

**CAYMAN ISLANDS**



# **PRIVATE FUNDS ACT**

**(2021 Revision)**

**Supplement No. 4 published with Legislation Gazette No.16 dated 19th February, 2021.**

## PUBLISHING DETAILS

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Law 1 of 2020 consolidated with Laws 30 of 2020 and 56 of 2020.

Revised under the authority of the *Law Revision Act (2020 Revision)*.

Originally enacted —

Law 1 of 2020-31st January, 2020

Law 30 of 2020-1st July, 2020

Law 56 of 2020-7th December, 2020.

Consolidated and revised this 31st day of December, 2020.



**CAYMAN ISLANDS****PRIVATE FUNDS ACT****Arrangement of Sections**

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## CAYMAN ISLANDS



# PRIVATE FUNDS ACT

(2021 Revision)

## PART 1 - PRELIMINARY

### Short title

1. This Act may be cited as the *Private Funds Act (2021 Revision)*.

### Interpretation

2. In this Act —

“**accountant**” means a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland or the Chartered Professional Accountants of Canada or the American Institute of Certified Public Accountants or by an institute of accountants in a non-high risk jurisdiction, and is a current member in good standing of one of those institutes;

“**administrator**” means a person established in the Islands or a non-high risk jurisdiction who —

- (a) is either —
  - (i) a licensed mutual funds administrator under section 12 of the *Mutual Funds Act (2021 Revision)*; or
  - (ii) authorised or otherwise permitted to carry out administration activities in relation to a private fund in any non-high risk jurisdiction; and

(b) does not have a control relationship with the private fund’s manager or operator;

“**alternative investment vehicle**” has the meaning prescribed;

“**auditor**” means a person who —

- (a) is an accountant; or
- (b) has another accounting qualification approved by the Authority; and
- (c) does not have a control relationship with the private fund’s manager or operator;

“**Authority**” means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Act (2020 Revision)* and includes any employee of the Authority acting under the Authority’s authorisation;

“**company**” means a body corporate constituted under the laws of the Islands or of any other jurisdiction;

“**controller**” means a person who, in relation to another person (the “controlled entity”), holds, directly or indirectly, more than fifty percent of the economic interests or voting power in the controlled entity;

“**control relationship**” means the relationship that exists between a person (“A”) and the private fund’s manager or operator if —

- (a) A is a controller of the private fund’s manager or operator;
- (b) the private fund’s manager or operator is a controller of A; or
- (c) a controller of A is also a controller of the private fund’s manager or operator;

“**custodial fund assets**” means the assets of a private fund that are capable of being physically delivered or capable of registration in an account opened in a custodian’s books in the name, or for the account, of the private fund;

“**custodian**” means a person established in the Islands or a non-high risk jurisdiction who —

- (a) is authorised or otherwise permitted in the Islands or any non-high risk jurisdiction to provide custody services; and
- (b) does not have a control relationship with the private fund’s manager or operator;

“**debt**” means an obligation of a company, unit trust or partnership to repay principal either without interest or together with interest calculated at either a fixed, floating or variable rate and whether or not together with any other entitlement, but payable in the event of the liquidation, termination or dissolution of the company, unit trust or partnership otherwise than in respect of, and, unless otherwise provided for by its terms, in priority to any payment in respect of a share, a trust unit or a partnership interest of that company, unit trust or partnership;



“**economic interests**” means —

- (a) in relation to an entity with a share capital, allotted or issued shares;
- (b) in relation to an entity with capital but no share capital, rights to share in the capital of the entity;
- (c) in relation to an entity without capital, interests —
  - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the entity; or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the entity in the event of a winding up;

“**exempted limited partnership**” means an exempted limited partnership registered under section 9(1) of the *Exempted Limited Partnership Act (2021 Revision)*;

“**general partner**” means —

- (a) in respect of a limited partnership registered under the *Partnership Act (2013 Revision)*, a general partner as defined in that Act;
- (b) in respect of an exempted limited partnership, a general partner as defined in that Act; or
- (c) in respect of a partnership constituted under the laws of a jurisdiction other than the Islands, a person who would be a general partner of the partnership if the partnership were constituted under the laws of the Islands;

“**high net worth person**” has the meaning assigned to that expression in the *Securities Investment Business Act (2020 Revision)*;

“**independent third party**” means a person established in the Islands or a non-high risk jurisdiction who does not have a control relationship with the private fund’s manager or operator;

“**International Financial Reporting Standards**” means the accounting and reporting standards developed and issued by the International Accounting Standards Board;

“**International Securities Identification Number**” means a unique code structured in accordance with ISO 6166 and issued by a country’s national numbering agency, or equivalent, to identify a given security that is traded and settled internationally;

“**investment interest**” means a share, LLC interest, trust unit or partnership interest that —

- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
- (b) is not redeemable or repurchasable at the option of the investor, but does not include debt, or alternative financial instruments as prescribed under the *Banks and Trust Companies Law (2021 Revision)*;

“**investor**”, in respect of a private fund, means the legal holder of record of an investment interest in the private fund but does not include a promoter, operator or proprietary investor;

“**limited liability company**” means a limited liability company registered under the *Limited Liability Companies Act (2021 Revision)*;

“**limited liability partnership**” means a limited liability partnership registered under the *Limited Liability Partnership Act (2021 Revision)*;

“**LLC interest**” has the meaning assigned to that expression in section 2 of the *Limited Liability Companies Act (2021 Revision)*;

“**manager**” means a person who is not an operator of a private fund and who is responsible for the management of some or all of the investments held for or within a private fund;

“**marketing materials**” means any documents on the basis of which investors are solicited to purchase investment interests in a private fund, including but not limited to offering documents;

“**non-fund arrangements**” means the arrangements specified in the Schedule;

“**non-high risk jurisdiction**” means any jurisdiction that is not on the list of high risk jurisdictions issued by the Financial Action Task Force;

“**operator**”, in respect of a private fund, means —

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

“**other fund assets**” means the assets of a private fund that are not custodial fund assets;

“**partnership**” means —

- (a) a limited partnership registered under the *Partnership Act (2013 Revision)*;
- (b) an exempted limited partnership;
- (c) a limited liability partnership; or
- (d) a partnership constituted under the laws of a jurisdiction other than the Islands;

“**private fund**” means a company, unit trust or partnership that offers or issues or has issued investment interests, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity’s acquisition, holding, management or disposal of investments, where —





- (a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and
- (b) the investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly, but does not include —
  - (i) a person licensed under the *Banks and Trust Companies Act (2021 Revision)* or the *Insurance Act, 2010 [Law 32 of 2010]*;
  - (ii) a person registered under the *Building Societies Act (2020 Revision)* or the *Friendly Societies Act (1998 Revision)*; or
  - (iii) any non-fund arrangements;<sup>1</sup>

“**professional adviser**” means an attorney-at-law or an accountant;

“**promoter**”, in respect of a private fund or proposed private fund, means any person whether within or outside the Islands who causes the preparation or distribution of marketing materials in respect of the private fund or proposed private fund but does not include a professional adviser acting for or on behalf of such a person;

“**proprietary investor**”, in respect of a private fund, means —

- (a) a person who is a current or past founder, principal, owner or stakeholder of a private fund;
- (b) any person who is providing, or in the same group as or affiliated with the person providing, directly or indirectly, the investment management or investment advisory services with respect to a private fund; or
- (c) a person who is a current or past founder, principal, owner or stakeholder of a person in paragraph (b);

“**public in the Islands**” does not include —

- (a) a sophisticated person;
- (b) a high net worth person;
- (c) a person specified in paragraph 3 or 4 of Schedule 4 to the *Securities Investment Business Act (2020 Revision)*;
- (d) an exempted or ordinary non-resident company registered under the *Companies Act (2021 Revision)*, or a foreign company registered under Part IX of that Act, or a limited liability company registered under the *Limited Liability Companies Act (2021 Revision)* or any such company acting as general partner of an exempted limited partnership, or any director or officer of the same acting in such capacity;
- (e) an exempted limited partnership;
- (f) a limited liability partnership; or
- (g) the trustee of any trust registered or capable of registration under section 74 of the *Trusts Act (2021 Revision)* acting in such capacity;

“**recognised overseas regulatory authority**” has the meaning assigned to that expression in section 2 of the *Securities Investment Business Act (2020 Revision)*;

“**record**” means any form in which information may be stored;

“**registered office**” means —

- (a) in respect of a company incorporated under the *Companies Act (2021 Revision)* (including an existing company as defined in that Act), the registered office of the company for the purposes of that Act;
- (b) in respect of a limited liability company, the registered office of the company for the purposes of that Act;
- (c) in the case of a foreign company as defined by section 183 of the *Companies Act (2021 Revision)*, the person or persons authorised on behalf of the company in accordance with section 184(1)(e) of that Act;
- (d) in the case of an exempted limited partnership, the registered office of that partnership for the purposes of that Act;
- (e) in the case of a limited liability partnership, the registered office of that partnership for the purposes of that Act; or
- (f) in the case of an exempted trust registered under the *Trusts Act (2021 Revision)*, the place shown in the file maintained by the Registrar of Trusts as the address of the trustees of the trust;

“**registered restricted scope private fund**” means a restricted scope private fund that has been registered by the Authority under section 7(2);

“**regulated EU Connected Fund**” has the meaning assigned to that expression in the *Mutual Funds Act (2021 Revision)*;

