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THE MUTUAL FUNDS LAW (13 OF 1993)
(1996 Revision)

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MUTUAL FUNDS LAW

(1996 Revision)

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MUTUAL FUNDS LAW

(1996 Revision)

PART I - Preliminary

1. This Law may be cited as the Mutual Funds Law (1996 Revision).

Short title

2. In this Law-

Definitions

“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 Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and is a current member in good standing of one of those institutes;

“auditor” means an accountant or a person with some other accounting qualification approved by the Inspector;

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

“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;

“equity interest” means a share, 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 redeemable or repurchasable at the option of the investor and, in respect of a company incorporated in accordance with the Companies Law (1995 Revision) (including an existing company as defined in that law), in accordance with but subject to section 36 of the Companies Law (1995 Revision) before the commencement of winding up or the dissolution of the company, unit trust or partnership,

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but does not include debt;

“general partner” means-

- 1995 Revision (a) in respect of a limited partnership registered under the Partnership Law (1995 Revision), a general partner as defined in that law;
- Law 11 of 1991 (b) in respect of an exempted limited partnership registered under the Exempted Limited Partnership Law, 1991, a general partner as defined in that law; 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;

“Governor” means the Governor in Council;

1995 Revision “Inspector” means the Inspector of Financial Services appointed under section 12(1) of the Banks and Trust Companies Law (1995 Revision) and includes any officer in the Inspector’s department acting under the Inspector’s authority;

“investor”, in respect of a mutual fund, means the legal holder of record or legal holder of a bearer instrument representing an equity interest in the mutual fund but does not include a promoter or operator;

“licensed regulated mutual fund” means a regulated mutual fund that is the holder of a Mutual Fund Licence;

licensed mutual fund administration” means the holder of a Mutual Fund Administrators Licence and includes a person exempted from obtaining a Mutual Fund Administrators Licence under section 9(2);

1995 Revisions “mutual fund” means a company, unit trust or partnership that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments but does not include a person licensed under the Banks and Trust Companies Law (1995 Revision) or the Insurance Law (1995 Revision), or a person registered under the Building Societies Law (Revised) or the Friendly Societies Law (Revised);

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“mutual fund administration” in respect of a mutual fund, means to manage (including to control all or substantially all the assets of the mutual fund) or to administer the mutual fund, to provide the principal office of the mutual fund in the Islands or to provide an operator to the mutual fund, but does not include-

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

- (b) in relation to a mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the Companies Law (1995 Revision), the Partnership Law (1995 Revision), the Exempted Limited Partnership Law, 1991, the Trusts Law (1996 Revision) or this Law; or
- (c) the activities of a general partner of a partnership which is a mutual fund;

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“mutual fund administrator” means a person who conducts mutual fund administration in or from the Islands and includes-

- (a) a company formed under the Companies Law (1995 Revision) (including an existing company as defined in that Law);
- (b) a foreign company registered pursuant to Part IX of the Companies Law (1995 Revision);
- (c) a limited partnership registered under the Partnership Law (1995 Revision); or
- (d) an exempted limited partnership registered under the Exempted Limited Partnership Law, 1991,

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Law 11 of 1991

that conducts mutual fund administration outside the Islands;

“Mutual Fund Administrators Licence” means a licence granted under sections 10 and 11;

“Mutual Fund Licence” means a licence granted under section 4;

“offering document”, in respect of a mutual fund, means a document or series of documents on the basis of which equity interests in the mutual fund are offered for sale or persons are invited to subscribe for or purchase equity interests in the mutual fund, but does not include any other notice, circular, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the mutual fund or the invitation to any person to subscribe for or purchase any equity interest in the mutual fund if before the offer or invitation is taken up or accepted the prospective investor is given the opportunity to consider an offering document containing the information prescribed by section 3(6);

“operator”, in respect of a mutual fund, means-

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

“partnership” means a limited partnership registered under the Partnership Law (1995 Revision), an exempted limited partnership registered under the Exempted

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Limited Partnership Law, 1991; or a partnership constituted under the laws of a jurisdiction other than the Islands;

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

“promoter”, in respect of a mutual fund or proposed mutual fund, means any person whether within or without the Islands who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund but does not include a professional adviser acting for or on behalf of such a person;

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

registered office” means-

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- (a) in respect of a company formed under the Companies Law (1995 Revision) (including an existing company as defined in that law), the registered office of the company for the purposes of that law;
- (b) in the case of a foreign company as defined by section 201 of the Companies Law (1995 Revision), the person or persons authorised on behalf of the company in accordance with section 202(1)(c) of that law;
- (c) in the case of an exempted limited partnership registered under the Exempted Limited Partnership Law, 1991, the registered office of that partnership for the purposes of that law; or

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- (d) in the case of an exempted trust registered under the Trusts Law (1996 Revision), the place shown in the file maintained by the Registrar of Trusts as the address of the trustees of the trust;

“regulated mutual fund” means a mutual fund that is carrying on or attempting to carry on a business in or from the Islands and is doing so in compliance with section 3(1) or (3);

“restricted Mutual Fund Administrators Licence” means a Mutual Fund Administrators Licence that contains the restriction referred to in section 10(2);

“share”, in the case of a company limited by guarantee, includes an interest of a member of the company;

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

“unit trust” means a trust established by a trustee which 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.

