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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	The EU list of non-cooperative jurisdictions for tax purposes <ul style="list-style-type: none">– Bahamas: final legislation and assessment under criterion 2.2= Bahamas: final legislation on collective investment funds and assessment under criterion 2.2= Investment Funds Act, 2019 (Part 5)

117. Uncooperative witness liable for contempt.

On application by the Commission to the court, a person summoned under section 116 is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

- (a) attend;
- (b) give evidence; or
- (c) produce a document in the custody, possession or control of that person.

INSPECTION

118. Compliance inspections for regulated persons.

- (1) At any time, the Commission may conduct an on-site or off-site inspection of the business of a regulated person for the purpose of —
 - (a) determining if the person is complying with —
 - (i) provisions of this Act;
 - (ii) the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*); or
 - (iii) any other law that is administered by the Commission; or
 - (b) providing assistance to an overseas regulatory authority in an investigation or in its supervisory functions or duties.
- (2) The Commission may, in writing, appoint another person to conduct the inspection under subsection (1).
- (3) The Commission may, by notice in writing, require a person subject to an inspection to produce information or documents, or a class of information or documents that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.
- (5) The Commission may during reasonable hours, enter the business premises of a person who is the subject of an inspection under subsection (1), for the purpose of —
 - (a) inspecting and copying information or documents stored in any form on such premises; and
 - (b) removing from the premises any information or documents.

- (6) The Commission may require a person who is the subject of an inspection under subsection (1), to give an explanation of, or further particulars regarding, any information or document produced under subsection (4).
- (7) If a person, acting on behalf of the Commission, enters premises under subsection (5), the person must present proof of his or her authority to do so.
- (8) Any information or document removed under subsection (5) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.

119. Power to require reports.

- (1) The Commission may require a regulated person to provide the Commission with a report, in such form as may be specified in the notice, by the person's auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the regulated person to provide information under section 118.
- (2) The report referred to in subsection (1) shall be prepared at the expense of the regulated person.
- (3) The person appointed by a regulated person to make the report required under subsection (1) shall immediately give written notice to the Commission of any fact or matter of which that person becomes aware which indicates —
 - (a) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the regulated person; and
 - (b) that the matters are likely to be of material significance for the exercise, in relation to such person, of the Commission's functions under this Act.
- (4) The person appointed to make a report required under this section must be a person approved by the Commission.

120. Compliance inspection of a party related to an investment fund.

- (1) The Commission may inspect the business of a party related to an investment fund, for the purpose of —
 - (a) determining if the person is complying with —
 - (i) investment funds laws;
 - (ii) the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*); or
 - (iii) any other law that is administered by the Commission; or

- (b) providing assistance to an overseas regulatory authority in an investigation or in its supervisory functions or duties.
- (2) For the purpose of subsection (1), the Commission may, in writing, appoint another person to conduct the inspection.
- (3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents, that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

121. General inspection matters.

- (1) After the conclusion of an inspection of a regulated person under section 118 or party related to an investment fund under section 120, a report shall be prepared setting out the findings of that inspection.
- (2) The Commission shall consider and make recommendations on any information or report prepared under this Sub Part.
- (3) The Commission shall assess charges to recover the cost of any inspection performed under this Sub Part.
- (4) Upon application, the Commission may grant an exemption regarding the payment of cost where the Commission considers it appropriate.

122. Participation of other regulatory authorities in inspections under this Part.

- (1) Subject to subsection (2), the Commission may, upon the request of a domestic regulatory authority or an overseas regulatory authority, permit the domestic regulatory authority or an overseas regulatory authority to take part in a compliance inspection undertaken by the Commission.
- (2) The Commission shall not permit an overseas regulatory authority to take part in a compliance inspection under subsection (1) unless it is of the opinion that the participation of the overseas regulatory authority is reasonably required —
 - (a) for the effective supervision of a regulated person; or
 - (b) for the purposes of the regulatory functions of the overseas regulatory authority.
- (3) The Commission may, in deciding whether to permit an overseas regulatory authority to take part in a compliance inspection under subsection (1), take into account, in particular, whether the overseas regulatory authority is subject to adequate legal restrictions on further

disclosure and whether it is likely, without the written permission of the Commission —

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in supervision; or
 - (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.
- (4) For the purposes of this section, “overseas regulatory authority” includes an authority in a foreign jurisdiction that exercises regulatory or supervisory functions over entities carrying on banking, insurance, securities, investment funds or other financial services business.