“**regulated mutual fund**” has the meaning assigned to that expression in the *Mutual Funds Act (2021 Revision)*;

“**regulatory law**” has the meaning assigned to that expression in the *Monetary Authority Act (2020 Revision)*;

“**restricted scope private fund**” has the meaning prescribed;

“**sophisticated person**” has the meaning assigned to that expression in the *Securities Investment Business Act (2020 Revision)*;

“**stakeholder**” means an employee or consultant who is issued an investment interest either —

- (a) by way of incentive compensation for no payment or nominal payment or capital commitment to the private fund; or
- (b) for which their payment or capital commitment in respect of such investment interest is greater than eighty thousand dollars or its equivalent;

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



“**unit trust**” means a trust established by a trustee that, for valuable consideration, issues trust units in profits or gains arising from the acquisition holding, management or disposal of investments by the trustee of the trust, the proper law of which is the law of the Islands or the law of any other jurisdiction.

### **Application**

3. (1) Subject to subsections (2) and (3), this Act applies to a private fund that is carrying on business or attempting to carry on business in or from the Islands but does not apply to a regulated mutual fund or a regulated EU Connected Fund.
- (2) Part 3 shall not apply to a private fund until its receipt of capital contributions from investors for the purposes of investments.
- (3) Where International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction permit consolidated or combined financial account reporting and a private fund chooses to report consolidated or combined financial statements with an alternative investment vehicle, sections 13, 16, 17, 18 and 19 shall not apply to such alternative investment vehicle.

### **Compliance with this Act**

4. (1) An operator of a private fund shall be responsible for compliance by that private fund with this Act.
- (2) An operator of a private fund who contravenes subsection (1) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

## **PART 2 - REGISTRATION**

### **Requirement for registration**

5. (1) Subject to subsection (3) and (6), a private fund shall not carry on or attempt to carry on business in or from the Islands unless —
- (a) it has submitted an application for registration to the Authority in accordance with section 6 within twenty-one days after its acceptance of capital commitments from investors for the purposes of investments;
- (b) the prescribed details in respect to the private fund are filed with the Authority;
- (c) the prescribed annual registration fee under section 10 has been paid in respect of the private fund;
- (d) it complies with any conditions of its registration imposed under section 7; and

- (e) it complies with the provisions of this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.
- (3) A private fund may carry on or attempt to carry on business in or from the Islands without complying with subsection (1) if it is a private fund, not incorporated or established in the Islands, which makes an invitation to the public in the Islands to subscribe for its investment interests by or through a person who is the holder of a licence under the *Securities Investment Business Act (2020 Revision)*, for a regulated activity specified by the Authority for the purposes of this subsection and —
- (a) those interests are listed on a stock exchange (including an over-the-counter market) specified by the Authority by notice in the Gazette; or
- (b) the private fund is regulated by a recognised overseas regulatory authority, approved by the Authority for the purposes of this subsection.
- (4) For the purposes of subsection (1) and section 3(1), a private fund is carrying on or attempting to carry on business in or from the Islands if it is —
- (a) incorporated or established in the Islands; or
- (b) incorporated or established outside the Islands and makes an invitation to the public in the Islands to subscribe for its investment interests;
- and it is in receipt of capital contributions from investors for the purposes of investments.
- (5) Subject to subsection (6), a private fund, or any person authorised to act on behalf of a private fund, may engage in oral or written communications and enter into any agreements with high net worth persons or sophisticated persons who may have an interest in subscribing for or purchasing investment interests in the private fund, prior to the filing of an application pursuant to section 6 with respect to such private fund with the Authority.
- (6) A private fund required to be registered under subsection (1) shall not accept capital contributions from investors in respect of investments until it is registered by the Authority in accordance with section 7.

### **Application to be registered**

6. (1) A private fund may apply to the Authority in the prescribed manner to be registered under this Act.
- (2) A restricted scope private fund that applies for registration under subsection (1) may elect as part of its registration application to be registered as a registered restricted scope private fund.



**Power to register**

7. (1) Subject to subsection (2), where an application is made under section 6, the Authority, after considering the application, may register the private fund in the manner and subject to such conditions that the Authority considers appropriate.
- (2) Where an application is made under section 6 by a restricted scope private fund that has elected to be registered as a restricted scope private fund in accordance with section 6(2), the Authority may register the restricted scope private fund as a registered restricted scope private fund.
- (3) The Authority shall communicate its decision to register or refuse to register a private fund under this section as soon as reasonably practicable after receiving the application.

**Risk-based supervision of private fund**

8. A private fund may be categorised by the Authority upon, or at any time following, registration based on an assessment of risk in accordance with any rules, statements of principle and guidance issued by the Authority under section 34 of *the Monetary Authority Act (2020 Revision)* and shall be subject to ongoing risk-based monitoring.

