

CAYMAN ISLANDS



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THE MUTUAL FUNDS (AMENDMENT) LAW, 2006

(LAW 29 OF 2006)

THE MUTUAL FUNDS (AMENDMENT) LAW, 2006

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 29 of 2006.

I Assent

Stuart Jack

Governor.

23 October, 2006

**A LAW TO AMEND THE MUTUAL FUNDS LAW (2003 REVISION) TO
MAKE FURTHER PROVISION WITH RESPECT TO THE POWERS
AND FUNCTIONS OF THE CAYMAN ISLANDS MONETARY
AUTHORITY AND THE CONDUCT OF BUSINESS IN THE ISLANDS
BY MUTUAL FUNDS; AND TO MAKE PROVISION FOR RELATED
MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Mutual Funds (Amendment) Law, 2006. Short title
2. The Mutual Funds Law (2003 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting, in their appropriate alphabetical places, the following definitions - Amendment of section 2
of the Mutual Funds
Law (2003 Revision) -
definitions
 - “ “high net worth person” and “sophisticated person”, respectively, have the meanings assigned to those expressions in the Securities Investment Business Law (2004 Revision);
 - “overseas regulatory authority” has the meaning assigned to that expression in the Monetary Authority Law (2004 Revision);
 - “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 the Fourth Schedule to the Securities Investment Business Law (2004 Revision);
- (d) an exempted or ordinary non-resident company registered under the Companies Law (2004 Revision), or a foreign company registered pursuant to Part IX of that Law, or any such company acting as general partner of a partnership registered under section 9(1) of the Exempted Limited Partnership Law (2003 Revision), or any director or officer of the same acting in such capacity; or
- (e) the trustee of any trust registered or capable of registration under section 74 of the Trusts Law (2001 Revision) acting in such capacity;”.

Amendment of section
4 -regulated mutual
funds

3. The principal Law is amended in section 4 as follows -

- (a) by deleting from subsection (3)(a)(i) the word “forty” and substituting the word “eighty”;
- (b) by repealing subsection (4) and substituting the following subsection—

“ (4) A mutual fund may carry on or attempt to carry on business in or from the Islands without complying with subsection (1) if—

- (a) the equity interests are held by not more than fifteen investors, a majority of whom are capable of appointing or removing the operator of the fund; or
- (b) it is a fund, not incorporated or established in the Islands, which makes an invitation to the public in the Islands to subscribe for its equity interests by or through a person who is the holder of a licence under the Securities Investment Business Law (2004 Revision), for a regulated activity specified by the Authority for the purposes of this subsection and —
 - (i) those interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette; or
 - (ii) the fund is regulated in a category, and by an overseas regulatory authority, approved by the Authority for the purposes of this subsection.”; and

(c) by deleting subsection (5)(b) and substituting the following paragraph –

“(b) regardless of where it is incorporated or established, it makes an invitation to the public in the Islands to subscribe for its equity interests.”.

4. The principal Law is amended in section 8 –

Amendment of section 8 -annual audit of regulated mutual fund

(a) by inserting after the word “shall” in subsection (2) the words “in such manner as the Authority may from time to time direct”; and

(b) by inserting after subsection (3) the following subsection –

“ (4) The Authority may, in relation to the whole or part of any financial year of the fund, exempt a regulated mutual fund from the requirements of this section either absolutely or subject to such conditions as the Authority may think fit to impose.”.

5. The principal Law is amended by repealing section 10 and substituting the following section –

Repeal and substitution of section 10 – person to be authorised to administer mutual funds

“Person to be authorised to administer mutual funds

10. Unless acting with, and in accordance with, the authorisation of the Authority, a person shall not act or carry on business as a mutual fund administrator unless authorised to do so by a Mutual Fund Administrators Licence, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.”.

6. The principal Law is amended by repealing section 16 and substituting the following section –

Repeal and substitution of section 16 - licensed mutual fund administrators to be satisfied in respect of mutual funds

“Licensed mutual fund administrators to be satisfied in respect of mutual funds

16. (1) A licensed mutual fund administrator shall not provide mutual fund administration to a mutual fund unless it has satisfied itself that –

- (a) each promoter of the mutual fund is of sound reputation;
- (b) the administration of the mutual fund will be undertaken by persons who have sufficient expertise to administer the mutual fund and are of sound reputation;
- (c) the business of the mutual fund and any offer of equity interest in it will be carried out in a proper way; and
- (d) the mutual fund, if it is not incorporated or established in the Islands, is incorporated or

established in a country or territory approved by the Authority for the purposes of this subsection.

(2) Subsection (1) shall be deemed to be a condition of every Mutual Fund Administrators Licence for the purposes of this Law.”.

Amendment of section 20 - licensed mutual fund administrators to have annual audit

7. The principal Law is amended in section 20(2) by inserting after the word “shall” the words “, in such manner as the Authority may from time to time direct,”.

Amendment of section 29 – Authority to administer Law

8. The principal Law is amended in section 29 as follows -

- (a) by renumbering the section as subsection (1) of section 29;
- (b) by repealing paragraph (b) of subsection (1) as re-numbered and substituting the following paragraph -

“(b) applications for mutual funds licences under section 5;” and

- (c) by inserting after subsection (1) the following subsections –

“(2) The Authority shall –

- (a) maintain a general review of mutual fund business in the Islands and submit an annual report thereon to the Governor;
- (b) be responsible for supervision and enforcement in respect of persons to whom this Law applies, and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of section 4(2), 7, 10 or 19; and
- (c) whenever the Authority considers it necessary, examine, by way of scrutiny of prescribed regular returns, on-site inspections or auditors’ reports, or in such other manner as the Authority may determine, the affairs or business of any regulated mutual fund or licensee for the purpose of a general review under paragraph (a) or for the purpose of satisfying itself that the provisions of this Law and of any regulations made under this Law or the Proceeds of Criminal Conduct Law (2005 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 Law.”.

