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MUTUAL FUNDS LAW

(1999 Revision)

Consolidated with Laws 18 of 1993, 16 of 1996 (part) and 9 of 1998.

Revised under the authority of the Law Revision Law (19 of 1975).

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Law 18 of 1993-24th September, 1993

Law 16 of 1996-20th September, 1996

Law 9 of 1998-17th June, 1998.

Consolidated and revised this 11th day of May, 1999.

Note (not forming part of the Law): This revision replaces the 1996 Revision which should now be discarded.

MUTUAL FUNDS LAW

(1999 Revision)

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MUTUAL FUNDS LAW

(1999 Revision)

PART I - Introductory

1. This Law may be cited as the Mutual Funds Law (1999 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 Authority;

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (1998 Revision) and includes any employee of the Authority acting under the Authority’s authorisation;

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“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 (1999 Revision) (including an existing company as defined in that law), in accordance with but subject to section 37 of the Companies Law (1999 Revision) before the

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Mutual Funds Law (1999 Revision)

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commencement of winding up or the dissolution of the company, unit trust or partnership,

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;

1999 Revision

(b) in respect of an exempted limited partnership registered under the Exempted Limited Partnership Law (1999 Revision), 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;

“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);

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“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 (1999 Revision), or a person registered under the Building Societies Law (1997 Revision) or the Friendly Societies Law (1998 Revision);

“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 (1999 Revision), the Partnership Law (1995 Revision), the Exempted Limited Partnership Law (1999 Revision) the Trusts Law (1998 Revision) or this Law; or
- (c) the activities of a general partner of a partnership which is a mutual fund;

1995, 1998 and 1999
Revisions

“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 (1999 Revision) (including an existing company as defined in that Law);
- (b) a foreign company registered pursuant to Part IX of the Companies Law (1999 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 (1999 Revision),

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;

1995 Revision
1999 Revision

“partnership” means a limited partnership registered under the Partnership Law (1995 Revision), an exempted limited partnership registered under the Exempted Limited Partnership Law (1999 Revision) 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-

- 1999 Revision
- (a) in respect of a company formed under the Companies Law (1999 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 202 of the Companies Law (1999 Revision), the person or persons authorised on behalf of the company in accordance with section 203(1)(c) of that law;
 - (c) in the case of an exempted limited partnership registered under the Exempted Limited Partnership Law (1999 Revision), the registered office of that partnership for the purposes of that law; or
- 1998 Revision
- (d) in the case of an exempted trust registered under the Trusts Law (1998 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- Regulated mutual funds

- (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 1995 Revision
- (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 Authority, there is filed with the Authority, 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 Authority by notice in the Gazette;
- (b) unless an exemption from this requirement has been granted by the Authority, there is filed with the Authority the prescribed details in respect of the mutual fund’s current offering document;
- (c) it is registered with the Authority 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 Authority 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 Authority or in the prescribed details of the offering document filed with the Authority; and
- (b) has not, within twenty-one days of becoming so aware, filed with the Authority an amended offering document or amended prescribed details, as the case may be, 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 Authority 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).

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

Mutual Fund Licences

- (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 Authority that the applicant complies or will be complying with section 3(1)(a)(i) or (ii), or (b);
- (c) details necessary to satisfy the Authority in accordance with subsection (2); and
- (d) the prescribed application fee.

(2) The Authority has no power to grant a Mutual Fund Licence until it 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 Authority 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 (1999 Revision), or on the establishment of any unit trust.

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(4) The Authority may grant a Mutual Fund Licence subject to such conditions as it 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 Authority 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 Authority 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

5. (1) The Authority may refuse to grant a Mutual Fund Licence in respect of a mutual fund with a name that-

- (a) is identical with that of any company, firm, business or other entity, whether or not within the Islands, or 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.

(2) If, in the Authority's opinion, a mutual fund is carrying on, or attempting to carry on business in or from the Islands in a name that the Authority would have refused by virtue of subsection (1), the Authority may direct the mutual fund to change its name to a name approved by the Authority.

(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.

Misrepresentation as mutual fund

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.

Annual audit of regulated mutual fund

7. (1) A regulated mutual fund shall have its accounts audited annually by an auditor approved by the Authority.

(2) A regulated mutual fund shall send its audited accounts in respect of a financial year of the fund to the Authority within six months of the end of that financial year or within such extension of that period as the Authority may allow.