**Name of private fund restricted**

9. (1) The Authority may refuse to register a private fund with a name that —
  - (a) is identical with that of any company, firm, business or other entity, whether or not within the Islands, or so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive;
  - (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within the Islands or elsewhere; or
  - (c) is likely to suggest, falsely, that the private fund has a special status in relation to or derived from the Government or the Crown.
- (2) If, in the Authority's opinion, a private fund is carrying on, or attempting to carry on business in or from the Islands in a name that the Authority would have refused by virtue of subsection (1), the Authority may direct the private fund to change its name to a name approved by the Authority.
- (3) A person who fails to comply with a direction given under subsection (2) commits an offence and is liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the private fund fails to comply with the direction.

**Private fund to pay annual registration fee**

10. (1) A private fund shall pay to the general revenue of the Islands the prescribed annual registration fee on or before 15th January in each year.

- (2) If the annual registration fee referred to in subsection (1) is not paid on or before 15th January in each year, there is payable an additional fee equal to one twelfth of that annual registration fee for each month or part of a month during which the annual registration fee and any additional fee imposed by virtue of this subsection remains unpaid.
- (3) The Authority may, for good cause, waive any additional fee imposed by virtue of subsection (2).
- (4) Without prejudice to subsection (1), (2) or (3), if an annual registration fee referred to in subsection (1) is not paid on or before 15th January in each year, the unpaid annual registration fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.

### **Authority to be informed of changes**

11. (1) Where a private fund —
  - (a) makes any change, or becomes aware of any change, that materially affects any information submitted to the Authority under section 6 or otherwise under this Act; or
  - (b) changes its registered office or the location of its principal office, the private fund shall within twenty-one days after making the change or becoming aware of the change, as the case may be, file with the Authority the details of the change.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

### **Misrepresentation as a private fund**

12. (1) A person other than a private fund shall not represent in any way that the person is carrying on or attempting to carry on business in or from the Islands as a private fund.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

## **PART 3 - OPERATING CONDITIONS FOR PRIVATE FUNDS**

### **Annual audit of private fund**

13. (1) A private fund shall have its accounts audited annually by an auditor approved by the Authority.
- (2) The accounts of a private fund shall be prepared in accordance with the International Financial Reporting Standards or the generally accepted



accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction.

- (3) The annual audit under subsection (1) shall be carried out in accordance with the International Standards on Auditing or the generally accepted auditing standards of the United States of America, Japan, Switzerland or a non-high risk jurisdiction.
- (4) A private fund shall, in such manner as the Authority may from time to time direct, send its audited accounts in respect of each financial year of the private fund to the Authority within six months of the end of that financial year or within such extension of that period as the Authority may allow.
- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine of twenty thousand dollars.
- (6) The Authority may, in relation to the whole or part of any financial year of a private fund, exempt a private fund from the requirements of this section either absolutely or subject to such conditions as the Authority may deem appropriate.

### **Annual return**

- 14.** A private fund shall, in respect of each financial year of the private fund, submit an annual return in the prescribed form.

### **Retention of records**

- 15.** A private fund shall maintain its records in an accessible manner and in accordance with rules, statements of principle and guidance issued by the Authority under section 34 of the *Monetary Authority Act (2020 Revision)*.

### **Valuation**

- 16.** (1) A private fund shall have appropriate and consistent procedures for the purposes of proper valuations of its assets, which shall ensure that valuations are conducted in accordance with the requirements in this Act.
- (2) Subject to subsection (6), valuations of the assets of a private fund shall be conducted in accordance with subsection (1).
- (3) Valuations of the assets of a private fund shall be carried out at a frequency that is appropriate to the assets held by the private fund and, in any case, on at least an annual basis.
- (4) Notwithstanding subsection (1), valuations of the assets of a private fund shall be performed by —
  - (a) an independent third party that is appropriately professionally qualified to conduct valuations in a non-high risk jurisdiction;
  - (b) the manager or operator of the private fund, or a person who has a control relationship with the manager of the private fund, provided that —

- (i) the valuation function is independent from the portfolio management function; or
  - (ii) potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the private fund;<sup>2</sup> or
  - (c) an administrator not falling under paragraph (a) who is appointed by the private fund.
- (5) Where the valuation of the assets of a private fund is not performed by an independent third party in accordance with subsection (4)(a), the Authority may require the private fund to have its valuations verified by an auditor or independent third party.
- (6) Valuation of the assets of a private fund shall be carried out in accordance with any requirements in relation to valuations, including in respect of the degree and regularity of valuations appropriate for a private fund, set out in rules, statements of principle and guidance issued by the Authority under section 34 of the *Monetary Authority Act (2020 Revision)*.
- (7) The Authority may exempt a private fund from the requirements of this section either absolutely or subject to such conditions as the Authority may deem appropriate.

