment Fund Regulations made in accordance with subsection (3).

(2) Without limiting subsection (1), a person promotes an investment fund if he communicates, or causes an invitation or inducement to be communicated to any other person, or advises or procures any other person, to become an investor, or to offer to become an investor, in an investment fund.

(3) The Investment Fund Regulations may provide that subsection does not apply in relation to communication or advice—

- (a) of a specified category or description; or
- (b) made or given in specified circumstances.

5. General Exemptions to promotion

(1) An investment fund incorporated, formed or organised in a foreign jurisdiction does not solicit an individual within the Currency Union to subscribe for, or purchase, any of its fund interests in circumstances where the subscription or purchase is a result of an approach made by the individual to the fund without any solicitation made by or on behalf of the fund.

(2) The Investment Fund Regulations may specify circumstances in which sections 3(1) or 3(2) does not apply with respect to certain specified categories or descriptions of investment fund or person.

6. Exemption period for registration as a professional fund

(1) An investment fund may carry on business in or from within the Currency Union, as a professional fund, for a continuous period not exceeding thirty days, if the fund-

- (a) satisfies the criteria for a professional fund specified in section 11(2)(a), (c) and (d); and
- (b) complies with, and is managed and administered in accordance with, the requirements of this Act and the Investment Fund Regulations relating to professional funds, other than with respect to registration.

(2) An investment fund that commences business in reliance on subsection (1) shall submit an application to the Commission for registration as a professional fund within twenty-one days after the commencement of its business.

(3) For the purposes of this Act, a fund that commences business in reliance on subsection (1) is deemed to have been registered as a professional fund for the period in which it carries on business in reliance on subsection (1).

(4) During the period in which an investment fund carries on business in accordance with subsection (1)-

- (a) the fund, a partner of the fund or, where the fund is a unit trust, the trustee, does not commit an offence under section 3(1); and
- (b) a person does not commit an offence under section 3(2) by acting as the service provider of or being concerned with the management or administration of the fund;

DIVISION II

PUBLIC FUNDS

7. Licensing of fund as public fund

(1) Application may be made to the Commission for the licensing of an investment fund as a public fund by-

- (a) a company, in the case of an investment fund that is incorporated in a member territory of the Currency Union, the company itself; or
- (b) a trustee, in the case of a unit trust.

(2) The Commission may grant an application for licensing under subsection (1), if it is satisfied that-

- (a) the fund is-
 - (i) a business company incorporated in a member territory of the Currency Union; or
 - (ii) a unit trust that is governed by the trust laws of a member territory and has a trustee that is based in the Currency Union;
- (b) the fund satisfies the requirements of this Act and where applicable;
- (c) the fund will upon licensing, be in compliance with this Act, and the Investment Fund Regulations;
- (d) the fund's service providers satisfy the Commission's fit and proper criteria;
- (e) the fund has, or upon licensing will have, an independent custodian;
- (f) the fund's name is not undesirable or misleading; and
- (g) it is appropriate to do so in the public interest.

(3) Where the Commission grants an application for a licence under subsection (1), it shall-

- (a) record the public fund in the Register of Public Funds; and
- (b) issue a licence certificate in the approved form to a public fund.

(4) The Commission may grant a public fund licence subject to such conditions as it considers appropriate.

8. Prohibition on invitation to public to subscribe for public fund

(1) A public fund shall not, whether within or outside the Currency Union, make an invitation to the public to subscribe for or purchase its fund interests, unless the invitation-

- (a) is contained in a prospectus approved by the Commission; and
- (b) complies with such requirements as may be specified in the Investment Fund Regulations.

(2) For the purposes of subsection (1), an invitation to more than 50 persons, in the Currency Union or in a foreign jurisdiction, to subscribe for or purchase fund interests, is an invitation to the public to subscribe for or purchase fund interests.

(3) Subsection (1) does not apply to an invitation that is deemed not to be an invitation to the public under section 9.

9. Circumstances in which invitation to subscribe not invitation to the public

(1) An invitation to a person to subscribe for or purchase interest in a fund is deemed not to constitute an invitation to the public if-

- (a) the invitation is made to, or is directed exclusively at, one or more of the following:
 - (i) an accredited investor;
 - (ii) a person having a close connection with the issuer; or
 - (iii) a participating government;
- (b) the minimum aggregate purchase price payable by a person for the fund interests acquired by him pursuant to the invitation-
 - (i) must be paid before the fund interests are issued; and
 - (ii) equals or exceeds the minimum specified in the Investment Fund Regulations, or the equivalent in another currency; or
- (c) the invitation is made
 - (i) to such persons,
 - (ii) with respect to fund interests issued, or to be issued, by such persons, or
 - (iii) in such circumstances, as may be specified in the Investment Fund Regulations.

10. Form and content of prospectus

(1) A prospectus intended to be submitted to the Commission for registration shall-

- (a) be in writing, be dated and be signed by or on behalf of-
 - (i) in the case of a business company of the Currency Union, the board of the company; or

- (ii) in the case of a unit trust, the fund manager or the trustee of the trust;
 - (b) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;
 - (c) be in the form, contain the information, statements, certifications and other matters specified in the Investment Funds Regulations; and
 - (d) have attached to it such documents as may be specified in the Investment Fund Regulations.

(2) The Commission shall issue a receipt for a prospectus within thirty days after the date of the filing of the prospectus.

(3) A distribution commences on the date that the receipt for the prospectus is issued.