(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.

8. (1) A licensed regulated mutual fund shall pay to the Financial Secretary for the benefit of the revenue the prescribed annual licence fee on or before the 15th January in each year.

Regulated mutual fund to pay annual fee

(2) A regulated mutual fund that is complying with section 4(3) shall pay to the Financial Secretary for the benefit of the revenue 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 one twelfth of 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 Authority 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 sent to the Authority in a form provided or approved for the purpose by the Authority and accompanied by such information as the Executive Council requires to determine the application and the prescribed application fee which shall be forwarded by the Authority to the Financial Secretary for the benefit of the revenue.

(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 Authority 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 Authority or 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 Governor has given his approval to the issue, transfer, disposal or dealing, as the case may be; or
- (b) the Governor 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.

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

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

(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 to the Financial Secretary for the benefit of the revenue.

(3) A licensed mutual fund administrator shall, on or before the 15th January in each year, pay the prescribed annual licence fee to the Financial Secretary for the benefit of the revenue.

(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 one twelfth of 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 Authority may, for good cause, waive any additional fee imposed under subsection (4).

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

14. (1) If the Authority 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), it may direct the mutual fund administrator to provide such guarantees or other financial support as it thinks fit or to increase its net worth to such amount as it 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.

15. A licensed mutual fund administrator shall not provide a principal office to a regulated mutual fund unless it has satisfied itself that-

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

- (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) 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.

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 -

Licensed mutual fund administrators to give notice of certain matters

- (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 Authority 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 Governor 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 Governor 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 Governor's opinion, he would have refused by virtue of subsection (1), the Governor may direct the licensed mutual fund administrator to change that name to a name approved by the Governor.

(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.

Misrepresentation as fund manager

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.

Licensed mutual fund administrators to have annual audit

19. (1) A licensed mutual fund administrator shall have its accounts audited annually by an auditor approved by the Authority, and whoever contravenes this 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 Authority within six months of the end of that financial year or within such extension of that period as the Authority 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 Authority's written approval to the appointment has been obtained; or
- (b) the Authority has exempted the administrator from the obligation to obtain the Authority'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

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

Special audits of regulated mutual funds

(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.

23. (1) If the Authority 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 Authority may instruct that person to give to the Authority such information or explanation as the Authority may reasonably require to enable the Authority to carry out its duty under this Law.

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

Authority may take action in respect of unregulated mutual funds

Division 2 - Licensed Mutual Fund Administrators

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

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

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

Authority may take action in respect of unlicensed mutual fund administrator

27. If it appears to the Authority-

- (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,

the Authority 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 Governor and the Authority

Authority to administer Law

28. It is the duty of the Authority to administer this Law and in particular to examine and make recommendations to the Governor and the Executive Council with respect to-

- (a) applications for mutual fund administrators' licences under sections 10 and 11;
- (b) proposals for exemptions under section 9(2);
- (c) proposals for exemptions under section 9(4);
- (d) proposals for waivers under section 11(3);

- (e) proposals for approvals or waivers under section 12;
- (f) proposals for refusals or directions under section 17; and
- (g) requirements and applications under section 30(10) and (11).

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

Powers of Authority 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 it as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Authority 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 Authority in accordance with section 7(2);
- (c) to pay its prescribed annual licence or registration fee in accordance with section 8; or
- (d) to have its accounts audited or to submit the audited accounts to the Authority when instructed to do so under section 22(1).

(3) For the purposes of subsection (1), the actions the Authority 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 Authority takes action under subsection (3), it may apply to the Grand Court for an order to take such other action as it considers necessary to protect the interests of investors in, and creditors of, the mutual fund and, subsequently, take any other action provided for in that subsection.

(5) Where it considers it necessary or appropriate to do so, and if it is practical to do so, the Authority shall inform the investors of a mutual fund of any action it 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 or the Authority by virtue of the appointment is an amount due to the Government or the Authority 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 Authority, supply the Authority with such information in respect of the mutual fund as is specified by the Authority;
- (b) within three months of his appointment, or within such other period as the Authority may specify, prepare and supply to the Authority 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 Authority such other information, reports and recommendations as the Authority specifies.