PART II - Regulated Mutual Funds

3. (1) Unless a mutual fund is complying with subsection (3) or is exempted under subsection (4), it shall not carry on or attempt to carry on business in or from the Islands unless-

- (a) it is the holder of a Mutual Fund Licence, and it has-
 - (i) a registered office in the Islands; or
 - (ii) if a unit trust, a trust company licensed under the Banks and Trust Companies Law (1995 Revision) as its trustee; or
- (b) a licensed mutual fund administrator is providing its principal office in the Islands,

and, unless an exemption from this requirement has been granted by the Inspector, there is filed with the Inspector, in respect of the mutual fund, a current offering document that complies with subsection (6).

(2) The operator of a mutual fund shall ensure that the mutual fund does not carry on or attempt to carry on business in or from the Islands contrary to subsection (1), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

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

- (a) it is a mutual fund in which-
 - (i) the minimum aggregate equity interest purchasable by a prospective investor in the fund is forty thousand dollars (or its equivalent in any other currency); or
 - (ii) the equity interests are listed on a stock exchange (including an over-the-counter market) specified by the Inspector by notice in the Gazette;
- (b) unless an exemption from this requirement has been granted by the Inspector, there is filed with the Inspector the prescribed details in respect of the mutual fund's current offering document;
- (c) it is registered with the Inspector in the prescribed manner; and
- (d) the prescribed annual registration fee has been paid in respect of the fund.

(4) A mutual fund in which the equity interests are held by not more than fifteen investors, the majority of whom are capable of appointing or removing the operator of the fund, is not required to comply with subsection (1).

(5) For the purposes of subsection (1) or (3), a mutual fund is carrying on or attempting to carry on business in or from the Islands if-

- (a) it is incorporated or established in the Islands; or
- (b) regardless of where it is incorporated or established, its management (including the control of all or substantially all of its assets) or its administration is carried on in the Islands.

(6) An offering document in respect of equity interests in a mutual fund shall-

- (a) describe the equity interests in all material respects; and
- (b) contain such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests.

(7) Subsection (6) is without prejudice to any duty of disclosure under the common law or any other law.

(8) A mutual fund does not, for the purpose of compliance with subsection (1) or (3)(b), have filed with the Inspector a current offering document or the prescribed details in respect of its current offering document if there is a continuing offering of equity interests and any promoter or operator of the mutual fund-

- (a) is aware of any change that materially affects any information in the offering document filed with the Inspector or in the prescribed details of the offering document filed with the Inspector; and
- (b) has not, within twenty-one days of becoming so aware, filed with the Inspector an amended offering document or amended prescribed details, as the case may be, to incorporating that change.

(9) A mutual fund is not complying with subsection (1) if-

- (a) it has changed its registered office or its principal office; or
- (b) it has changed the trust company acting as its trustee,

and it has failed to inform the Inspector of the change.

(10) Notwithstanding subsections (3) and (4), a mutual fund to which either of those subsections applies may choose to comply with subsection (1).

Mutual Fund Licences

4. (1) An application for a Mutual Fund Licence shall be made to the Inspector in a form approved or provided for the purpose by the Inspector and shall be accompanied by-

- (a) the current offering document or, if one has not been finally settled, the latest draft of the offering document together with a synopsis of that document;
- (b) details necessary to satisfy the Inspector that the applicant complies or will be complying with section 3(1)(a)(i) or (ii), or (b);
- (c) details necessary to satisfy the Inspector in accordance with subsection (2); and
- (d) the prescribed application fee.

(2) The Inspector has no power to grant a Mutual Fund Licence until he has been satisfied by the applicant that-

- (a) each promoter is of sound reputation;
- (b) the administration of the mutual fund will be undertaken by persons who-
 - (i) have sufficient expertise to administer the mutual fund; and
 - (ii) are of sound reputation; and
- (c) the business of the mutual fund and any offer of equity interests in it will be carried out in a proper way.

(3) Nothing in subsection (2) is to be taken as prohibiting the Inspector from granting a Mutual Fund Licence to take effect on the incorporation of any relevant company or, in the case of a foreign company, on the registration of the company under Part IX of the Companies Law (1995 Revision), or on the establishment of any unit trust.

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(4) The Inspector may grant a Mutual Fund Licence subject to such conditions as he considers appropriate.

(5) The operator of a mutual fund shall ensure that when carrying on or attempting to carry on business in or from the Islands the mutual fund complies with any conditions contained in its 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 Inspector may, on the written application of a licensed regulated mutual fund, waive, vary or revoke any condition contained in its Mutual Fund Licence.