DIVISION III

PRIVATE AND PROFESSIONAL FUNDS

11. Registration of private and professional fund

(1) Application may be made to the Commission for the registration of an investment fund as a private fund or as a professional fund by-

- (a) in the case of an investment fund that is a company, the fund itself;
- (b) in the case of a unit trust, by the trustee;
- (c) in the case of an investment fund that is a partnership, by a partner;
- (d) in any other case, by the manager, or proposed manager of the fund.

(2) The Commission may register an investment fund as a private fund or a professional fund if it is satisfied that-

- (a) the fund is lawfully incorporated, constituted, formed or organised under the laws of a member territory of the Currency Union or a foreign jurisdiction;
- (b) in the case of a private fund, the constitutional documents of the fund specify that-
 - (i) the fund is not authorised to have more than 50 investors; or
 - (ii) an invitation to subscribe for, or purchase fund interests issued by the fund shall be made to not more than 50 investors;

(c) in the case of a professional fund, the constitutional documents of the fund specify that

(i) the fund interests shall be issued only to professional investors;

(ii) the initial investment of each investor in the fund, other than exempted investors, shall be not less than such sum as may be prescribed in the Investment Fund Regulations;

(d) the fund satisfies such other criteria as may be specified for registration of a private or professional fund, as the case may be, in Regulations made pursuant to this Act;

(e) the fund satisfies the requirements of this Act with respect to the application;

(f) the fund will, on being registered, be in compliance with this Act and any practice directions applicable to the fund;

(g) it is appropriate in the public interest to register the fund as a private or professional fund.

(3) For the purposes of subsection (2)(b)(ii), an invitation to subscribe for, or purchase, fund interests issued by a private investment fund includes an invitation which is made-

to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or

by reason of a private or business connection between the person making the invitation and the investor.

(4) For the purposes of subsection (2)(c), the minimum investment limit referred to does not apply in respect of an investment made by a person specified in the Investment Fund Regulations as an exempted investor.

(5) Where the Commission grants an application for registration under subsection (1), it shall-

(a) register the fund in the Register of Private Funds or the Register of Professional Funds, as appropriate; and

(b) issue the fund with a certificate of registration in the approved form.

(6) The registration of a private or professional fund is subject to such conditions as may be imposed by the Commission.

12. Obligation to act in accordance with constitutional documents

(1) No registered private or professional fund shall make any offer or invitation of its fund interests, issue any fund interests or carry on business in any manner that would result in the fund-

(a) in the case of a private fund-

- (i) having more than 50 investors; or
- (ii) making any invitation to subscribe for, or purchase, its fund interests otherwise than on a private basis; or

(b) in the case of a professional fund, issuing fund interests

- (i) to any person who is not a professional investor; or
- (ii) where the initial investment, in respect of a professional investor who is not an exempted investor, is less than the sum prescribed in the Investment Fund Regulations.

(2) Without limiting subsection (1), no person shall be accepted as an investor in a private or professional fund unless that person has provided-

(a) in the case of a professional fund, written confirmation that he is a professional investor within the meaning specified; and

(b) in the case of a private or professional fund, a written acknowledgment that he has received, understood and accepted the prescribed investment warning.

DIVISION IV

REGISTRATION OF A FOREIGN FUND

13. Registration of a foreign investment fund

(1) An application may be made to the Commission by a foreign investment fund for the fund to be a registered foreign fund.

(2) The Commission may approve an application for the registration of a foreign fund if the Commission is satisfied that-

(a) the fund complies with the requirements of this Act in respect of the application and will, upon registration, be in compliance with the requirements of this Act with respect to registered foreign funds;

(b) the fund is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Commission, provides to investors in the Currency Union protection at least equivalent to the protection provided under this Act for investors of public funds; and

(c) the fund is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

14. Investment Fund Regulations may provide for registration of foreign investment funds

(1) The Investment Fund Regulations may make provision with respect to the registration of foreign funds, including as to-

- (a) the submission to the Commission and the publication of such particulars as regards registered foreign investment funds as may be prescribed;
- (b) the notifications to be provided to the Commission with respect to registered foreign funds, including as to the amendment of the constituting instruments of investment a registered foreign fund and changes of the service providers of a registered foreign fund;
- (c) the maintenance in the Currency Union of deposits and property by and with respect to registered foreign investment funds.

DIVISION V

GENERAL PROVISIONS APPLICABLE TO LICENSED AND REGISTERED FUNDS

15. Restriction on licensing or registration of investment fund

(1) The Commission shall not license or register an investment fund until the applicant has satisfied the Commission that –

- (a) each promoter, operator, investment fund advisor, investment fund manager, investment fund administrator, auditor, custodian, is fit and proper; and
- (b) the business of the investment fund and any offering of equity interests in it will be carried out, in accordance with this Act, the Investment Fund Regulations and any other applicable laws.

16. Grant of licence or approval of registration of an investment fund

(1) The Commission shall not grant a license or approve the registration of 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 registered; or
- (c) the name of the investment fund is –

- (i) identical to that of any other investment fund that is licensed or registered under this Act or which so nearly resembles the name of an investment fund licensed or registered 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 Currency Union or elsewhere, or
- (iii) likely to suggest falsely, that the fund has a special status in relation to or derived from the respective Government of a member territory of the Currency Union.

(2) Where the Commission refuses to grant the application, it will serve a notice of its decision, in writing, on the applicant.

17. Restricted names

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

(2) 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 section 16(1)(c), the Commission may direct the investment fund to change its name to a name approved by the Commission.

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

18. Transfer to another jurisdiction

(1) A regulated investment fund may transfer from the Currency Union to a foreign jurisdiction and shall notify the Commission of such transfer in the prescribed form within fourteen days of the issue of the licence or notification of approval of registration with 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 or registered in the Currency Union; 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 issue a public notice that the investment fund is no longer licensed in the Currency Union by publication —

- (a) in the Official Gazette in each member territory of the Currency Union;
- (b) in a newspaper in each member territory; and

(c) on the website of the Commission.