PART V - GENERAL REGULATORY AUTHORITY OF THE COMMISSION

123. Authority to access records and to request information.

- (1) The Commission shall be entitled at all reasonable times to exercise its authority to have access to or to request the books, records or any information of or from the regulated person or party related to the investment fund under this Act for the purpose of satisfying itself that —
 - (a) the provisions of this Act or any regulations made under the Act are being complied with; and
 - (b) the provisions of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*) or any regulations made thereunder are being complied with, and after the conclusion of such examination to prepare a report on its findings.
- (2) In any case where the Commission is unable to conduct an examination described in subsection (1), it may appoint an auditor, at the expense of the regulated person or party related to the investment fund, to conduct such examination and to report thereon to the Commission.
- (3) The Commission may assess charges to recover the cost of such examination.
- (4) If requested to do so by the Commission, a regulated person or a party related to an investment fund shall give the Commission access to or provide at any reasonable time all records relating to the regulated person or the party related to an investment fund.
- (5) The Commission may copy or take an extract of a document it is given access to, or provided with in accordance with this section.

Page - 83

- (6) If requested to do so by the Commission, a regulated person or a party related to an investment fund shall give the Commission such information or such explanation in respect of the regulated person or a party related to an investment fund as the Commission may reasonably request to enable it to carry out its duties under this Act.
- (7) A person giving information or an explanation for the purpose of subsection (1) or (2) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

124. General review of operations.

- (1) It shall be the duty of the Commission —
 - (a) to maintain a general review of the operations of regulated persons and parties related to investment funds in The Bahamas;
 - (b) to monitor, by way of receipt of regular reports or in such other manner as it thinks necessary the affairs or business of any investment fund in The Bahamas.
- (2) The Commission may make rules providing for such matters as may be necessary or expedient for giving effect to its duties.

125. Authority to regulate.

- (1) The Commission shall have the authority to regulate the investment fund industry and the operation and duties of investment funds and parties related to investment funds.
- (2) Without prejudice to the generality of the foregoing the Commission shall have the authority to establish by rules the standards or education criteria, if any, which govern the suitability of a party related to an investment fund or contracted to provide any of the services of a party related to an investment fund.

126. Compliance with Financial Transactions Reporting Act.

In the exercise of its functions under this Act the Commission shall satisfy itself that the provisions of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*) are being complied with.

PART VI - DISCIPLINARY AND ENFORCEMENT AUTHORITY OF THE COMMISSION

127. Power of the Commission to conduct regulatory hearings.

- (1) The Commission may, where it appears that a person has breached a provision of this Act or failed to comply with a requirement, directive or order given by the Commission —
 - (a) conduct investigations and regulatory hearings; and
 - (b) impose one or more of the sanctions, remedies or other relief as may be prescribed in investment funds laws.
- (2) The Commission shall have authority to conduct regulatory hearings to determine whether —
 - (a) there has been or there is likely to be a failure to comply with the provisions of this Act, regulations or rules;
 - (b) a regulated person is carrying on its business in a manner detrimental to the public interest;
 - (c) a regulated person is carrying on or attempting to carry on business or is winding up, dissolving or terminating its business voluntarily in a manner that is prejudicial to —
 - (i) the investors in the investment fund;
 - (ii) any investment fund being administered by an investment fund administrator;
 - (iii) the creditors or the investment fund;
 - (iv) the creditors of the investment fund administrator;
 - (v) an investment fund being managed by an investment fund manager or AIFM; or
 - (vi) the creditors of the investment fund manager or AIFM;
 - (d) a regulated person is carrying on or attempting to carry on investment fund business without complying with the conditions of its licence, registration or approval.
- (3) A regulatory hearing of the Commission shall be conducted as prescribed by the Commission from time to time.

128. Hearings.

- (1) At a hearing, the Commission shall provide a reasonable opportunity for each person directly affected to be heard and shall give reasonable notice to each such person and may give notice to any interested party related to an investment fund, which notice shall include the prescribed information.

