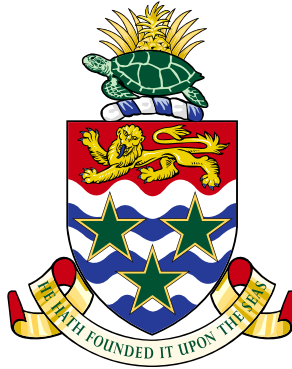


**CAYMAN ISLANDS**



# **MUTUAL FUNDS LAW**

**(2020 Revision)**

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**CAYMAN ISLANDS**

# MUTUAL FUNDS LAW

## (2020 Revision)

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## CAYMAN ISLANDS



# MUTUAL FUNDS LAW

(2020 Revision)

## PART I - Preliminary

### Short title

1. This Law may be cited as the *Mutual Funds Law (2020 Revision)*.

### Definitions

2. In this Law —

“**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;

“**AIF**” has the meaning assigned to it in the AIFMD;

“**AIFM**” has the meaning assigned to it in the AIFMD;

“**AIFMD**” means the *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers* and amending *Directives 2003/41/EC and 2009/65/EC* and *Regulations (EC) No 1060/2009* and *(EU) No 1095/2010*;

“**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 5(1) of the *Monetary Authority Law (2020 Revision)* and includes any employee of the Authority acting under the Authority’s authorisation;

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

“**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;

“**EEA**” means the European Economic Area established by the Agreement on the European Economic Area which entered into force on 1<sup>st</sup> January, 1994 and the relevant amending annexes and protocols;

“**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 (2020 Revision)* (including an existing company as defined in that law), in accordance with but subject to section 37 of the *Companies Law (2020 Revision)* before the commencement of winding-up or the dissolution of the company, unit trust or partnership,

but does not include debt, or alternative financial instruments as prescribed under the *Banks and Trust Companies Law (2020 Revision)*;

“**EU**” means the European Union established by the Treaty on European Union signed in Maastricht on 7th February 1992;

“**EU Connected Fund**” means a company, unit trust or partnership carrying on business in or from within the Islands which issues —

- (a) equity interests; or
- (b) shares, trust units or partnership interests that carry an entitlement to participate in the profits or gains of the company, unit trust or partnership that are not redeemable or purchasable at the option of the investor,

the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the company, unit trust or partnership to receive profits or gains from the acquisition, holding, management or disposal of investments and is —





- (i) managed by a person whose registered office is in a Member State and whose regular business is managing one or more AIFs as notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State; or
- (ii) marketed to investors or potential investors in a Member State, as notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State;

“**feeder fund**” means a mutual fund that conducts more than 51% of its investing in a master fund either directly or through an intermediary entity;

“**general partner**” means —

- (a) in respect of a limited partnership registered under the *Partnership Law (2013 Revision)*, a general partner as defined in that law;
- (b) in respect of an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 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;

“**high net worth person**” and “**sophisticated person**”, respectively, have the meanings assigned to those expressions in the *Securities Investment Business Law (2020 Revision)*;

“**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 administrator**” means the holder of a Mutual Fund Administrators Licence and includes a person exempted from obtaining a Mutual Fund Administrators Licence under section 10(2) of the *Mutual Funds Law (2003 Revision)*;

“**marketing**” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of shares, trust units or partnership interests of an EU Connected Fund it manages to or with investors domiciled or with a registered office in the EU;

“**master fund**” means a company, partnership or unit trust that —

- (a) is established or incorporated, as the case may be, in the Islands;
- (b) issues equity interests to one or more investors;

- (c) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund;
- (d) has one or more regulated feeder funds either directly or through an intermediary entity established to invest in the master fund; and
- (e) is not licensed under the *Banks and Trust Companies Law (2020 Revision)* or the *Insurance Law, 2010 [Law 32 of 2010]*, or registered under the *Building Societies Law (2020 Revision)* or the *Friendly Societies Law (1998 Revision)*,

and for the purposes of this Law such master fund shall be deemed to be a mutual fund;

“**Member State**” means a state which is —

- (a) a member of the EU; or
- (b) a part of the EEA in which the AIFMD has been implemented;

“**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 (2020 Revision)* or the *Insurance Law, 2010 [Law 32 of 2010]*, or a person registered under the *Building Societies Law (2020 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 (2020 Revision)*, the *Partnership Law (2013 Revision)*, the *Exempted Limited Partnership Law (2018 Revision)*, the *Trusts Law (2020 Revision)* or this Law; or
- (c) the activities of a general partner of a partnership which is a mutual fund;

“**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 (2020 Revision)* (including an existing company as defined in that Law);
- (b) a foreign company registered pursuant to Part IX of the *Companies Law (2020 Revision)*;



- (c) a limited partnership registered under the *Partnership Law (2013 Revision)*; or
- (d) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*,

that conducts mutual fund administration outside the Islands;

“**Mutual Fund Administrators Licence**” means a licence granted under sections 11 and 12;

“**Mutual Fund Licence**” means a licence granted under section 5;

“**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 4(6);