19. Transfer from another jurisdiction

(1) An investment fund that intends to transfer to the Currency Union from a foreign jurisdiction shall notify the Commission of such transfer, in the prescribed form and shall apply to the Commission to be licensed or registered not later than twenty-one days prior to transferring to the Currency Union.

(2) An investment fund under subsection (1) shall submit to the Commission, the following information in support of its application –

- (a) name of the investment fund;
- (b) name of investment fund administrator;
- (c) name of the investment fund manager;
- (d) address of registered office or principal office in the Currency Union;
- (e) name and address of the operators;
- (f) the current offering document;
- (g) any other information prescribed by the Commission;
- (h) evidence that the investment fund has complied with the laws of the jurisdiction outside the Currency Union.

(3) An investment fund transferring to the Currency Union shall provide evidence of the surrender of its licence in the foreign jurisdiction.

(4) The Commission may upon the written application of the investment fund transferring to the Currency Union, extend the period within which the fund must obtain an investment fund licence or registration from the Commission.

20. Voluntary Surrender of licence by investment fund

(1) An investment fund shall notify the Commission in the prescribed manner, of its intention to surrender its licence or registration granted by the Commission, at least fourteen days prior to the effective date of the surrender.

(2) The Commission may, on receiving notification by an investment fund under subsection (1) –

- (a) accept, subject to such terms and conditions as it may impose, the voluntary surrender of the licence or registration of the investment fund if the Commission is satisfied that the surrender of the licence or registration would not be prejudicial to the public interest; or

- (b) without providing an opportunity to be heard, suspend the licence or registration or impose any condition or restriction on the licence that the Commission deems appropriate.

(3) On the effective date of the surrender, where the Commission has accepted 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 or registered in the Currency Union; or
- (b) in the event the original certificate is lost, submit to the Commission an affidavit attesting to the fact of such loss.

(4) The Commission shall within fourteen days of acceptance of the investment fund's voluntary surrender of its licence or registration under subsection (2)(a), cause a public notice to be issued that the investment fund is no longer licensed or registered in the Currency Union.

(5) The Public notice issued subsection (4) shall be published—

- (a) in the Official Gazette of each ECCU member territory;
- (b) in one issue of a newspaper publicly available in each member territory; and
- (c) on the website of the Commission.

21. Voluntary suspension of investment fund activity

(1) An investment fund that has either not commenced operations within one year of being licensed or registered or that ceases trading and liquidates and distributes its assets without formally liquidating its structure, within one year of being licensed or registered, 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 or registration of the investment fund and cause a public notice to be issued that the licence or registration of the investment fund has been suspended.

(4) The notice issued under subsection (3) shall be published –

- (a) in the Official Gazette in each ECCU member territory;
- (b) in one issue of a newspaper publicly available in each member territory; or
- (c) on the website of the Commission.

(5) An investment fund whose licence or registration 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 or registration of such suspended investment fund.

(6) An investment fund whose licence or registration 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.

(7) The Commission may upon the written application of the investment fund extend the period of suspension of a licence or registration to a period not exceeding eighteen months.

(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 and issue a public notice, published in like manner as under subsection (3), that the investment fund has been re-launched.

22. Investment fund register

(1) The Commission shall maintain an investment funds register to show details of investment funds that are licensed, registered or exempted under this Act.

(2) The register under subsection (1) shall contain information to include —

- (a) the name of the regulated person;
- (b) the contact information for all parties related to an investment fund;
- (c) any conditions, under which the licence or registration was granted;
- (d) a listing of any related master funds and feeder funds, and
- (e) any other information as prescribed by the Commission.

(3) The Commission shall keep the register updated and available for inspection by any member of the public upon payment of the prescribed fee.

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

23. Mis-representation

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

(2) Where a regulated investment fund becomes aware that a service provider has provided it with false or misleading information, it shall immediately notify the Commission in writing.

PART II

LICENSING OF INVESTMENT FUND SERVICE-PROVIDERS

DIVISION I

24. Prohibition by service- provider

Subject to the provisions of this Part, no person shall carry on business as a service-provider to an investment fund in or from within the Currency Union unless it is licensed or registered by the Commission.

DIVISION II

INVESTMENT FUND MANAGER

25. Appointment of investment fund manager

(1) Subject to subsection 3, an investment fund shall appoint an investment fund manager prior to 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 such services may include providing investment advice for valuable consideration.

(3) Where an investment fund appoints an investment fund manager, the investment fund manager shall be required to be licensed or registered as an investment fund manager.

(4) An investment fund is exempt from the requirements of this Division where –

- (a) its investment fund manager manages one or more investment funds whose only investors are the investment fund manager or a parent or subsidiary of the investment fund manager or other subsidiaries of the parent undertaking, provided that none of those investors is itself an investment fund.
- (b) it is a feeder fund that invests one hundred per cent of its assets in a master fund.

26. Licensing or registration of investment fund manager

(1) A person shall not act as an investment fund manager of an investment fund unless it is licensed or registered as such by the Commission.

(2) Subject to subsection (3), a person shall apply to the Commission for a licence or registration to operate as an investment fund manager.

(3) The Commission may licence or register a person as an investment fund manager where that investment fund manager –

- (a) intends to manage professional funds;
- (b) intends to manage an investment fund whose equity interests are not limited to being offered to accredited investors;
- (c) intends to manage any investment fund in a jurisdiction, whose equity interests are offered to accredited investors only; or
- (d) is licensed or registered in a prescribed jurisdiction.