Page - 85

- (2) The Commission may —
 - (a) issue a subpoena or other request or summons requiring a person to attend a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in the person's possession or under the person's control, whether they are located in or outside The Bahamas; and
 - (b) compel a person to give evidence on oath, orally or in writing.
- (3) Notwithstanding subsection (2), no persons giving evidence before the Commission shall be compelled to incriminate themselves, and every person shall be entitled to all privileges that a witness giving evidence before a court is entitled to in respect of the evidence given by the person to the Commission.
- (4) On application by the Commission to the court, a person summoned under subsection (1) is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —
 - (a) attend;
 - (b) give evidence; or
 - (c) produce a document in the custody, possession or control of the person.
- (5) A hearing under this section shall be open to the public unless the Commission directs otherwise.
- (6) A person who is entitled to notice of a hearing under subsection (1) may be represented by a counsel and attorney and, subject to the procedural rules made by the Commission under this Act, may present evidence and argument and may cross-examine witnesses at the hearing.
- (7) A counsel and attorney may advise a witness at a hearing under subsection (1).
- (8) The Commission may admit as evidence any oral testimony or documentary exhibit that it considers relevant to the subject-matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.
- (9) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.
- (10) The Commission shall —
 - (a) make a final decision in writing and state the findings of fact on which it is based and the reasons for it;
 - (b) send a copy of the final decision and reasons to each person given notice under subsection (1) and to each person who appeared at the hearing; and

- (c) publish a copy of the final decision and reasons or a summary of the decision and reasons in a periodical published by the Commission, on its website or in a daily newspaper circulating in The Bahamas but the Commission may omit the name of an affected person from a decision so published.

129. Compliance notice.

Without prejudice to any other action that may be instituted or taken against a person, if at any time it appears to the Commission that a person has failed to comply with any of the requirements under this Act including any requirement of the Hearing Panel, the Commission may, by written notice, direct the person to comply with the requirement within such period and on such terms and conditions as the Commission may specify and the person shall comply with the notice.

130. Orders in the public interest.

- (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement with the person or after a hearing —
 - (a) order a person to comply with the provisions of this Act, a decision of the Hearing Panel or a compliance notice of the Commission;
 - (b) order a person, a class of persons or all persons to cease trading an investment fund, a category of investment fund or all investment funds;
 - (c) order that any or all of the exemptions in this Act do not apply to a person;
 - (d) prohibit a person from —
 - (i) acting as a partner, director or officer of another person;
 - (ii) acting as a regulated person, or representative of a regulated person;
 - (iii) acting as a party related to an investment fund;
 - (iv) acting as an auditor of a regulated person or party related to an investment fund;
 - (v) acting in a management or consultative capacity in connection with activities in the investment funds industry; or
 - (vi) promoting the trading of an investment fund or of investment funds generally;
 - (e) issue a censure or reprimand;
 - (f) suspend the licence or registration of the regulated person;
 - (g) reclassify the licence or registration of a regulated person;

- (h) require the substitution of any party related to the investment fund or any senior officer of a regulated person;
- (i) appoint a person to advise a regulated person on the proper conduct of its affairs;
- (j) appoint a person to assume control of the regulated person's affairs;
- (k) apply to the court for an order to take such other action as it considers necessary to protect the interests of —
 - (i) the investors of an investment fund;
 - (ii) any investment fund being administered by an investment fund administrator;
 - (iii) the creditors of the investment fund;
 - (iv) the creditors of the investment fund administrator;
 - (v) an investment fund being managed by an investment fund manager or AIFM; or
 - (vi) the creditors of the investment fund manager or AIFM;
- (l) restrict the trading or advising activities of a regulated person, or licensee;
- (m) order a person to change a document;
- (n) order a person to publish information or a document;
- (o) order a person not to publish information or a document;
- (p) impose conditions or restrictions on a registration or licence, or suspend or revoke a registration or licence;
- (q) order a person that is a party related to an investment fund to make changes to its practices and procedures;
- (r) appoint a person to advise a regulated person on the proper conduct of its affairs and to report to the Commission thereon;
- (s) appoint a person to assume control of a regulated person's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver-manager of the assets and property of the regulated person;
- (t) apply to the court for an order to take such action as it considers necessary to protect the interests of —
 - (i) clients or creditors of a regulated person;
 - (ii) investors or creditors of an investment fund;
 - (iii) investment funds administered by an investment fund administrator;
 - (iv) creditors of an investment fund administrator;
 - (v) investment funds managed by an investment fund manager or AIFM; or