(7) A person shall not, in connection with an application for a Mutual Fund Licence, supply to the Inspector information that he knows or should reasonably know is false or misleading, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

Name of regulated mutual fund restricted	<p>5. (1) The Inspector may refuse to grant a Mutual Fund Licence in respect of a mutual fund with a name that-</p> <ul style="list-style-type: none">(a) is identical with that of any company, firm, business or other entity, whether or not within the Islands, or which 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 fund has a special status in relation to or derived from the Government or the Crown. <p>(2) If, in the Inspector's opinion, a mutual fund is carrying on, or attempting to carry on business in or from the Islands in a name that the Inspector would have refused by virtue of subsection (1), the Inspector may direct the mutual fund to change its name to a name approved by the Inspector.</p> <p>(3) The operator of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (2), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the mutual fund failed to comply with the direction.</p>
Misrepresentation as mutual fund	<p>6. A person other than a regulated mutual fund or a mutual fund referred to in section 3(4) shall not represent in any way that he is carrying on or attempting to carry on business in or from the Islands as a mutual fund, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.</p>
Annual audit of regulated mutual fund	<p>7. (1) A regulated mutual fund shall have its accounts audited annually by an auditor approved by the Inspector.</p> <p>(2) A regulated mutual fund shall send its audited accounts in respect of a financial year of the fund to the Inspector within six months of the end of that financial year or within such extension of that period as the Inspector may allow.</p> <p>(3) The operator of a regulated mutual fund shall ensure that the mutual fund complies with subsections (1) and (2), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.</p>
Regulated mutual fund to pay annual fee	<p>8. (1) A licensed regulated mutual fund shall pay the prescribed annual licence fee on or before the 15th January in each year.</p>

(2) A regulated mutual fund that is complying with section 4(3) shall pay the prescribed annual registration fee on or before the 15th January in each year.

(3) If an annual fee referred to in subsections (1) and (2) is not paid on or before the 15th January in each year there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(4) The Inspector may, for good cause, waive any additional fee imposed by virtue of subsection (3).

PART III - Mutual Fund Administration

9. (1) Unless acting with, and in accordance with, the authorisation of the Executive Council or exempted in accordance with subsection (2), 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.

Person to be authorised
to administer mutual
funds

(2) The Executive Council may exempt a mutual fund administrator from obtaining a Mutual Fund Administrators Licence if, upon application made to it accompanied by the prescribed application fee, it is satisfied that the applicant would otherwise be granted a restricted Mutual Fund Licence and the applicant will not be administering more than one specified mutual fund.

(3) Subject to subsections (4) and (5), for the purposes of this Law a mutual fund administrator exempted from obtaining a Mutual Fund Administrators Licence under subsection (2) is to be taken to be the holder of a restricted Mutual Fund Administrators Licence.

(4) An exemption granted under subsection (2) may be revoked in the same circumstances as a Mutual Fund Administrators Licence may be revoked.

(5) Instead of the prescribed annual licence fee referred to in section 13(3) a mutual fund administrator exempted under subsection (2) shall pay the prescribed annual exemption fee, but in all other respects the prescribed annual exemption fee shall have effect as if it were the annual licence fee referred to in section 13(3).

Types of Mutual Fund
Administrators Licences

10. (1) Subject to subsection (2), a Mutual Fund Administrators Licence authorises the holder of the licence to act or carry on business as a mutual fund administrator in respect of an unlimited number of regulated mutual funds.

(2) Subject to subsection (3), there may be granted a Mutual Fund Administrators Licence that authorises the holder of the licence to act or carry on business as a mutual fund administrator solely in respect of the regulated mutual funds specified from time to time in the licence.

(3) A restricted Mutual Fund Administrators Licence may not be granted to a person who does not have a registered office in the Islands.

Mutual Fund
Administrators Licences

11. (1) An application for a Mutual Fund Administrators Licence shall be made to the Clerk of the Executive Council in a form provided or approved for the purpose by the Clerk and accompanied by such information as the Executive Council requires to determine the application and the prescribed application fee.

(2) The Executive Council may not grant a Mutual Fund Administrators Licence until it has been satisfied by the applicant-

- (a) that he has sufficient expertise to administer regulated mutual funds, is of sound reputation and will administer regulated mutual funds in a proper manner;
- (b) in the case of an application for a licence that is not a restricted Mutual Fund Licence and, subject to subsection (3), that he has a net worth of at least four hundred thousand dollars (or the equivalent in another currency); and
- (c) in the case of an application for a licence that is not a restricted Mutual Fund Administrators Licence, it has a place which will be its principal office in the Islands and two individuals or a body corporate resident or incorporated in the Islands to be its agent in the Islands; and
- (d) in the case of an application for a restricted Mutual Fund Administrators Licence, that the applicant has a registered office in the Islands.