27. Grant of licence or approval of registration of an investment fund manager

(1) The Commission shall not grant a licence or approve the registration of an investment fund manager under this Part unless –

- (a) it is satisfied that the applicant will be able to meet the conditions of this Part;
- (b) the applicant has the prescribed capital, own funds and professional indemnity insurance in accordance with section 29;
- (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 Currency Union.

(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 or registration and the names of every person succeeding them in office shall be communicated to the Commission.

28. General duties of an investment fund manager

(1) An investment fund manager shall –

- (a) act honestly and fairly, with due skill, care and diligence in conducting its activities;

- (b) act in the best interests of each investment fund or the investors of each investment fund it manages and for the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose those conflicts of interest in order to prevent them from adversely affecting the interests of each investment fund and its investors and to ensure that each investment fund it manages is fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of each investment fund or the investors of each investment fund it manages and the integrity of the market; and
- (f) treat all investment fund investors fairly and ensure that no investor in an investment fund shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant investment fund's constitutive documents.

(2) Where an investment fund is exempted from appointing a custodian under section 38(3) the investment fund manager shall ensure that –

- (a) the sale, issue, repurchase, redemption and cancellation of equity interests effected on behalf of an investment fund are carried out in accordance with the offering documents and constitutive documents of the fund;
- (b) the value of the equity interests is calculated in accordance with the offering documents and constitutive documents of the fund; and
- (c) the income of an investment fund is applied in accordance with the offering documents and constitutive documents of the fund.

29. Minimum Capital and professional indemnity insurance requirements

(1) An investment fund manager which is a licensed investment fund manager, shall meet the prescribed initial capital requirement in East Caribbean Dollars or the equivalent in a currency that is acceptable to the Commission;

(2) An investment fund manager shall –

- (a) have own funds or additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

DIVISION IV

INVESTMENT FUND ADMINISTRATOR

30. Appointment of investment fund administrator

(1) Subject to subsection (2), an investment fund shall appoint an investment fund administrator prior to the commencement of operations as a regulated investment fund.

(2) An investment fund may be exempt from the provisions of subsection (1) as prescribed by the Commission.

31. Name of investment fund administrator restricted

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

32. Licensing or registration of an investment fund administrator

(1) An investment fund administrator shall not act on behalf of an investment fund unless it is-

- (a) the holder of an investment fund administrator’s licence or registration certificate; and
- (b) established and operating in accordance with the laws of the Currency Union or a foreign jurisdiction.

33. Grant of licence or approval of registration of an investment fund administrator

(1) The Commission shall not grant an investment fund administrator’s licence or approve the registration, 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 Currency Union or in a foreign jurisdiction; or
- (c) likely to suggest, falsely, that the investment fund administrator has a special status in relation to or derived from a member 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 within the Currency Union using 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).

34. Obligations of an investment fund administrator

(1) An investment fund administrator shall –

- (a) provide the principal office for an investment fund that it administers in or from within the Currency Union;
- (b) pay the prescribed fees for each investment fund for which it provides a principal office in the Currency Union;
- (c) ensure that each party related to an investment fund is fit and proper as prescribed by the Commission;
- (d) make such reports to the Commission regarding the investment funds for which it acts as the investment fund administrator, as the Commission may require.

35. 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. Chief Executive Officer of an investment fund administrator

(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 as prescribed 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 any necessary conditions to the approval under subsection (3).

36. Requirements for paid up capital and professional indemnity insurance

(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 –

- (a) provide such guarantee or professional indemnity insurance coverage or other financial support as the Commission shall deem necessary; or
- (b) increase its shareholders' equity to such amount as the Commission shall consider appropriate.

(2) If the investment fund administrator fails to comply with a direction given under subsection (1) the Commission shall –

- (a) request other financial guarantees, acceptable to the Commission, to be supplied by the investment fund administrator within ninety days; or
- (b) where the investment fund administrator is unable to provide the guarantees under paragraph (a), revoke the licence.

37. Compliance officer of an investment fund administrator

(1) Subject to subsection (4), an investment fund administrator shall appoint a person as a Compliance Officer, subject to such conditions that the Commission shall prescribe.

(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 as prescribed 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 any necessary conditions to the approval under subsection (4).

DIVISION IV

CUSTODIAN

38. Appointment of custodian

(1) An investment fund which is licensed or registered by the Commission shall appoint one or more persons as custodian of the assets of the investment fund.

(2) A custodian shall not act on behalf of an investment fund unless
it is-

- (a) the holder of a custodian's licence or registration certificate; and
- (b) established and operating in accordance with the laws of a member territory of the Currency Union or of a foreign jurisdiction.

(3) Notwithstanding subsection (1) the Commission may exempt a licensed or registered investment fund from the requirement to appoint a custodian where –

- (a) the investment fund's only investors are a parent or subsidiary of the investment fund or other subsidiaries of the parent

- (b) undertaking, provided that none of those investors is itself an investment fund; or
- (c) the assets of an investment fund are of a type that does not require the assets to be held in custody.

(4) The custodian shall satisfy requirements as prescribed by the Commission from time to time.

39. Licensing or registration of custodian

A person shall not act as a custodian of an investment fund unless it is licensed or registered as such by the Commission

40. Independence of custodian

An investment fund shall have a custodian that is independent of the investment fund administrator, the investment fund manager and the operator of the fund unless the fund is exempted by the Commission under subsection 38(3).

41. Segregation of investment fund assets – custodian appointed

(1) A custodian that holds assets on behalf of an investment fund, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the investment fund.