### Safekeeping of fund assets

17. (1) Subject to subsection (3), a private fund shall appoint a custodian to perform the duties set out in subsection (2).
- (2) The custodian shall —
- (a) hold in custody, in segregated accounts opened in the name, or for the account, of the private fund, the custodial fund assets; and
  - (b) verify, based on information provided by the private fund and available external information, that the private fund holds title to any other fund assets and maintain a record of those other fund assets.
- (3) A private fund shall not be required to appoint a custodian if it has notified the Authority and it is neither practical nor proportionate to do so, having regard to the nature of the private fund and the type of assets it holds.
- (4) Where a private fund notifies the Authority of its intention not to appoint a custodian pursuant to subsection (3), the private fund shall appoint one of the following persons to carry out the title verification described in subsection (2)(b) —
- (a) an administrator or another independent third party; or
  - (b) the manager or operator, or a person with a control relationship with the manager of the private fund, provided that —





- (i) the title verification function is independent from the portfolio management function; or
  - (ii) potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the private fund.<sup>3</sup>
- (5) Where the title verification described in subsection (2)(b) is not performed by a custodian, an administrator or another independent third party appointed in accordance with subsections (1) or (4)(a), the Authority may require the private fund to have its title verification verified by an appropriately professionally qualified independent third party.

### Cash monitoring

- 18.** (1) A private fund shall appoint one of the following persons to perform the cash monitoring duties set out in subsection (2) —
- (a) an administrator, custodian or another independent third party; or
  - (b) the manager or operator, or a person who has a control relationship with the manager of the private fund, provided that —
    - (i) the cash monitoring function is independent from the portfolio management function; or
    - (ii) potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the private fund.<sup>4</sup>
- (2) The person appointed under subsection (1) shall —
- (a) monitor the cash flows of the private fund;
  - (b) ensure that all cash of the private fund has been booked in cash accounts opened in the name, or for the account, of the private fund; and
  - (c) ensure that all payments made by investors to the private fund in respect of investment interests have been received.
- (3) Where the cash monitoring duties described in subsection (2) are not performed by an administrator, a custodian or another independent third party in accordance with subsection (1)(a), the Authority may require the private fund to have its cash monitoring verified by an independent third party.

### Identification of securities

- 19.** (1) A private fund that regularly trades securities or holds them on a consistent basis shall maintain a record of the identification codes of the securities it trades and holds in accordance with subsection (2) and shall make this record available to the Authority upon request.
- (2) In relation to securities, the relevant identification codes for the purposes of subsection (1) shall include —
- (a) the International Securities Identification Number; or

- (b) if the International Securities Identification Number is not available, an alternative identification code that conforms to widely adopted international standards; or
- (c) if an alternative identification code that conforms to widely adopted international standards is not available, a regional identification code or the legal entity identifier of the issuer.

## **PART 4 - SUPERVISION AND ENFORCEMENT**

### **Special measures**

- 20.** (1) The Authority may, where it considers that a private fund has breached or is at risk of breaching any of its obligations under this Act, enforce special measures against that private fund, which may include instructing the private fund to —
- (a) have its accounts audited by an auditor approved by the Authority and to submit them to the Authority within such time as the Authority specifies; or
  - (b) provide a one-off or periodic report to the Authority on certain matters requested by the Authority in connection with the private fund in such form and within such time as the Authority specifies.
- (2) A person who fails to comply with an instruction by the Authority under subsection (1) commits an offence and is liable on conviction to a fine of ten thousand dollars plus five hundred dollars in respect of each day after the specified time during which the private fund failed to comply with the instruction.

### **Information required by the Authority**

- 21.** (1) The Authority may request a private fund to provide the Authority with such documents, statements or other information in respect of a private fund as the Authority may reasonably require in connection with the Authority's functions under this Act.
- (2) A person who fails to comply with a request by the Authority under subsection (1) commits an offence and is liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the private fund fails to comply with the direction.



**Authority may require information in respect of an alleged breach of section 5**

- 22.** (1) If the Authority has reasonable grounds for believing a person is carrying on business or attempting to carry on business as a private fund in contravention of section 5, the Authority may instruct that person to give to the Authority such information or explanation as the Authority may reasonably require to enable the Authority to carry out its duty under this Act.
- (2) A person giving information or an explanation for the purpose of subsection (1) shall not give the Authority information or an explanation that the person knows or should reasonably know is false or misleading.
- (3) A person who fails to comply with an instruction given under subsection (1) or contravenes subsection (2) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

**Authority may take action in respect of unregistered private funds**

- 23.** If it appears to the Authority that a private fund is carrying on or attempting to carry on business in or from the Islands and is doing so in breach of section 5, the Authority may apply to the Grand Court for such orders as it thinks fit to preserve the assets of the investors in the private fund and the Grand Court may grant such orders.