(3) The Executive Council may waive compliance with subsection (2)(b) if it is otherwise satisfied as to the financial viability of the applicant.

(4) Where, in accordance with subsection (2)(c), a licensed mutual fund administrator has appointed two individuals in the Islands to act as its agents in the Islands the administrator may appoint them to act either separately or jointly.

(5) If a licensed mutual fund administrator has a principal office in the Islands or a body corporate or individuals acting as its agent in the Islands it shall not change that principal office or the body corporate or any individual acting as its agent without first giving the Inspector notice of its intention to do so, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

(6) The Executive Council may grant a Mutual Fund Administrators Licence subject to such conditions as it considers appropriate.

(7) A licensed mutual fund administrator shall, when carrying on or attempting to carry on business as a mutual fund administrator, comply with any conditions contained in its 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.

(8) A person shall not, in connection with an application for a Mutual Fund Administrators Licence, supply to the Executive Council information he knows or should reasonably know is false or misleading, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

12. Where a licensed mutual fund administrator is a company, the company shall not issue shares or a person owning or having an interest in shares in the company shall not transfer or otherwise dispose of or deal in those shares or that interest, unless-

Restriction on issue, etc.,
or transfer of shares in
licensed mutual fund
administrator

- (a) the Inspector has given his approval to the issue, transfer, disposal or dealing, as the case may be; or
- (b) the Inspector has, in respect of the company, waived the obligation to obtain that approval,

and any conditions of the approval or waiver are complied with, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

13. (1) A licensed mutual fund administrator shall, immediately upon starting to provide the principal office of a regulated mutual fund, give the Inspector the prescribed details in respect of the mutual fund and pay the prescribed fee in respect of the mutual fund, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

Annual fee for providing
or acting as principal
office of mutual fund

(2) A licensed mutual fund administrator shall, on or before the 15th January in each year after the date when it started to provide the principal office of

a regulated mutual fund, pay the prescribed annual fee in respect of that mutual fund.

(3) A licensed mutual fund administrator shall, on or before the 15th January in each year, pay the prescribed annual licence fee.

(4) If an annual fee referred to in subsection (2) or (3) is not paid on or before the 15th January in each year, there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(5) The Inspector may, for good cause, waive any additional fee imposed under subsection (4).

Inspector may direct licensed mutual fund administrators to increase capital value, etc.

14. (1) If the Inspector is satisfied that there is reasonable cause to do so or the net worth of a licensed mutual fund administrator is less than any amount prescribed by section 12(2), he may direct the mutual fund administrator to provide such guarantees or other financial support as he thinks fit or to increase its net worth to such amount as he considers appropriate.

(2) A licensed mutual fund administrator shall comply with a direction given under subsection (1), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

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

15. A licensed mutual fund administrator shall not provide a principal office to a regulated 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; and
- (c) that the business of the mutual fund and any offer of equity interest in it will be carried out in a proper way,

and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

Licensed mutual fund administrators to give notice of certain matters

16. If a licensed mutual fund administrator knows or has reason to believe that a regulated mutual fund for which it provides a principal office, or a promoter or operator of such a mutual fund -

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with this or any other law; or

- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the mutual fund,

the mutual fund administrator shall immediately give the Inspector written notice of its knowledge or belief giving its reason for that knowledge or belief, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two hundred thousand dollars.

17. (1) The Inspector may refuse to grant a Mutual Fund Administrators Licence authorising a person to carry on business as a mutual fund administrator in a name that-

Name of licensed mutual fund administrators restricted

- (a) is identical with that of any company, firm, business or other entity, whether or not within the Islands, or which 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 administrator has a special status in relation to or derived from the Government or the Crown.

(2) If, subsequent to granting a Mutual Fund Administrators Licence, the Inspector finds that the licensed mutual fund administrator is authorised to carry on business as a mutual fund administrator in or from the Islands in a name which, in the Inspector's opinion, he would have refused by virtue of subsection (1), the Inspector may direct the licensed mutual fund administrator to change that name to a name approved by the Inspector.

(3) A licensed mutual fund administrator shall comply with a direction given to it in accordance with subsection (2), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two thousand dollars, plus one hundred dollars in respect of each day during which the mutual fund administrator failed to comply with the direction.

18. A person other than a licensed mutual fund administrator shall not represent in any way that he is carrying on or attempting to carry on business on or from the Islands as a mutual fund administrator, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

Misrepresentation as fund manager

19. (1) A licensed mutual fund administrator shall have its accounts audited annually by an auditor approved by the Inspector, and whoever contravenes this

Licensed mutual fund administrators to have annual audit

provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

(2) A licensed mutual fund administrator shall send its audited accounts in respect of a financial year of the administrator to the Inspector within six months of the end of that financial year or within such extension of that period as the Inspector may allow, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

Approval to be sought to appointment of director, etc., of licensed mutual fund administrator

20. A licensed mutual fund administrator shall not appoint a director or similar senior officer, or a general partner, as the case may be, unless-

- (a) the Inspector's written approval to the appointment has been obtained; or
- (b) the Inspector has exempted the administrator from the obligation to obtain the Inspector's approval,

and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

Certain licensed mutual fund administrators to have two directors

21. A licensed mutual fund administrator that is a company shall, at all times, have at least two directors, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

PART IV - Supervision and Enforcement

Division 1 - Regulated Mutual Funds

Special audits of regulated mutual funds

22. (1) The Inspector may, at any time, instruct a regulated mutual fund to have its accounts audited and to submit them to the Inspector within such time as the Inspector specifies.