- (vi) creditors of the investment fund manager or AIFM; or
 - (u) apply to the court for an order that the person be wound up or dissolved by the court;
 - (v) order that all subscriptions and redemptions cease and that any subscriptions collected be repaid to investors.
 - (w) order the disgorgement of profits or other unjust enrichment and a penalty not to exceed twice the amount of such profits or unjust enrichment;
 - (x) order restitution; or
 - (y) impose any other sanctions or remedies as the justice of the case may require.
- (2) The Commission may make an order under subsection (1)(e) to (1)(o) against a person, without a hearing —
- (a) if the person has been convicted in any jurisdiction of a criminal offence arising from a transaction, business or course of conduct related to investment funds;
 - (b) if the person has been found by a court to have contravened the laws relating to investment funds of any jurisdiction;
 - (c) if the person has been found by an overseas regulatory authority to have contravened the laws relating to investment funds of that jurisdiction; or
 - (d) if the Commission considers it necessary and in the public interest to do so.
- (3) Where the Commission makes an order under subsection (1), other than an order under subsection (1)(m), (1)(n) or (1)(o), such order remains effective for no more than fifteen days.
- (4) If the Commission considers it necessary and in the public interest to do so, the Commission may, without providing an opportunity to be heard, extend an order made under subsection (3) until the Commission makes a final decision after —
- (a) a hearing under subsection (1) is held; or
 - (b) an opportunity to be heard under subsection (2) is provided.
- (5) If the Commission makes an order under this section, the Commission must send the order to each person named in the order.
- (6) If the Commission sends an order made under subsection (3) or (4), the Commission must send a notice of hearing, or a notice of opportunity to be heard, with the order.
- (7) A person appointed under subsection (1)(i) or (1)(j) is appointed at the expense of the relevant regulated person and any expenses reasonably

incurred by the Commission by virtue of the appointment is an amount due to the Commission and is payable by the regulated person.

- (8) A person appointed under subsection (1)(j) has all the powers necessary, to the exclusion of any other person, other than a liquidator or receiver or receiver-manager, to administer the affairs of the relevant regulated person in the best interests of the clients, investors and creditors of the regulated person.
- (9) The powers referred to in subsection (8) include the power to terminate the business of the regulated person if it is judged to be insolvent.
- (10) A person appointed in respect of a regulated person under subsection (1)(i) or (1)(j) shall —
 - (a) supply the Commission with such information in respect of the regulated person, when requested to do so by the Commission;
 - (b) within three months of the person's appointment, or within such other period as the Commission may specify, prepare and supply to the Commission a report on the affairs of the regulated person and where appropriate make recommendations in respect of the regulated person;
 - (c) if the person's appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission shall require.
- (11) If a person appointed under (1)(i) or (1)(j) —
 - (a) fails to comply with an obligation under subsection (1); or
 - (b) in the Commission's opinion, is not carrying out the person's obligations in respect of the relevant regulated person satisfactorily, the Commission may revoke the appointment and appoint some other person in the person's place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment.
- (12) On receipt of any information or report under subsection (1) in respect of a regulated person, the Commission may —
 - (a) require the regulated person to reorganise its affairs in a manner specified by the Commission; or
 - (b) apply to the court for an order to wind up, dissolve, liquidate or otherwise terminate, as appropriate, the regulated person upon such terms and conditions as the court thinks fit;
 - (c) take such action in respect of the appointment or continued appointment of the person appointed under subsections (1)(i) or (1)(j) as the Commission considers appropriate.

- (13) If the Commission takes action under subsection (12) it may —
- (a) apply to the court for an order to take such other action as it considers necessary to protect the interests of the clients or creditors of, or investors in, the regulated person; or
 - (b) take any other action provided for in subsection (1) or (2).

131. Application to court.

Notwithstanding any other provision, if the Commission considers it in the public interest to do so, the Commission may, at any time and without a hearing, apply to the court for an order to take any action as it considers necessary.

132. Administrative penalty.

- (1) If the Commission considers it in the public interest to do so, the Commission may, [upon a settlement or after a hearing], order a person that has breached any provision of this Act to pay the Commission an administrative penalty of not more than five hundred thousand dollars as prescribed by the Commission, for each contravention.
- (2) Any person in breach of any provision of this Act solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an automatic penalty of up to one thousand dollars, or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document is filed or delivered.