(2) A custodian that holds cash on behalf of an investment fund must hold the cash separate and apart from the property of the custodian in a designated trust account with a financial institution licensed under the Banking Act or other licensed deposit-taking institution in a recognised jurisdiction.

(3) A custodian may allow a licensed marketplace or clearing facility to hold or control cash belonging to an investment fund for the purpose of—

- (a) a transaction for the investment fund with or through that marketplace or facility; or
- (b) meeting the investment fund's obligation to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

42. Segregation of investment fund assets – exempt from appointment of custodian

(1) Where an investment fund is exempt from appointing a custodian, any assets held on behalf of the investment fund, by a party related to the fund, including cheques and similar instruments, must be held separate and apart from its own property and in trust for the investment fund.

(2) A party related to an investment fund that holds cash on behalf of the investment fund must hold the cash separate and apart from the property of the party related to the fund in a

designated trust account with a bank holding a licence under the Banking Act or other licensed deposit-taking institution in a recognised jurisdiction.

(3) A party related to an investment fund may allow a licensed marketplace or clearing facility to hold or control cash belonging to an investment fund for the purpose of—

- (a) a transaction for the investment fund with or through that marketplace or facility; or
- (b) meeting the investment fund's obligation to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

PART III

GENERAL REGULATORY MATTERS

43. Application for licensing or registration of licence

(1) An application to the Commission for a licence or registration, shall be made in the prescribed form and shall be accompanied by –

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

(2) A licence or registration is effective unless –

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

44. Imposition, variation or revocation of terms and conditions of licence or registration

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 or registration.

45. Renewal of licence

(1) A regulated person shall renew its licence or registration as applicable, on an annual basis by submitting an application for renewal to the Commission on or before the 1st day of April each year.

(2) An application for renewal of a licence or registration of a fund shall be made on the prescribed form and must be accompanied by the prescribed licence or registration renewal fee.

46. Service provider register

(1) The Commission shall maintain a service provider register to show details of service providers that are licensed, registered or exempted under this Act.

(2) The register under subsection (1) shall contain information to include —

- (a) the name of the regulated person;
- (b) the contact information for all parties related to an investment fund;
- (c) any conditions, under which the licence or registration was granted;
- (d) any other information that may be prescribed by the Commission.

47. Offence

(1) Any person who carries on business requiring a licence or registration under Part I or II without holding such a licence or registration certificate, or other than in accordance with the person's licence or registration, commits an offence and is liable on summary conviction -

- (a) in the case of an individual, to a fine of up to five hundred thousand dollars or to imprisonment for two years or to both;
- (b) in the case of a company, to a fine of up to one million dollars.

(2) If the offence is a continuing offence, the individual or company is liable to a further fine not exceeding 10 per cent of the maximum fine above for every day that the offence continues after conviction.

PART IV

ADMINISTRATIVE AND FINANCIAL MATTERS

48. Due diligence by licensed service- provider

(1) A service-provider shall not undertake to provide services to an investment fund unless the service-provider has satisfied itself that it may carry out its tasks and responsibilities to that fund in accordance with the securities laws and all other legislation applicable to that fund.

(2) Subsection (1) shall be deemed a condition of every service- provider licence for the purposes of this Act.

49. Delegation of tasks

(1) A service-provider shall not appoint or charge a third-party provider to assist it with the provision of services for which a service- provider licence has been granted, unless-

- (a) the prior written approval of the Commission has been obtained for the appointment or change; or
- (b) the third-party provider complies with such conditions imposed by the Commission; and
- (c) the prescribed fee has been paid;
- (d) or the Commission has exempted the service-provider from the obligation to obtain the Commission's approval.

(2) A service-provider with a valid service-provider licence may delegate tasks to a third-party provider but the delegating service- provider's responsibilities may not be delegated.

50. Service- provider to give notice of certain matters

(1) Where a service-provider knows or has reason to believe that an investment fund for which it provides services, or an operator, auditor, or a promoter of such investment fund –

- (a) is, or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with this Act or any other law; or is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund,
- (c) the service-provider shall immediately give the Commission written notice of its knowledge or belief giving its reason for that knowledge or belief.

51. Auditor to be appointed

(1) Every regulated person shall appoint an approved auditor who shall conduct an audit of the regulated person's annual financial statements, within one hundred and twenty days of the end of the funds' financial year.

(2) The audit of a regulated person's financial statements shall be performed in accordance with generally accepted auditing standards and the auditor shall provide the Commission with the prescribed reports on the financial affairs of the regulated person.

(3) The Commission may impose all or any of the following duties on the auditor of a regulated person –

- (a) a duty to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
- (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the person licensed under this Part;

- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Commission on any matters referred to in paragraphs (b) and (c),
- (e) and the auditor shall carry out such additional duty or duties.

(4) Every regulated person shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (2).

52. Obligations of auditors

(1) If, during the performance of his duties as auditor for a regulated person under this Act, an approved auditor –

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the entity being audited to a material extent; or
- (b) discovers evidence of a contravention of such provisions as may be prescribed

the auditor shall as soon as is practicable, and in any event within seven days, report the matter in writing to the Commission and to the licensee.

53. Instructions to audit accounts

(1) The Commission may at any time instruct a regulated person –

- (a) to have its accounts audited; and
- (b) to submit the audited financial statements to the Commission, within such time as the Commission shall specify.

(2) The audited financial statements referred to in subsection (1) shall be prepared in accordance with international auditing standards and shall be at the expense of the regulated person.

54. Reporting to the Commission

(1) Within the prescribed periods, a regulated person shall deliver to the Commission –

- (a) annual financial statements in respect of the regulated person's financial year along with the report of the auditor;
- (b) interim financial statements and other information as may be prescribed; and
- (c) all other reports, information or documents that the Commission deems necessary.