(2) The operator of a regulated mutual fund shall ensure that an instruction given to the mutual fund in accordance with subsection (1) is complied with within the specified time, and whoever contravenes this provision is guilty of an offence and 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 regulated mutual fund failed to comply with the instruction.

Promoter or operator of regulated mutual funds to give Inspector information or explanation

23. (1) If requested to do so by the Inspector, a promoter or operator of a regulated mutual fund shall give the Inspector, such information or such explanation in respect of the fund as the Inspector may reasonably require to enable him to carry out his duty under this Law, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

(2) A person giving information or an explanation for the purpose of subsection (1) shall not give the Inspector information or an explanation that he knows or should reasonably know is false or misleading, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

24. (1) If requested to do so by the Inspector, the promoter or operator of a regulated mutual fund shall give the Inspector access to, or provide at any reasonable time all records relating to the mutual fund, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

Promoter or operator of regulated mutual funds to give Inspector access, etc., to records

(2) The Inspector may copy or take an extract of a record he is given access to, or is provided with under subsection (1).

25. (1) If the Inspector has reasonable grounds for believing a person is carrying on or attempting to carry on business as a mutual fund in or from the Islands in contravention of section 3(1), the Inspector may instruct that person to give to the Inspector such information or explanation as the Inspector may reasonably require to enable the Inspector to carry out his duty under this Law.

Inspector may require information in respect of alleged breach of section 3

(2) Whoever fails to comply with an instruction given to him in accordance with subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Inspector information or an explanation that he knows or should reasonably know is false or misleading, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

26. If it appears to the Inspector that a mutual fund is carrying on or attempting to carry on business in and from the Islands and is doing so in breach of section 3(1), the Inspector has power to apply to the Grand Court for such orders as he thinks fit to preserve the assets of the investors in the mutual fund, and the Grand Court has power to grant such orders.

Inspector may take action in respect of unregulated mutual funds

Division 2 - Licensed Mutual Fund Administrators

27. (1) The Inspector may, at any time, instruct a licensed mutual fund administrator to have its accounts audited and to submit them to the Inspector within such reasonable time as the Inspector specifies.

Special audits of licensed mutual fund administrators

(2) A licensed mutual fund administrator shall comply with an instruction given to it under subsection (1), and whoever contravenes this provision is guilty of an offence and 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 mutual fund administrator failed to comply with the instruction.

Licensed mutual fund administrators to give Inspector information

28. (1) If requested to do so by the Inspector, a licensed mutual fund administrator shall give to the Inspector such information or such explanation in respect of its mutual fund administration as the Inspector may reasonably require to enable him to carry out his duty under this Law, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

(2) A person giving information or an explanation for the purpose of subsection (1) shall not give the Inspector information or an explanation that he knows or should reasonably know is false or misleading, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

Licensed mutual fund administrators to give Inspector access to records

29. (1) If requested to do so by the Inspector, a licensed mutual fund administrator shall give the Inspector access to, or provide at any reasonable time, the records of the administrator and any records under the control of the administrator relating to mutual fund administration carried out by the administrator, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

(2) The Inspector may copy or take an extract of a document he is given access to, or is provided with, under subsection (1).

Inspector may require information in respect of alleged breach of section 9

30. (1) If the Inspector has reasonable grounds for believing a person is acting or carrying on business as a mutual fund administrator in contravention of section 9, the Inspector may instruct that person to give to the Inspector such information or explanation as the Inspector may reasonably require to enable the Inspector to carry out his duty under this Law.

(2) Whoever fails to comply with an instruction given to him under subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Inspector information or an explanation that he knows or should reasonably know is false or misleading, and whoever contravenes

this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.

31. If it appears to the Inspector-

- (a) that a person is acting or carrying on business as a mutual fund administrator; and
- (b) the person is doing so in breach of section 9,

Inspector may take action in respect of unlicensed mutual fund administrator

the Inspector has power to apply to the Grand Court for such orders as he thinks fit to preserve the assets of the investors in any mutual fund being administered by that person, and the Grand Court has power to grant such orders.