133. Removal of benefits.

If the Commission considers it in the public interest to do so, the Commission may, after a hearing, order a person to pay to the Commission any amount obtained, or payment or loss avoided, as a result of a contravention of the provisions of this Act, plus a penalty, not to exceed twice the amount obtained or payment or loss avoided.

134. Payment of costs.

- (1) The Commission shall order a person subject to a hearing to pay the costs of the Commission's investigation, the hearing and related costs.
- (2) For the purposes of this section, the costs that the Commission may order the person to pay include —
 - (a) costs incurred in respect of services provided by persons appointed or engaged under section 115 (2);
 - (b) costs of matters preliminary to the hearing;

- (c) costs for time spent by the Commission or the staff of the Commission;
- (d) any fee paid to and costs of a witness; and
- (e) costs of legal services provided to the Commission.

135. Order to freeze property.

- (1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of this Act or to give assistance to an overseas regulatory authority in the administration of the laws relating to investment funds of such other jurisdiction, by order for a period not to exceed five days direct —
 - (a) a person having on deposit, under control or for safekeeping any moneys, investment funds or other property of the person named in the order to hold them; or
 - (b) a person —
 - (i) not to withdraw any moneys, investment funds or other property from any person having them on deposit, under control or for safekeeping; or
 - (ii) to hold all moneys, investment funds or other property of a client of that person, or of others, in the person's possession or control pending the appointment of a receiver, receiver-manager, trustee or liquidator.
- (2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the Commission's order shall remain in effect until it is set aside or it expires.
- (3) Unless expressly stated, an order made under subsection (1) does not apply to moneys, equity interests in investment funds or other property at a clearing facility, or to equity interests in investment funds in the process of transfer by a transfer agent.

136. Limitation period.

No proceedings against any person for a breach or for a failure to comply with any of the provisions of this Act, may be commenced after the expiration of six years from the day upon which the breach or non-compliance was or ought to have been discovered.

137. Liability of directors and officers.

- (1) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, any director or officer of the person who knowingly or recklessly authorized, permitted or acquiesced

in the offence commits an offence and is liable to the penalty specified for it.

- (2) Reasonable reliance, including reliance on advice of counsel, an auditor or other expert, in good faith, is a defence in a proceeding under this section.

PART VII - INFORMATION SHARING

138. Co-operation with other regulatory authority.

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

PART VIII - MARKET MISCONDUCT

139. Misleading or deceptive conduct.

- (1) A person must not engage in conduct, in or from The Bahamas, in relation to investment funds business that is misleading or deceptive or is likely to mislead or deceive.
- (2) The reference in subsection (1) to engage in conduct in relation to an investment fund includes —
- (a) trading in or marketing of an investment fund;
 - (b) issuing or establishing an investment fund;
 - (c) publishing a notice in relation to an investment fund; or
 - (d) carrying on negotiations or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of paragraphs (a) to (c).

140. Misleading the Commission.

A person must not, in compliance with any requirement imposed by or under investment funds laws, knowingly or recklessly provide the Commission or the public with information that —

- (a) is false;
- (b) is misleading in a material particular; or

- (c) fails to state a fact that is required to be stated or that is necessary to make the statement not misleading.

141. False or misleading statements.

A person must not, whether in The Bahamas or elsewhere, make a statement, or disseminate information, if —

- (a) the statement or information is false in a material particular or is materially misleading;
- (b) the statement or information is likely —
 - (i) to induce persons in The Bahamas to acquire an interest in an investment fund; or
 - (ii) to have the effect of increasing, reducing, maintaining or stabilising the price for acquiring an interest in an investment fund; and
- (c) when the person makes the statement, or disseminates the information —
 - (i) the person is reckless as to whether the statement or information is true or false; or
 - (ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

142. Inducing persons to deal.

A person must not, in or from The Bahamas, induce another person to acquire an interest in an investment fund —

- (a) by making or publishing a statement, promise or forecast if the person knows or is reckless as to whether the statement is misleading, false or deceptive;
- (b) by a dishonest concealment of material information; or
- (c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if —
 - (i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and
 - (ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to others.