**PART 5 - DUTIES AND POWERS OF THE AUTHORITY****Authority to administer this Act**

- 24.** (1) It is the duty of the Authority to administer this Act and in particular to examine and make determinations with respect to an application for registration of a private fund under section 7.
- (2) The Authority shall —
- (a) maintain a general review of business of a private fund in the Islands and submit an annual report in respect of the review of private fund business to the Cabinet;
- (b) be responsible for supervision and enforcement in respect of persons to whom this Act applies and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of this Act; and
- (c) whenever the Authority considers it necessary, examine, by way of scrutiny of regular returns, on-site inspections or auditors' reports, or in such other manner as the Authority may determine, the affairs or business of any private fund for the purpose of —
- (i) a general review under paragraph (a); or

- (ii) satisfying itself that this Act and any regulations made under this Act or under the *Proceeds of Crime Act (2020 Revision)* are being complied with.
- (3) The Authority may in writing authorise any other person to assist it in the exercise and performance of its powers and functions under this Act.

### **Powers of Authority in respect of a private fund**

- 25.** (1) The Authority may take all or any of the actions specified in subsection (2) if it is satisfied that —
- (a) a private fund is or is likely to become unable to meet its obligations as they fall due;
  - (b) a private fund is carrying on business fraudulently or otherwise in a manner detrimental to the public interest or to the interests of its investors or its creditors;
  - (c) a private fund is carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
  - (d) a private fund is carrying on or attempting to carry on business without complying with —
    - (i) any condition of its registration imposed under this Act; or
    - (ii) any other provision of this Act or of the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (e) the direction and management of a private fund has not been conducted in a fit and proper manner; or
  - (f) a person holding a position as an operator, manager or officer of a private fund is not a fit and proper person to hold the respective position.
- (2) For the purposes of subsection (1), the actions the Authority may take in respect of a private fund are to —
- (a) cancel any registration under section 7 in respect of the private fund;
  - (b) impose conditions or further conditions on any private fund and to amend or revoke those conditions;
  - (c) require the substitution of any promoter or operator of the private fund;
  - (d) appoint a person to advise the private fund on the proper conduct of its affairs; and
  - (e) appoint a person to assume control of the affairs of the private fund.
- (3) If the Authority takes action under subsection (2), it may —
- (a) apply to the Grand Court for an order to take such other action as it considers necessary to protect the interests of investors in, and creditors of, the private fund; and



- (b) subsequently, take any other action provided for under subsection (2).
- (4) Where it considers it necessary or appropriate to do so, and if it is practical to do so, the Authority shall inform the investors of a private fund of any action it is taking or intending to take in respect of the private fund under this section.
- (5) A person appointed under subsection (2)(d) or (e) is appointed at the expense of the private fund, and any expense incurred by the Authority by virtue of the appointment is an amount due to the Authority and payable by the private fund.
- (6) A person appointed under subsection (2)(e) has all the powers necessary, to the exclusion of any operator, to administer the affairs of the private fund in the best interests of the investors and creditors of the private fund, and to appoint delegates to assist in that task.
- (7) The powers referred to in subsection (6) include the power to terminate the business of the private fund.
- (8) A person appointed in respect of a private fund under subsection (2)(d) or (e) shall —
- (a) when requested to do so by the Authority, supply the Authority with such information in respect of the private fund as may be specified by the Authority;
  - (b) within three months of the person's appointment, or within such other period as the Authority may specify, prepare and supply to the Authority a report on the affairs of the private fund making, where appropriate, recommendations in respect of the private fund; and
  - (c) if the person's appointment is not terminated after supplying the report referred to in paragraph (b), supply to the Authority such other information, reports and recommendations as the Authority specifies.
- (9) If a person appointed under subsection (2)(d) or (e) fails to comply with an obligation under subsection (8) or, in the Authority's opinion, is not carrying out the person's obligations in respect of the private fund satisfactorily, the Authority may revoke the appointment and appoint another person under subsection (2)(d) or (e).
- (10) On receipt of any information or a report under subsection (8) in respect of a private fund, the Authority may —
- (a) require the private fund to reorganise its affairs in a manner specified by the Authority;
  - (b) if the private fund is a company incorporated under the *Companies Act (2021 Revision)*, apply to the Grand Court under section 94 of the *Companies Act (2021 Revision)* for the company to be wound up by the Grand Court in accordance with that Act;

- (c) if the private fund is a foreign company as defined by section 183 of the *Companies Act (2021 Revision)*, apply to the Grand Court for an order to wind up the foreign company;
- (d) if the private fund is a limited liability company, apply to the Grand Court under Part 8 of the *Limited Liability Companies Act (2021 Revision)* for the company to be wound up by the Grand Court in accordance with that Act;
- (e) if the private fund is a unit trust governed by the laws of the Islands, apply to the Grand Court for an order directing the trustee to wind up the private fund; or
- (f) if the private fund is a partnership governed by the laws of the Islands, apply to the Grand Court for an order to dissolve or wind up the partnership,

and may take such action in respect of the appointment or continued appointment of the person appointed under subsection (2)(d) or (e) as it considers appropriate.