PART V-Duties and Powers of the Inspector

32. It is the duty of the Inspector to administer this Law.

Inspector to administer Law

33. (1) The Inspector may take all or any of the actions specified in subsection (3) if he is satisfied that a regulated mutual fund-

Powers of Inspector in respect of regulated mutual funds

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) 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; or
- (c) in the case of a licensed mutual fund, is carrying on or attempting to carry on business without complying with any condition of its Mutual Fund Licence contrary to section 4(5).

(2) For the purposes of alerting him as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Inspector shall immediately enquire into and ascertain the reason for any failure by a regulated mutual fund-

- (a) to change its name in accordance with a direction given to it under section 5(2);
- (b) to have its accounts audited in accordance with section 7(1) or to send its audited accounts to the Inspector in accordance with section 7(2);
- (c) to pay its prescribed annual licence or registration fee in accordance with section 8;
- (d) to have its accounts audited or to submit the audited accounts to the Inspector when instructed to do so under section 22(1);
- (e) (by its promoter or operator) to give the Inspector information or an explanation when requested to do so under section 23; or

(f) (by its promoter or operator) to give the Inspector access to records when requested to do so under section 24.

(3) For the purposes of subsection (1), the actions the Inspector may take in respect of a regulated mutual fund are to-

- (a) revoke any Mutual Fund Licence the mutual fund holds;
- (b) impose conditions or further conditions on any Mutual Fund Licence the mutual fund holds and to amend or revoke those conditions;
- (c) require the substitution of any promoter or operator of the mutual fund;
- (d) appoint a person to advise the fund on the proper conduct of its affairs; and
- (e) appoint a person to assume control of the affairs of the mutual fund.

(4) If the Inspector takes action under subsection (3), he may apply to the Grand Court for an order to take such other action as he considers necessary to protect the interests of investors in, and creditors of, the mutual fund and, subsequently, take any other action provided for in that subsection.

(5) Where he considers it necessary or appropriate to do so, and if it is practical to do so, the Inspector shall inform the investors of a mutual fund of any action he is taking or intending to take in respect of the mutual fund under this section.

(6) A person appointed under subsection (3)(d) or (e) is appointed at the expense of the relevant fund, and any expenses incurred by the Government by virtue of the appointment is an amount due to the Government payable by the mutual fund.

(7) A person appointed under subsection (3)(e) has all the powers necessary, to the exclusion of any operator, to administer the affairs of the mutual fund in the best interests of the investors and creditors of the mutual fund.

(8) The powers referred to in subsection (7) include the power to terminate the business of the mutual fund.

(9) A person appointed in respect of a mutual fund under subsection (3)(d) or (e) shall-

- (a) when requested to do so by the Inspector, supply the Inspector with such information in respect of the mutual fund as is specified by the Inspector;

- (b) within three months of his appointment, or within such other period as the Inspector may specify, prepare and supply to the Inspector a report on the affairs of the mutual fund making, where appropriate, recommendations in respect of the mutual fund; and
- (c) if his appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Inspector such other information, reports and recommendations as the Inspector specifies.

(10) If a person appointed under subsection (3)(d) or (e) fails to comply with an obligation under subsection (9), or, in the Inspector's opinion, is not carrying out his obligations in respect of the relevant mutual fund satisfactorily, the Inspector may revoke the appointment and appoint some other person in his place.

(11) On receipt of any information or a report under subsection (9) in respect of a mutual fund, the Inspector may-

- (a) require the mutual fund to reorganise its affairs in a manner specified by the Inspector;
- (b) if the mutual fund is a company, apply to the Grand Court under section 95 of the Companies Law (1995 Revision) for the company to be wound up by the Court in accordance with that Law;
- (c) if the mutual 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 fund; or
- (d) if the mutual fund is a partnership governed by the laws of the Islands, apply to the Grand Court for an order to dissolve the partnership,

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and may take such action in respect of the appointment or continued appointment of the person appointed under subsection (3)(d) or (e) as he considers appropriate.

(12) If the Inspector takes action under subsection (11), he may apply to the Grand Court for an order to take such other action as he considers necessary to protect the interests of investors and creditors of the mutual fund, and take any other action provided for in that subsection or subsection (3).

(13) Where a regulated mutual fund is a partnership formed under the laws of the Islands and the Inspector revokes any Mutual Fund Licence of the mutual fund in accordance with subsection (3)(a) the partnership is to be taken to have been dissolved.

(14) Where the Grand Court makes an order on an application made in accordance with subsection (11)(c), the Court may grant the trustee such indemnity as it considers appropriate out of the assets of the mutual fund.

(15) Without prejudice to any other power of the Inspector, the Inspector may, at any time, revoke a Mutual Fund Licence if the Inspector is satisfied that the holder of the licence has ceased to carry on or to attempt to carry on business as a mutual fund or the holder of the licence is placed in winding-up or is dissolved.

Powers of Inspector in
respect of licensed
mutual fund
administrators

34. (1) The Inspector may take any actions specified in subsection (3) if he is satisfied that a licensed mutual fund administrator is-

- (a) or is likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or is winding up its mutual fund administration business in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or to the creditors of any such mutual fund; or
- (c) carrying on or attempting to carry on the business of mutual fund administration without complying with any condition of its Mutual Fund Administrators Licence, contrary to section 11(6).