143. Dishonest conduct.

A person must not, in the course of carrying on investment funds business in or from The Bahamas, engage in dishonest conduct in relation to investment funds business or an investment fund.

144. Prohibited representations.

- (1) Except as provided in the Act, no person, for the purpose of inducing another person to acquire an interest in an investment fund, shall make any representation, written or oral that any person —
 - (a) will resell or repurchase the equity interests in an investment fund; or
 - (b) will refund all or any of the purchase price of such equity interests.
- (2) No person, for the purpose of inducing another person to acquire an equity interest in an investment fund, shall make any representation, written or oral, relating to the future value or price of such investment fund.
- (3) Except as provided in the Act, no person, for the purpose of inducing another person to acquire an interest in an investment fund, shall make any representation, written or oral, that such investment fund will be listed on any securities exchange.

145. Market misconduct offences.

- (1) Any person who contravenes a provision under this Part, commits an offence and shall be liable —
 - (a) on summary conviction to a fine of one hundred and fifty thousand dollars, or imprisonment for a term of one year, or to both;
 - (b) on conviction upon information to a fine of five hundred thousand dollars, or to imprisonment for a term of ten years or to both.
- (2) Any person who commits an offence under this Part, shall return any gains made or loss avoided from contravention of the sections, and if the court so directs, pay a penalty not to exceed twice the amount of such gains or loss avoided.

PART IX – MISCELLANEOUS

146. Exemptions and modifications.

The Commission may grant exemption and modification to —

- (a) a person or class of persons from all or specified provisions of this Act; or

- (b) an investment fund or category of investment funds from all or specified provisions of this Act.

pursuant to regulations made by the Minister pursuant to section 159.

147. Administrative proceedings and reviews.

- (1) Any person directly affected by a decision of the Executive Director or any employee exercising delegated authority from the Commission may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review of that decision by the Commission.
- (2) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.
- (3) Notwithstanding the fact that a person requests a hearing and review under subsection (2), the decision under review takes effect immediately but the Commission may grant a stay pending the disposition of the hearing and review.

148. Power to remove exemption contained in Commission rule.

If the Commission considers it in the public interest to do so, the Commission may order that an exemption in a rule made under section 160 does not apply to a person or class of persons or an investment fund.

149. Filing documents and public availability.

- (1) All documents or information required to be filed with, delivered to or provided to the Commission shall be submitted to the Commission in the prescribed manner.
- (2) Subject to subsection (3), the Commission —
 - (a) shall make all documents or information required to be filed with it available for public inspection; and
 - (b) may make all documents or information filed with it available to the public by posting such documents to the website of the Commission.
- (3) The Commission may hold in confidence all or part of a document or information referred to in subsection (1) if it considers that —
 - (a) a person whose information appears in the document or information would be unduly prejudiced by disclosure of the information; and
 - (b) the person's privacy interest outweighs the public's interest in having the information disclosed.

- (4) Where a document or information is not expressly required to be filed but is required to be delivered or provided to the Commission under this Act, the document or information shall not be disclosed under subsection (2) unless the Commission determines that such disclosure is in the public interest.

150. Verification.

The Commission may by notice in writing require the person furnishing any information to the Commission to verify such information by oath or affirmation, within a reasonable period as specified in the notice.

151. Register and other documents as evidence.

Where it is provided in this Act that a register be established and maintained or kept, or a book of accounts be kept, or a list be prepared or published, any entry in such register, book of account or list, or the production of any licence or certificate issued under this Act, shall be *prima facie* evidence of the contents thereof.

152. Conditions on decisions.

The Commission may impose terms, conditions, requirements and restrictions on any decision it makes, as the Commission deems fit.

153. Discretion to revoke or vary decisions.

The Commission may, at any time by notice in writing, vary any term, condition, requirement or restriction imposed in any decision of the Commission or may revoke any decision of the Commission as it deems fit.

154. Stamp duty exemption.

Notwithstanding any provision of the Stamp Act (*Ch. 370*) or any other law to the contrary, stamp duty shall not be payable in respect of the transfer in The Bahamas of any equity interest in an investment fund listed on a registered securities exchange.