(2) The Commission may require a regulated person to disseminate to the public any report filed with the Commission under subsection (1).

55. Compliance with directions

A regulated person shall use reasonable efforts to ensure that it complies with any direction given to it by the Commission in accordance with the provisions of this Act.

56. Approval by the Commission

(1) A regulated person shall not appoint or change a director, operator, chief executive officer (or the equivalent position) as the case may be, or any other person for whom initial approval by the Commission was required, unless –

- (a) the prior written approval of the Commission has been obtained, for the appointment; or
- (b) the Commission has exempted the regulated person from the obligation to obtain the Commission’s approval; and
- (c) the prescribed fee has been paid.

57. Ongoing statutory reporting obligations

The initial requirements for a licence or registration or such other requirements imposed by the Act or the Commission from time to time shall continue to be met by the person throughout the period for which the licence is valid.

58. Commission to administer law

(1) The Commission shall administer this Act.

(2) The Commission shall-

- (a) maintain a general review of investment fund business in the Currency Union and submit an annual report to the Monetary Council; and
- (b) be responsible for supervision and enforcement in respect of persons to whom this Act applies; and
- (c) for the investigation of persons where the Commission reasonably believes that they are or have been in breach of this Act.

(3) Whenever the Commission considers it necessary or expedient, the Commission may—

- (a) conduct onsite or offsite inspections;
- (b) examine prescribed regular returns, auditors’ reports or ad hoc reports requested by the Commission;
- (c) and engage in such other activity as the Commission may determine,

to regulate the affairs or business of any regulated person for the purpose of a general review or for the purpose of satisfying itself that this Act and any regulations made under this Act are being complied with.

(4) The Commission may charge a fee as prescribed for an inspection conducted under this Part.

(5) In carrying out its responsibilities, the Commission may, in addition to any powers granted under this Act, exercise any of the powers and responsibilities granted to it under Parts IV, V, VI, VII, VIII, IX, XI, XII, XIII and XIV of the Securities Act and the Eastern Caribbean Securities Regulatory Commission Agreement.

PART V

MISCELLANEOUS PROVISIONS

59. General offence

(1) A person who contravenes any provision of this Act or the regulations, not otherwise provided for in this Act, commits an offence and is liable on summary conviction to a fine of up to one million dollars or to imprisonment for up to 10 years or to both.

(2) Notwithstanding subsection (1) where an offence is committed by a company, a director and every senior officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the same penalty prescribed for the company.

60. Regulations

The Minister may, on the recommendation of the Commission, make regulations that are necessary or expedient for carrying out the purposes of the Investment Funds Act and to give effect to the functions and responsibilities of the Commission.

61. Rules

In carrying out the purpose of the Investment Funds Act and its functions and responsibilities under the Act, the Commission may make rules providing for such matters as may be necessary or expedient for giving effect to such purposes, functions and responsibilities.

62. Winding up, dissolution and termination

A regulated investment fund, investment fund manager, or investment fund administrator shall inform the Commission of its intent to wind up, dissolve or terminate within thirty days or such other time period as may be prescribed by the Commission before the formal winding up, dissolution or other termination procedure has commenced.

63. Recognised country

The Commission may, by notice published in the Gazette, recognize a country for the purposes of this Act.

64. Transitional provisions

- (1) Notwithstanding the repeal of the Securities Act 2001 by the Securities Act 2020, as from the date of the commencement of this Act –
 - (a) an investment fund administrator or investment fund manager who is the holder of a valid licence issued under the Securities Act 2001 expiring less than one year after the commencement of this Act, shall apply for renewal in accordance with this Act;
 - (b) an investment fund that is the holder of a valid licence issued under Securities Act 2001 expiring less than one year after the commencement of this Act, shall apply for renewal in accordance with this Act.
 - (c) The Securities (Collective Investment Schemes) Regulations 2001 made under the Securities Act 2001, and in force at the commencement of this Act, shall remain in force until replaced by new regulations and rules made pursuant to this Act.

Passed the House of Representatives on
the day of , 2020.

Passed the Senate on the day of
, 2020.

.....
Speaker.

.....
President.

.....
Clerk to the House of Representatives.

.....
Clerk to the Senate.

EXPLANATORY MEMORANDUM

INVESTMENT FUNDS ACT

INTRODUCTION

At the 59th Meeting of Commissioners held on 23 November 2015, the Commissioners of the Eastern Caribbean Securities Regulatory Commission (ECSRC) unanimously agreed to develop new and modern collective investment scheme legislation to govern investment fund business in the Eastern Caribbean Securities Market (ECSM). The Investment Funds Act 2020 (The Act) is new draft legislation that will overhaul the regulatory regime for collective investment schemes and specifically reform the current Part IX of the Securities Act and the Collective Investment Scheme Regulations 2001/2002. It will also improve and modernise the law to ensure that it is consistent with international standards and best practices.

The new Act includes provisions to protect investors and the public and repeals and replaces Part IX of the current Securities Act 2001 on Collective Investment Schemes, the Collective Investment Scheme Regulations, 2001/2002 and the respective Mutual Funds Acts in the member territories of the Eastern Caribbean Currency Union (ECCU/Currency Union).

It is anticipated that the new Act will enhance the competitiveness of the ECCU jurisdiction in the international investment funds market by providing the enabling legislation that would attract foreign investment funds to the region. This will redound to the benefit of the economies in the member territories and enhance investment options for investors in the ECCU.

SUMMARY OF PARTS

The provisions in the Act are set out in five (5) Parts and these are summarised below:

PRELIMINARY

The Preliminary provisions in the Act include the short title and commencement in section 1 and the interpretation in section 2.