(2) For the purpose of alerting him as to whether or not an event referred in subsection (1) has occurred or is likely to occur, the Inspector shall immediately enquire into and ascertain the reason for-

- (a) any failure by a licensed mutual fund administrator-
 - (i) to give the Inspector notice that it has started to provide the principal office of a regulated mutual fund in accordance with section 13(1), to pay the prescribed annual fee in respect of a regulated mutual fund in accordance with section 13(2) or to pay its prescribed fee in accordance with section 13(3);
 - (ii) to provide a guarantee or other financial support or to increase its net worth in accordance with a direction given under section 14;
 - (iii) to satisfy itself with respect to a regulated mutual fund or any promoter or operator of a fund as required by section 15;
 - (iv) to give the Inspector written notice in respect of the affairs of a regulated mutual fund as required by section 16;
 - (v) to change its name in accordance with a direction given to it under section 17(2);

- (vi) to have its accounts audited in accordance with section 19(1) or to send its audited accounts to the Inspector in accordance with section 19(2);
- (vii) to have at least two directors as required by section 21;
- (viii) to have its accounts audited, and to submit the audited accounts to the Inspector when instructed to do so under section 27;
- (ix) to give the Inspector information or an explanation when requested to do so under section 28; or
- (x) to give the Inspector access to records when requested to do so under section 29;
- (b) the issue by the administrator of shares without the Inspector's approval, contrary to section 12;
- (c) the appointment of a director or similar senior officer, or general partner of the administrator without the Inspector's written approval, contrary to section 20; or
- (d) any shares in the administrator being disposed of or dealt in without the Inspector's approval, contrary to section 12.

(3) For the purposes of subsection (1), the actions the Inspector may take in respect of a licensed mutual fund administrator are to-

- (a) impose conditions or further conditions on its Mutual Fund Administrators Licence and to amend or revoke those conditions;
- (b) require the substitution of any director or similar senior officer or a general partner of the administrator;
- (c) appoint a person to advise the administrator on the proper conduct of its mutual fund administration; and
- (d) appoint a person to assume control of the affairs of the administrator relating to mutual fund administration.

(4) If the Inspector takes action under subsection (3), he may apply to the Grand Court for an order to take such other action as he considers necessary to protect the interests of investors in the funds administered by the administrator and its creditors and the creditors of any such fund, and subsequently take any other action provided for in that subsection.

(5) A person appointed under subsection (3)(c) or (d) is appointed at the expense of the relevant administrator, and any expenses incurred by the Government by virtue of the appointment is an amount due to the Government, payable by the administrator.

(6) A person appointed under subsection (3)(d) has all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver), to administer the affairs of the administrator relating to mutual fund

administration in the best interest of investors in the funds administered by the administrator and its creditors and creditors of any such funds.

(7) The powers referred to in subsection (6) include the power to terminate the business of the administrator so far as it relates to mutual fund administration.

(8) A person appointed in respect of a licensed mutual fund administrator under subsection (3)(c) or (d) shall-

- (a) when requested to do so by the Inspector, supply the Inspector with such information in respect of the administrator's administration of mutual funds as is specified by the Inspector;
- (b) within three months of his appointment, or within such other period as the Inspector may specify, prepare and supply to the Inspector a report on the administrator's administration of the mutual fund making, where appropriate, recommendations in respect of the administrator; and
- (c) if his appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Inspector such other information, reports and recommendations as the Inspector specifies.

(9) If a person appointed under subsection (3)(c) or (d)-

- (a) fails to comply with an obligation under subsection (8); or
- (b) in the Inspector's opinion, is not carrying out his obligations in respect of the mutual fund administrator satisfactorily,

the Inspector may revoke the appointment and appoint some other person in his place.

(10) On receipt of any information or a report under subsection (8) in respect of a licensed mutual fund administrator, the Inspector may-

- (a) require the administrator to reorganise its affairs in a manner specified by the Inspector; or
- (b) if the administrator is a company, apply to the Grand Court in accordance with section 95 of the Companies Law (1995 Revision) for the company to be wound up by the Court in accordance with that law,

and may take such action in respect of the appointment of the person appointed under subsection (3) (c) or (d) as he considers appropriate.

(11) If the Inspector takes action under subsection (10), he may apply to the Grand Court for an order to take such other action as he considers necessary to

protect the interests of investors in the funds administered by the administrator and its creditors or the creditors of any such funds and take any other action provided for in that subsection or subsection (3).

(12) Without prejudice to any other power of the Inspector, the Inspector may, at any time, revoke a Mutual Fund Administrators Licence if-

- (a) the Inspector is satisfied that the holder of the licence has ceased to carry on or to attempt to carry on business as a mutual fund administrator; or
- (b) the holder of the licence is placed in winding-up or is dissolved.