- (11) If the Authority takes action under subsection (10), it may apply to the Grand Court for an order to take such other action as it considers necessary to protect the interests of investors and creditors of the private fund, and take any other action provided for in that subsection or subsection (2).
- (12) Where the Grand Court makes an order on an application made in accordance with subsection (10)(e), the Grand Court may grant the trustee such indemnity as it considers appropriate out of the assets of the private fund.
- (13) Without prejudice to any other power of the Authority, the Authority may, at any time, cancel any registration under section 7 in force in respect of a private fund if the Authority is satisfied that the private fund has ceased to carry on or to attempt to carry on business as a private fund or is winding up or is dissolved.
- (14) Nothing in this section shall be construed as limiting any power conferred on the Authority by section 24 or by any other provision of this Act or the regulations made under this Act.
- (15) In determining for the purposes of this Act whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's —
  - (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.



**Powers of Authority, etc., to search in accordance with search warrant**

- 26.** (1) If a magistrate is satisfied on an application made by the Authority or a police officer of the rank of Inspector or above that there are reasonable grounds for suspecting that an offence under this Act has been, is being or is about to be committed in certain premises, the magistrate may issue a warrant authorising the Authority or a police officer and such other persons as may reasonably be needed to assist the Authority or the police officer —
- (a) to enter those premises, using force if necessary;
  - (b) to search the premises and any person in the premises;
  - (c) if it is necessary to do so, to break open and search anything on the premises in which a record may be stored or concealed;
  - (d) to take possession of, and secure against interference any record that appears to indicate that any offence under this Act has been, is being or is about to be committed; and
  - (e) to inspect and take copies of any record on the premises that appears to indicate that an offence under this Act has been, is being or is about to be committed, or, if this is not practical, to take away or deliver any such records to the Authority.
- (2) If a record is taken away by, or delivered to the Authority in accordance with subsection (1)(e), the Authority may retain it for as long as is necessary to allow it to be inspected and for copies or abstracts to be taken and it is then to be returned to the premises from which it was taken.
- (3) While a record is in the possession of the Authority in accordance with subsection (2), the Authority shall allow a person who would be entitled to inspect it if it were not in the possession of the Authority to inspect and take copies and abstracts of it at any reasonable time.
- (4) If a person has a lien on a record, nothing done under this section in relation to the record prejudices the lien.
- (5) Nothing in this section authorises a person to search a person of the opposite sex.
- (6) In this section, “**premises**” includes —
- (a) land, whether or not covered by buildings;
  - (b) any structure, whether or not attached to land; and
  - (c) a means of transport.

**Authority shall not be hindered**

- 27.** A person shall not hinder the Authority in the exercise of any of its powers under this Act, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of two hundred thousand dollars.

## PART 6 - MISCELLANEOUS PROVISIONS

### Appeals

28. (1) An appeal lies to the Grand Court from a decision of the Authority to cancel the registration of a private fund under section 25(2).
- (2) An appeal against a decision of the Authority under subsection (1) shall be on motion, and the appellant, within twenty-one days after the day on which the Authority has given its decision, shall serve on the Authority a notice, in writing signed by the appellant, or the appellant's attorney-at-law, of the appellant's intention to appeal and of the general ground of the appeal.
- (3) Notwithstanding subsection (2), a person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Grand Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Grand Court upon hearing of such application may extend the time prescribed by this section as it deems fit.
- (4) Subject to subsection (5), the Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the Grand Court without delay a copy of the decision and all papers relating to the appeal.
- (5) The Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.
- (6) The Clerk of the Grand Court shall set the appeal down for hearing and shall cause notice of the date to be published in such manner as the Grand Court may direct.
- (7) At the hearing of the appeal, the appellant shall, before presenting the case, state all the grounds of appeal on which the appellant intends to rely and shall not, unless by leave of the Grand Court, go into any matters not raised by such statements.
- (8) The Grand Court may adjourn the hearing of an appeal and may, upon the hearing of the appeal, confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Grand Court thereon to the Authority.
- (9) An appeal against a decision of the Authority shall not have the effect of suspending the execution of the decision.