PART I

INVESTMENT FUNDS

Part I of the Act contains five divisions.

Division I of the Act provides general prohibitions on the operation of unlicensed and unregistered funds in the ECCU. Subsection 3 of section 3 outlines the circumstances where an investment fund will be deemed to be carrying on business “in” the Currency Union and “from within” the Currency Union. Section 4 provides for the prohibition against promotion of an investment fund. Under section 5 an investment fund incorporated, formed or organised in a foreign jurisdiction does not solicit an individual within the Currency Union to subscribe for, or purchase, any of its fund interests in circumstances where the subscription or purchase is a result of an approach made by the individual to the fund without any solicitation made by or on behalf of the fund.

Under section 6 a professional fund is permitted to operate for a continuous period not exceeding thirty days while it seeks to be registered by the Commission, if the fund satisfies the criteria specified in section 11 (2) (a), (c) and (d), and complies with, and is managed and administered in accordance with the requirements of the Act and the Investment Fund Regulations relating to professional funds. An investment fund that commences business in reliance on subsection (1) shall submit an application to the Commission for registration as a professional fund within twenty one days after the commencement of its business in the ECCU.

Division II of the Act deals with the licensing requirements for a public investment fund.

Section 7 provides that a public fund shall not, whether in or outside the Currency Union, make an invitation to the public to participate or invest in a public investment fund, unless the invitation is contained in a registered prospectus and such prospectus complies with the Investment Funds regulations. Section 8 sets out circumstances under which it will not be deemed to have constituted an invitation to the public to participate or invest in a public investment fund. Section 10 provides for the form and content of an investment fund prospectus for a public investment fund.

Division III provides for a registration process for private and professional investment funds.

A private investment fund is defined as “a fund that-

- (a) is lawfully incorporated, constituted, formed or organised under the laws of a member territory of the Currency Union or under the laws of a foreign jurisdiction; and
- (b) specifies in its constitutional documents that-
 - (i) the fund is not authorised to have more than fifty investors; or
 - (ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only;

A professional fund is defined as 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 in the fund –

- (a) any bank or trust company licensed under the Banking Act and Trust Act of a member territory or licensed under the laws of another jurisdiction; whether acting in its individual or fiduciary capacity;
- (b) any registered firm under the Securities Act 20-- or under the laws or another jurisdiction;
- (c) any insurance company licensed under the Insurance Act, of a member territory or licensed under the laws of another jurisdiction;
- (d) any investment fund licensed or registered under this Act or regulated under the laws of another jurisdiction;
- (e) an individual whose individual net worth at the time of the purchase exceeds EC\$500,000 and/or individual annual income has been in excess of EC\$200,000 in each of the two most recent years, and has reasonable expectation of reaching the same income level in the current year;
- (f) an individual whose joint net worth with that individual's spouse, at the time of the purchase exceeds EC\$1,000,000 or whose joint income with that individual's spouse has been in excess of \$600,000 in each of the two most recent 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 where all the equity owners satisfy one of the requirements in paragraphs (a) to (g); or
- (i) any entity with net assets in excess of five million dollars (\$5,000,000);

Section 11(2) sets out the requirements for registration of a private or professional fund by the Commission. Under section 11(5), where the Commission grants an application for registration of a public or professional fund, it shall register the funds in the respective Private Funds Register or Professional Funds Register and issue a certificate of registration in the approved form.

Section 12 provides that a private or professional fund should act in accordance with its constitutional documents. This section also requires that prior to investing in a private or professional fund, an investor must provide written confirmation that he/she is a professional investor for the purposes of the Act and that he/she has understood and accepted the prescribed investment warning.

Division IV provides for the registration of a foreign fund. Section 13(2) provides that the Commission may approve an application for registration by a foreign investment fund if the Commission is satisfied that:

- (a) the fund complies with the requirements of this Act in respect of the application and will, upon being registered, be in compliance with the requirements of this Act with respect to registered foreign funds;
- (b) the fund is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Commission, provides to investors in the Currency Union protection at least equivalent to the protection provided under this Act for investors of public funds;
- (c) the fund is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

In section 13 the Investment Funds Regulations will make provisions for matters related to the registration of foreign funds, including, the publication of fund particulars, notifications to be provided to the Commission and the maintenance of deposits and property by the fund, in the Currency Union.

Division V of the Act provides general provisions applicable to licensed and registered funds.

Section 15 provides that the Commission shall not license or register a fund until the applicant has satisfied the Commission that the service-providers (promoters, operators, investment fund advisors, investment fund managers, investment funds administrators, auditors, custodians) are fit and proper and the business of the investment fund and any offering of equity interests in it will be carried out in a proper manner. Section 16 sets out the circumstances under which the Commission may refuse to license or register an investment fund. Under section 16, no person other than a regulated investment fund shall carry on or attempt to carry on business as an investment fund with the words “fund” or “investment funds” in its name.

Sections 18 and 19 provide the requirements where an investment fund transfers its operations into or intends to operate from within the Currency Union.

The procedures for the voluntary surrender of a license or registration granted to an investment fund, are provided for under section 20 of the Act.

Section 21 sets out the circumstances in which an investment fund may voluntarily suspend and re-launch its operations as an investment fund.

Under section 22 the Commission shall maintain an investment funds register to show details of licensed, registered and exempted regulated funds.

Section 23 provides that an applicant for a licence should not provide information that he or she reasonably knows to be false or misleading, to the Commission. There is also a requirement that

the Commission should be notified by a regulated investment fund if it receives false or misleading information from a service provider.