155. Right to appeal to court.

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

156. Offences.

- (1) Any person who contravenes —

- (a) sections 9, 18, 20(1), 24, 61 or 106, commits an offence and shall be liable on conviction on information to a fine of one hundred and fifty thousand dollars or to imprisonment for three years or to both such fine and imprisonment;
 - (b) sections 43, 54, 57, 58, 59, 60 or 112, commits an offence and shall be liable on summary conviction to a fine of seventy five thousand dollars or to imprisonment for two years or to both fine and imprisonment;
 - (c) sections 108, or 123 (4), (5) and (6), commits an offence and shall be liable on summary conviction to a fine of twenty thousand dollars plus five hundred dollars in respect of each day during which the person failed to comply with the direction or to imprisonment for twelve months or to both such fine and imprisonment;
 - (d) sections 15(2) and 38(3), commits an offence and shall be liable on summary conviction to a fine of ten thousand dollars plus two hundred dollars in respect of each day after the specified time during which the person failed to comply with the instruction or to imprisonment for six months or to both such fine and imprisonment.
- (2) Any person who —
- (a) refuses to do anything that is properly required to be done by him under this Act;
 - (b) fails to pay any fee that is due and payable under this Act; or
 - (c) without reasonable cause contravenes any section of this Act for which no other penalty is provided,
- commits an offence and shall be liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.
- (3) A person who —
- (a) upon an examination, oath or affirmation required under this Act; or
 - (b) otherwise in or about any matter arising under this Act,
- commits an offence of perjury is liable on conviction to imprisonment for ten years.

157. Order to be fit and proper.

The Commission may by Order —

- (a) prescribe persons who are required to be fit and proper;
- (b) determine persons that are considered to be fit and proper,

for the purposes of the Act.

158. Amendment of Schedule.

The Minister may, on the recommendation of the Commission, by Order published in the Gazette, amend the *Schedule* to this Act.

159. Minister to make regulations.

- (1) The Minister, after consultation with the Commission, may make regulations necessary for carrying out the purposes of this Act and such regulations may provide for or in relation to —
 - (a) the operation of investment funds or any regulated person;
 - (b) investment fund administrators in relation to their investment fund administration;
 - (c) the role and obligation of any party related to an investment fund;
 - (d) the requirements of Non-Bahamas based investment funds;
 - (e) any matter to which the Commission may make a rule; and
 - (f) the nature, purpose and duration of exemptions that may be granted by the Commission to a person or class of persons or an investment fund or category of investment funds;
 - (g) any other matter or thing which may be or is required to be prescribed under this Act.
- (2) Regulations made under this section may, notwithstanding the provisions of section 25(e) of the Interpretation and General Clauses Act (*Ch. 2*) prescribe greater penalties than those specified in that section provided that the maximum penalty that may be imposed by any such regulation shall be a fine of seventy-five thousand dollars or imprisonment for two years or both such fine and imprisonment.

160. Rules.

The Commission may make rules providing for such matters as may be necessary or expedient for giving effect to the purposes, functions and responsibilities under this Act.

161. Rule-making process.

- (1) The Commission shall publish, in a daily newspaper of general circulation in The Bahamas, in any regular periodical published by the Commission or on its website, at least sixty days before the proposed effective date —
 - (a) a copy of any rule that it proposes to make; and
 - (b) a concise statement of the substance and purpose of the proposed rule.

- (2) After a proposed rule is published in accordance with subsection (1), the Commission shall give interested parties a reasonable opportunity to make written representations with respect to the proposed rule.
- (3) The Commission shall publish each final rule, with any amendments that the Commission deems appropriate to make as a result of the public comment process under this section, as prescribed on or before its effective date.
- (4) The Commission is not required to comply with subsections (1) and (2) if —
 - (a) all persons who will be subject to the rule are named and the information required by subsections (1)(a) and (1)(b) is sent to each of them;
 - (b) the rule only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
 - (c) the rule makes no material substantive changes in an existing rule;
 - (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or
 - (e) The Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1) and (2) would be prejudicial to the public interest.
- (5) The Commission must give a copy of any final rule to the Minister without delay.
- (6) A rule, or any amendment to a rule, shall be effective if the Commission has provided the Minister with a copy of the rule or amendment and the Commission has not received an objection to the rule or amendment from the Minister within thirty days after the rule or amendment was delivered to the Minister.
- (7) Where the Minister objects to a rule or any amendment to a rule, the Commission shall be provided with notice in writing of the reasons for the objection.
- (8) A rule, or any amendment to a rule, shall be effective on the date it is published in the Gazette or such later date as may be specified in the rule or amendment.
- (9) If the Commission alters or revokes a rule, it must —
 - (a) publish notice of the alternation or revocation; and
 - (b) give written notice to the Minister without delay; and
 - (c) include in such notices details of the alternation or revocation.