### Obligation of auditor

29. (1) If an auditor, in the course of carrying out an audit of the accounts of a private fund pursuant to section 13(1), obtains information or suspects that the private fund is —
- (a) unable or likely to become unable to meet its obligations as they fall due;





- (b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business otherwise than in compliance with —
  - (i) this Act or any regulations made under this Act;
  - (ii) the *Monetary Authority Act (2020 Revision)*;
  - (iii) the *Anti-Money Laundering Regulations (2020 Revision)*; or
  - (iv) a condition of its registration imposed under this Act,

the auditor shall immediately give the Authority written notice of the information or suspicion and, in the case of suspicion, the reason for that suspicion.

- (2) Without prejudice to subsection (6), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may instruct the private fund to remove and replace its auditor.
- (3) A private fund shall not appoint as an auditor a person removed under subsection (2) unless the Authority is satisfied that the person will in future comply with subsection (1).
- (4) A reference in this section to an auditor carrying out an audit of the accounts of a private fund includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.
- (5) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.
- (6) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a private fund an obligation to do anything that the auditor would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.

### **Exemption from compliance with Trade and Business Licensing Act**

- 30.** A private fund may carry on business without reference to the *Trade and Business Licensing Act (2021 Revision)*.

## Regulations

- 31.** (1) The Cabinet may make regulations —
- (a) prescribing anything by this Act required to be prescribed;
  - (b) prescribing forms to be used under this Act;
  - (c) prescribing any returns to be made under this Act;
  - (d) **Repealed** by section 4 of the *Private Funds (Amendment) Act, 2020 [Law 30 of 2020]*.
  - (e) prescribing any fees payable; and
  - (f) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act and its administration.
- (2) Regulations made under this Act may —
- (a) make different provision in relation to different cases or circumstances;
  - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances; or
  - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary or expedient for the purposes of the Regulations.
- (3) Regulations made under this Act may create an offence punishable by a fine not exceeding twenty thousand dollars.
- (4) Fees prescribed for the purpose of this Act need bear no relationship to the cost of providing any service.

## Amendment of Schedule

- 32.** The Cabinet may, after consultation with the Authority, by Order amend the Schedule.

## Savings, transitional and consequential provisions

- 33.** (1) Notwithstanding section 31, the Cabinet may make regulations to provide for such savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of this Act as are necessary or expedient.
- (2) Regulations made under subsection (1) may be given retrospective operation to a day not earlier than the day that this Act comes into force.



## SCHEDULE

(Sections 2 and 32)

### Non-fund arrangements

The following arrangements, as defined in rules and guidance issued by the Authority under section 34 of the *Monetary Authority Act (2020 Revision)*, constitute non-fund arrangements —

- (a) pension funds;
- (b) securitisation special purpose vehicles;
- (c) contracts of insurance;
- (d) joint ventures;
- (e) proprietary vehicles;
- (f) officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect;
- (g) holding vehicles;
- (h) individual investment management arrangements;
- (i) pure deposit-based schemes;
- (j) arrangements not operated by way of business;
- (k) debt issues and debt issuing vehicles;
- (l) common accounts;
- (m) franchise arrangements;
- (n) timeshare and long-term holiday product schemes;
- (o) schemes involving the issue of certificates representing investments;
- (p) clearing services;
- (q) settlement services;
- (r) funeral plan contracts;
- (s) individual pension accounts;
- (t) structured finance vehicles;
- (u) preferred equity financing vehicles;
- (v) a fund of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette;

- (x) occupational and personal pension schemes;
- (y) sovereign wealth funds;
- (z) single family offices.

**Publication in consolidated and revised form authorised by the Cabinet this 5th day  
of January, 2021.**

**Kim Bullings**  
*Clerk of Cabinet*



## ENDNOTES

### Table of Legislation history:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	30/2020	Private Funds (Amendment) Law, 2020	7-Jul-2020	LG49/2020/s6
3/2020		Private Funds Law, 2020 (Commencement) Order, 2020	7-Feb-2020	LG9/2020/s4
	1/2020	Private Funds Law, 2020	7-Feb-2020	LG9/2020/s1

### Table of Endnote references:

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<sup>1</sup> S. 2	<i>Substituted by Private Funds (Amendment) Act [Law 30 of 2020]</i>
<sup>2</sup> S. 16(4)(b)(ii)	<i>amended by Private Funds (Amendment) Act [Law 30 of 2020]</i>
<sup>3</sup> S. 17(4)(b)(ii)	<i>amended by Private Funds (Amendment) Act [Law 30 of 2020]</i>
<sup>4</sup> S. 18(1)(b)(ii)	<i>amended by Private Funds (Amendment) Act [Law 30 of 2020]</i>





(Price: \$6.40)