9. The principal Law is amended in section 30 –

Amendment of section
30 – powers of
Authority in respect of
regulated mutual funds

- (a) in subsection (3), by deleting paragraph (a) and substituting the following paragraph –
 - “(a) cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of the mutual fund.”;
- (b) by inserting after subsection (13) the following subsection -
 - “ (13a) Without prejudice to any other powers of the Authority, the Authority may at any time cancel a Mutual Fund Administrators Licence, if the Authority is satisfied that the mutual fund administrator has ceased to carry on or to attempt to carry on business or has been placed in voluntary winding up or is dissolved.”;
- (c) by repealing subsection (15) and substituting the following subsection –
 - “ (15) Without prejudice to any other power of the Authority, the Authority may, at any time, cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of a mutual fund if the Authority is satisfied that the fund has ceased to carry on or to attempt to carry on business as a mutual fund or has been placed in winding up or is dissolved.”; and
- (d) by inserting after subsection (15) the following subsection –
 - “ (16) Nothing in this section shall be construed as limiting any power conferred on the Authority by section 29 or by any other provision of this Law or the regulations made under this Law.”.

10. The principal Law is amended in section 31 –

Amendment of section
31 - powers of Authority
in respect of licensed
mutual fund
administrators

- (a) by deleting from subsection (1) (c) the words “contrary to section 12(6)” and the comma that precedes them;
- (b) by deleting from subsection (2)(a)(iii) the word “regulated”.

11. The principal Law is amended by inserting after section 31 the following section –

Insertion of section
31A - Authority may
attend winding-up
proceedings

“Authority may attend
winding-up proceedings

31A. (1) Where a petition for the winding up of –

- (a) a regulated mutual fund;
- (b) a licensed mutual fund administrator;
- (c) a person who has at any time been a

regulated mutual fund; or

- (d) a person who has at any time been a licensed mutual fund administrator,

is presented by a person other than the Authority, the Authority shall be served by the petitioner with a copy of the petition and may appear at the hearing of the petition and the provisions of subsections (2) and (3) shall apply.

(2) A document which relates to a petition for winding up and which is required to be sent to any person specified in subsection (1)(a), (b), (c) or (d), or to any of their respective creditors, shall also be sent to the Authority.

(3) A person appointed for the purpose by the Authority may –

- (a) attend a meeting of creditors of a person specified in subsection (1)(a), (b), (c) or (d);
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.”.

Repeal and substitution
of section 34 –
obligation of auditors

12. The principal Law is amended by repealing section 34 and substituting the following section –

“Obligation of auditors

34. (1) If an auditor, in the course of carrying out an audit of the accounts of a regulated mutual fund, obtains information or suspects that the mutual 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 Law or any regulations made hereunder;
- (ii) the Monetary Authority Law (2004 Revision);
- (iii) the Money Laundering Regulations (2006 Revision); or
- (iv) a condition of the licence,

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

(2) If an auditor, in the course of carrying out an audit of the accounts of a licensed mutual fund administrator, obtains information or suspects that the mutual fund administrator 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 mutual fund administration business voluntarily in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or the creditors of any such mutual fund;
- (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 Law or any regulations made hereunder;
 - (ii) the Monetary Authority Law (2004 Revision); or
 - (iii) the Money Laundering Regulations (2006 Revision); or
 - (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of

suspicion, his reason for that suspicion.

(3) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1) or (2), the Authority may disqualify him from being an auditor of a regulated mutual fund or a licensed mutual fund administrator; but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with subsection (1) or (2), as the case may be.

(4) A regulated mutual fund or a licensed mutual fund administrator shall not appoint as an auditor a person disqualified under subsection (3).

(5) Where the Authority has granted approval of an auditor under any provision of this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(6) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission concerned was in bad faith.

(7) A reference in this section to an auditor carrying out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator 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.

(8) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars.

(9) Nothing in subsection (1) or (2) shall impose on an auditor carrying out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator an obligation to do anything that he 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.”.

13. (1) Section 4(3)(a)(i) of the new Law does not apply to a mutual fund which, immediately before the appointed date, was carrying on business in or from the Islands; and section 4(3)(a)(i) of the former Law shall continue to apply to such mutual fund as if the new Law had not come into force.

Savings and transitional provisions

(2) The amendments effected by this Law in relation to section 10 of the former Law do not apply to a mutual fund administrator who, immediately before the appointed date, was exempted in accordance with section 10(2) of the former Law; and section 10(2), (3), (4) and (5) of the former Law continue to apply to such mutual fund administrator as if those amendments had not come into force.

(3) A power conferred on the Authority by section 30(3) of the principal Law, as amended by this Law, may be exercised in respect of a matter arising before, on or after the appointed date.

(4) Section 31A of the principal Law does not apply in respect of a winding-up petition presented before the appointed date.

(5) Section 34 of the principal Law, as amended by this Law, does not apply to an audit that was concluded before the appointed date.

(6) In this section -

“the appointed date” means the date of commencement of this Law;

“the former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“the new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the 29th day of September, 2006.

EDNA MOYLE

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.