162. Regulation prevails over rule.

Where a rule made by the Commission conflicts with a regulation made by the Minister, the regulation made by the Minister prevails.

163. Guidelines.

The Commission may publish guidelines regarding any regulations or rules made under investment funds laws, or of any provisions of investment funds laws, provided however that such guidelines shall not be taken as having the force of law.

164. Repeal.

The Investment Funds Act (*Ch. 369A*) is repealed.

165. Savings.

Any statutory instrument or notice made under the former Act remains in force unless revoked.

166. Transitional provisions.

- (1) An investment fund licensed under the former Act is deemed to be licenced as an investment fund under section 5 of the Act with effect from the date of the commencement of this Act.
- (2) An investment fund administrator licensed under the former Act is deemed to be licenced as an investment fund administrator under section 36 of this Act with effect from the date of the commencement of this Act.
- (3) An investment fund manager that is managing an investment fund prior to this Act coming into force, shall, within six months from the date of the commencement of this Act, apply for licensing or registration as required, in accordance with section 26 of this Act as required.
- (4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and in the case of a continuing offence, to a further fine of one thousand dollars for each day for which the offence continues.

167. Consequential amendments.

The Acts specified in Column 1 of the table in *Schedule* are amended to the extent specified in Column 2 of *Schedule*.

SCHEDULE

(section 167)

ACT	EXTENT OF AMENDMENT
Securities Industry Act, 2011 (<i>No. 10 of 2011</i>)	<p>1. In section 4, delete the definition of “regulated person” and substituting the following definition —</p> <p>“ “regulated person” means a registrant or a person registered under Part V of the Act;”.</p> <p>2. In section 13, insert the following subsection —</p> <p>“ (2) For purposes of this section “regulated person” includes a registrant, a person registered under Part V of the Act, an investment fund, investment fund administrator, an investment fund manager and an AIFM.”.</p> <p>3. In Part 3 of the First Schedule, repeal paragraphs 1(8), 2(10), 3(2) and 4(1).</p>
The Investment Funds (Prescribed Securities Exchanges and Jurisdictions) Notice, 2004 (<i>S.I. No. 7 of 2004</i>)	Repeal the notice.
Partnership Act (<i>Ch. 310</i>)	<p>1. Insert immediately after section 2, the following new section 2A —</p> <p>“2A. Definition of regulator.</p> <p>For the purposes of this Act, regulator means the Securities Commission of The Bahamas continued under section 10 of the Securities Industry Act, 2011 (<i>No. 10 of 2011</i>).”.</p> <p>2. In section 36 —</p> <p>(a) renumber section 36 to</p>

	<p>subsection 36(1);</p> <p>(b) insert immediately after subsection 36(1), the following new subsection 36(2) as follows —</p> <p>“(2) Notwithstanding subsection (1), a regulator may present a notice of dissolution to the court in respect of a partnership over which it has regulatory authority and whose licence or registration has been suspended or revoked.”</p>
Exempted Limited Partnership Act (Ch. 312)	<p>1. In section 2, insert the following definition in the appropriate alphabetical order —</p> <p>““regulator” means the Securities Commission of The Bahamas;”</p> <p>2. In section 15 —</p> <p>(a) insert immediately after subsection (2), the new subsection (3) as follows —</p> <p>“(3) On application by a regulator, in respect of an exempted limited partnership over which it has regulatory authority and whose licence or registration has been suspended or revoked, the court may decree dissolution of the exempted limited partnership and may make such orders and may give such directions as to the winding up of the affairs of the exempted limited partnership.”; and</p>

	(b) renumber the existing subsection (3) as subsection (4).
Companies Act (<i>Ch. 308</i>)	<p>In section 172, delete subsection (3) and substituting the following –</p> <p>“(3) This section shall not apply to a foreign company that carried on an undertaking in The Bahamas –</p> <p>(a) prior to the commencement of this Act; or</p> <p>(b) as an investment fund administrator under the Investment Fund Act, 2018.”.</p>