(13) Where a licensed mutual fund administrator is a partnership formed under the laws of the Islands and the Inspector revokes its Mutual Fund Administrators Licence in accordance with subsection (3) the partnership is to be taken to have been dissolved.

35. (1) If a magistrate is satisfied on an application made by the Inspector or a police officer of the rank of Inspector or above that there are reasonable grounds for suspecting that-

Powers of Inspector, etc., to search in accordance with search warrant

- (a) an offence under this Law has been, is being or is about to be committed in certain premises; or
- (b) a record to which the Inspector ought to have been given access under section 24(1) or 29(1), but was not given access, is to be found on certain premises,

the magistrate may issue a warrant authorising the Inspector or a police officer and such other people as he may reasonably need to assist him-

- (i) to enter those premises, using force if necessary;
- (ii) to search the premises and any person in the premises;
- (iii) 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;
- (iv) to take possession of, and secure against interference any record that appears to indicate that any offence under this Law has been, is being or is about to be committed; and
- (v) to inspect and take copies of any record on the premises that appears to indicate that an offence under this Law 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 Inspector.

(2) If a record is taken away by, or delivered to the Inspector in accordance with subsection (1)(v), the Inspector 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 Inspector in accordance with subsection (2), the Inspector shall allow a person who would be entitled to inspect it if it were not in the possession of the Inspector 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.

Inspector shall not be hindered

36. No person shall hinder the inspector in the exercise of any of his powers under this Law, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two hundred thousand dollars.

PART VI - Miscellaneous Provisions

Secrecy

37. (1) Subject to subsections (2) and (3), the Inspector shall not disclose any information relating to-

- (a) any application made to him for a licence under this Law;
- (b) the affairs of a mutual fund; or
- (c) the affairs of a mutual fund administrator,

the Inspector has acquired in the course of his duties or the exercise of his functions under this Law, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of fifty thousand dollars or to imprisonment for one year.

(2) Subsection (1) shall not apply to a disclosure by the Inspector-

- (a) necessary for the effective regulation of a mutual fund;
- (b) when lawfully required or permitted to do so by a court; or
- (c) under any other law.

(3) The Inspector may disclose to a mutual fund regulating authority outside the Islands general information of a statistical nature about a mutual fund

or a mutual fund administrator that does not disclose the identity of investors (unless such disclosure is otherwise permitted).

38. (1) A person aggrieved by any action taken by the Inspector under this Law may, within sixty days of being sent written notice of the Inspector's action, appeal to the Executive Council.

Appeal to Executive Council against any action of Inspector

(2) An appeal under subsection (1) shall be made by written notice to the Clerk of the Executive Council, and set forth a copy of any application to the Inspector, details of the action of the Inspector appealed against and the grounds of the appeal.

(3) After hearing an appeal, the Executive Council may uphold the Inspector's action or direct the Inspector not to take the action or to take some other action, as the case may be.

(4) The Inspector shall comply with a direction given to him under subsection (3).

39. (1) If an auditor, in the course of carrying out an audit of the accounts of a regulated mutual fund, becomes aware or has reason to believe that the mutual fund is-

Obligation of auditors

- (a) or is likely to become unable to meet its obligations as they fall due;
- (b) 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; or
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited,

the auditor shall immediately give the Inspector written notice of his knowledge or belief giving his reason for that knowledge or belief, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

(2) If an auditor, in the course of carrying out an audit of the accounts of a licensed mutual fund administrator, becomes aware of or has reason to believe that the mutual fund administrator is-

- (a) or is 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 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; or

- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited,

the auditor shall immediately give the Inspector written notice of his knowledge or belief giving his reason for that knowledge or belief, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.

(3) 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 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.

Indemnity

40. Neither the Crown nor any person carrying out or charged with the carrying out of any duty, obligation or function under this Law is liable for anything done or omitted to be done in respect of the discharge, purported discharge or non-discharge of that duty or function unless it is shown that the act or omission was in bad faith.

Common law restriction on alienation clarified

41. No rule of law to the contrary renders invalid a transfer of title by delivery of a trust unit represented by a bearer instrument or a restriction or prohibition on the transfer of a share, trust unit or partnership interest.

Regulations

42. (1) The Governor may make regulations necessary or convenient for the purposes of this Law.

(2) Fees prescribed for the purpose of this Law need bear no relationship to the cost of providing any service.

Exemption from compliance with Trade and Business Licensing Law (1996 Revision)

43. (1) Mutual fund administration may be carried on by a licensed mutual fund administrator without reference to the Trade and Business Licensing Law (1996 Revision).

(2) A mutual fund may carry on business without reference to the Trade and Business Licensing Law (1996 Revision).

Publication in revised and consolidated form authorised by the Governor in Council this 4th day of June, 1996

Mona N. Banks-Jackson
Clerk of Executive Council