(10) If a person appointed under subsection (3)(d) or (e) fails to comply with an obligation under subsection (9), or, in the Authority's opinion, is not carrying out his obligations in respect of the relevant mutual fund satisfactorily, the Authority 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 Authority may-

- (a) require the mutual fund to reorganise its affairs in a manner specified by the Authority;
- (b) if the mutual fund is a company, apply to the Grand Court under section 96 of the Companies Law (1999 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,

1999 Revision

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

(12) If the Authority takes action under subsection (11), it may apply to the Grand Court for an order to take such other action as it considers necessary to protect the interests of investors and creditors of the 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 Authority 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 Authority, the Authority may, at any time, revoke a Mutual Fund Licence if the Authority 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.

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

Powers of Governor in respect of licensed mutual fund administrators

- (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 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) is 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 it as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Authority shall immediately enquire into and ascertain the reason for-

- (a) any failure by a licensed mutual fund administrator-
 - (i) to give the Authority 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 Authority 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 Authority in accordance with section 19(2);
 - (vii) to have at least two directors as required by section 21; or
 - (viii) to have its accounts audited, and to submit the audited accounts to the Authority when instructed to do so under section 25;
- (b) the issue by the administrator of shares without the Governor's approval, contrary to section 12;
- (c) the appointment of a director or similar senior officer, or general partner of the administrator without the Authority's written approval, contrary to section 20; or
- (d) any shares in the administrator being disposed of or dealt in without the Governor's approval, contrary to section 12.

(3) For the purposes of subsection (1), the actions the Governor 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 Governor takes action under subsection (3), the Authority may apply to the Grand Court for an order to take such other action as it 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 or the Authority by virtue of the appointment is an amount due to the Government or the Authority, 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 Authority, supply the Authority with such information in respect of the administrator's administration of mutual funds as is specified by the Authority;
- (b) within three months of his appointment, or within such other period as the Governor and the Authority may specify, prepare and supply to the Governor and the Authority 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 Authority such other information, reports and recommendations as the Authority 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 Authority's opinion, is not carrying out his obligations in respect of the mutual fund administrator satisfactorily,

the Governor 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 Governor may-

- (a) require the administrator to reorganise its affairs in a manner specified by the Governor; or
- (b) if the administrator is a company, apply to the Grand Court in accordance with section 96 of the Companies Law (1999 Revision) for the company to be wound up by the Court in accordance with that law,

1999 Revision

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 Governor takes action under subsection (10), the Authority may apply to the Grand Court for an order to take such other action as it 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 Governor or the Authority, the Governor may, at any time, revoke a Mutual Fund Administrators Licence if-

- (a) the Authority 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 Governor revokes its Mutual Fund Administrators Licence in accordance with subsection (3) the partnership is to be taken to have been dissolved.

31. (1) If a magistrate is satisfied on an application made by the Authority or a police officer of the rank of Inspector or above that there are reasonable grounds for suspecting that an offence under this Law has been, is being or is about to be committed in certain premises, the magistrate may issue a warrant authorising the Authority or a police officer and such other persons as it or he may reasonably need to assist it or him-

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

- (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 Authority.

(2) If a record is taken away by, or delivered to the Authority in accordance with subsection (1)(v), the Authority may retain it for as long as is necessary to allow it to be inspected and for copies or abstracts to be taken and it is then to be returned to the premises from which it was taken.

(3) While a record is in the possession of the Authority in accordance with subsection (2), the Authority shall allow a person who would be entitled to inspect it if it were not in the possession of the Authority to inspect and take copies and abstracts of it at any reasonable time.

(4) If a person has a lien on a record, nothing done under this section in relation to the record prejudices the lien.

(5) Nothing in this section authorises a person to search a person of the opposite sex.

(6) In this section-

“premises” includes-

- (a) land, whether or not covered by buildings;
- (b) any structure, whether or not attached to land; and
- (c) a means of transport.

Authority shall not be hindered

32. No person shall hinder the Authority in the exercise of any of its 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

Obligation of auditors

33. (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 -

- (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) is 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 Authority 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 -

- (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 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) is 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 Authority 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.

34. 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. Indemnity

35. 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. Common law restriction on alienation clarified

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

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

37. (1) Mutual fund administration may be carried on by a licensed mutual fund administrator without reference to the Trade and Business Licensing Law (1999 Revision). Exemption from compliance with Trade and Business Licensing Law (1999 Revision)

(2) A mutual fund may carry on business without reference to the Trade and Business Licensing Law (1999 Revision).

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Carmena H. Parsons
Clerk of Executive Council