PART II

LICENSING OF INVESTMENT FUND SERVICE-PROVIDERS

Part II of the Act is arranged in four Divisions.

Division I sets out the prohibition on the conduct of business as a service-provider unless it is licensed or registered by the Commission.

Division II (sections 25 to 30) deals with the licensing requirements for an Investment Fund Manager. By virtue of section 25, an investment fund shall appoint an investment fund manager upon commencement of operations. Section 25 also provides for exemptions from that requirement.

Section 27 sets out the requirements for grant of the investment fund manager licence or registration.

Under section 27, the Commission will not approve a licence or register an investment fund manager unless-

- (a) it is satisfied that the applicant will be able to meet the conditions of this Part;
- (b) the applicant has the prescribed capital, own funds and professional indemnity insurance in accordance with section 29;
- (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 Currency Union.

The general duties of an investment fund manager are listed in section 28 of the Act. The requirements for minimum paid-up capital and professional indemnity insurance are provided in section 29 of the Act.

Division III (section 30 to 37) deals with the licensing requirements for an Investment Fund Administrator. By virtue of section 30, an investment fund is to appoint an investment fund administrator prior to commencement of operations. The name of the investment fund administrator is restricted under section 31, which provides that no person shall carry on or attempt to carry the business of investment fund administrator with the word fund administrator in its title, unless exempted or otherwise authorized to do so by the Commission.

Section 32 prohibits a person from acting as an investment fund administrator unless licensed by the Commission and is established and operating in accordance with the laws of a prescribed jurisdiction.

In section 33, the Commission will not license or register an investment fund administrator 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 Currency Union 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.

The obligations of an investment fund administrator are outlined under section 34 of the Act.

Section 35 provides for the appointment of the Chief Executive Officer and the Compliance Officer of an investment fund administrator.

Section 36 of the Act gives the Commission the discretion to require an investment fund administrator to increase its paid-up capital and maintain professional indemnity insurance.

Section 37 requires an investment fund administrator to appoint a compliance officer to ensure that it complies with all applicable laws. The compliance officer must be approved by the Commission.

Division IV (Sections 38 to 42) deals with matters related to the custodian of an investment fund. Under section 38, an investment fund shall appoint one or more persons as custodians of the assets

of the investment fund. A custodian must first be licensed or registered under the laws of a member territory or foreign jurisdiction before such appointment.

Sections 40 requires that a custodian must be independent of the investment fund administrator, the investment fund manager and the operator of the fund, unless exempted. The obligation of segregation of the investment fund's assets from the custodian's assets is set out in section 41 of the Act.

PART III

GENERAL REGULATORY MATTERS

Part III of the Act addresses a number of general matters with respect to an investment fund. Section 43 provides the procedure for the submission of applications for the licensing or registration of an investment fund, where the applicant has satisfied the necessary requirements. The section also provides that the licence or registration will remain effective unless revoked, expires, the condition for continuing the licence, or registration have not been satisfied or the Commission accepts a surrender of the licence.

Section 44 provides that the Commission may impose, vary or revoke a condition of a licence or registration and section 45 provides for the renewal process of a licence or registration.

Under section 46, the Commission shall maintain a service-provider register to show details of the service-providers that are licensed, registered or exempted under the Act.

Section 47 provides that it is an offence for anyone to carry on business under Parts I or II without holding the required licence or registration from the Commission.

PART IV

ADMINISTRATIVE AND FINANCIAL MATTERS

Section 48 provides that an investment fund service-provider shall undertake due-diligence on an investment fund before providing services to that fund.

Section 49 provides that an investment fund service-provider shall not appoint or charge a third party provider to assist with the provision of services for which a service-provider licence has been granted, unless prior written approval is obtained from the Commission, the third party complies with any conditions given upon approval, and any applicable fee has been paid.

Under section 50, where a service provider knows or has reason to believe that an investment fund for which it provides services, or an operator, any service provider, auditor or promoter of such investment fund is likely to become unable to meet its obligations as they fall due, is carrying on business otherwise than in accordance with this Act or any other law or is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund, the service-provider shall immediately give the Commission written notice of its knowledge or belief giving its reason for that knowledge or belief.

This Part also provides for various administration, accounting, reporting and auditing of regulated persons in sections 51 to 53 of the Act.

Every investment fund service-provider is required to have its financial statements audited annually by an auditor under section 51 of the Act.

Under section 52, an approved auditor is obliged to report to the Commission if during the performance of the audit, he becomes aware of any matter which in his opinion adversely affects the financial position of the entity being audited to a certain extent or he discovers evidence of a contravention of such provisions as may be prescribed.

Section 53 authorises the Commission to require the audit of the accounts of a regulated person at any time.

Section 54 of the Act provides for financial reporting by a regulated person. Section 55 requires a regulated person to comply with any direction given to it by the Commission. The approval of the Commission is required for any change in appointments or information under section 56 of the Act.

Section 57 provides that initial requirements for licensing or registration as well as any other requirements imposed by the Act or the Commission from time to time, must continue to be met by a licensee or registrant during the validity period of a licence or registration.

Section 58 provides that the Commission is to administer the ECCU Investment Funds Act.

PART V

MISCELLANEOUS PROVISIONS

Section 59 provides for general offences. Under section 59, a person who contravenes any provision of the Act or the regulations made under the Act, commits an offence and liable on conviction to a fine of up to one million dollars or to imprisonment for up to 10 years or both.

Sections 60 and 61 of the Act makes provisions for regulations by the Minister of Finance and the rule-making authority of the Commission. Section 61 of the Act outlines the procedures for winding up and termination.

Section 66 provide s for transitional provisions.

Hon. Gaston Browne
*Prime Minister and
Minister of Finance*