“**operator**”, in respect of a mutual fund or an EU Connected 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;

“**overseas regulatory authority**” has the meaning assigned to that expression in the *Monetary Authority Law (2020 Revision)*;

“**partnership**” means a limited partnership registered under the *Partnership Law (2013 Revision)*, an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 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;

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

- (a) a sophisticated person;
- (b) a high net worth person;

- (c) a person specified in paragraph 3 or 4 of Schedule 4 to the *Securities Investment Business Law (2020 Revision)*;
- (d) an exempted or ordinary non-resident company registered under the *Companies Law (2020 Revision)*, or a foreign company registered under Part IX of that Law, or any such company acting as general partner of a partnership registered under section 9(1) of the *Exempted Limited Partnership Law (2018 Revision)*, or any director or officer of the same acting in such capacity; or
- (e) the trustee of any trust registered or capable of registration under section 74 of the *Trusts Law (2020 Revision)* acting in such capacity;

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

**“registered office”** means —

- (a) in respect of a company formed under the *Companies Law (2020 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 183 of the *Companies Law (2020 Revision)*, the person or persons authorised on behalf of the company in accordance with section 184(1)(e) of that Law;
- (c) in the case of an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*, the registered office of that partnership for the purposes of that Law; or
- (d) in the case of an exempted trust registered under the *Trusts Law (2020 Revision)*, the place shown in the file maintained by the Registrar of Trusts as the address of the trustees of the trust;

**“regulated EU Connected Fund”** means an EU Connected Fund that elects to be licensed or registered pursuant to section 22B;

**“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 4(1) or (3);

**“regulated feeder fund”** means a regulated mutual fund that conducts more than 51% of its investing in a master fund either directly or through an intermediary entity;

**“restricted Mutual Fund Administrators Licence”** means a Mutual Fund Administrators Licence that contains the restriction referred to in section 11(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.

### Application of Law

**2A.** This Law applies to licensed or registered mutual funds or EU Connected Funds.

## PART II - Regulated Mutual Funds

### Determination of fitness and propriety

- 3.** In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's —
- (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.

### Regulated mutual funds

- 4.** (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 (2020 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 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 a person who contravenes this provision commits an offence and is 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 —
    - (i) in which the minimum aggregate equity interest purchasable by a prospective investor is eighty thousand dollars (or its equivalent in any other currency);

- (ii) the equity interests of which are listed on a stock exchange (including an over-the-counter market) specified by the Authority by notice in the Gazette; or
  - (iii) that is a master fund and the minimum aggregate equity interest purchasable by a prospective investor in the master fund is eighty thousand dollars (or its equivalent in any other currency) or the equity interests of the master fund 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 —
- (i) the prescribed details in respect of the mutual fund’s current offering document, or
  - (ii) in the case of a master fund where there is no offering document, there is filed with the Authority the prescribed details with respect to such master funds;
- (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 may carry on or attempt to carry on business in or from the Islands without complying with subsection (1) if —
- (a) the equity interests are held by not more than fifteen investors, a majority of whom are capable of appointing or removing the operator of the fund; or
  - (b) it is a fund, not incorporated or established in the Islands, which makes an invitation to the public in the Islands to subscribe for its equity interests by or through a person who is the holder of a licence under the *Securities Investment Business Law (2020 Revision)*, for a regulated activity specified by the Authority for the purposes of this subsection and —
    - (i) those interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette; or
    - (ii) the fund is regulated in a category, and by an overseas regulatory authority, approved by the Authority for the purposes of this subsection.
- (4A) Subsection (4)(a) does not apply to a master fund.
- (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, it makes an invitation to the public in the Islands to subscribe for its equity interests.



- (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 or the prescribed details of a master fund that is without an 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 or the prescribed details of a master fund that is without an 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).

### **Mutual Fund Licences**

- 5.** (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 —
- (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 4(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 —
    - (i) by persons who have sufficient expertise to administer the mutual fund; and
    - (ii) by persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions; 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 (2020 Revision)*, or on the establishment of any unit trust.
- (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 a person who contravenes this provision commits an offence and is 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 that person knows or should reasonably know is false or misleading, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

### **Name of regulated mutual fund restricted**

6. (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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the mutual fund failed to comply with the direction.

### **Misrepresentation as mutual fund**

7. A person other than a regulated mutual fund or a mutual fund referred to in section 4(4) shall not represent in any way that that person is carrying on or attempting to carry on business in or from the Islands as a mutual fund, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

### **Annual audit of regulated mutual fund**

8. (1) A regulated mutual fund shall have its accounts audited annually by an auditor approved by the Authority.
- (2) A regulated mutual fund shall, in such manner as the Authority may from time to time direct, 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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.
- (4) The Authority may, in relation to the whole or part of any financial year of the fund, exempt a regulated mutual fund from the requirements of this section either absolutely or subject to such conditions as the Authority may think fit to impose.

### **Regulated mutual fund to pay annual fee**

9. (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.

- (2) A regulated mutual fund that is complying with section 5(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).
- (5) Without prejudice to subsections (1) to (4), if an annual fee referred to in subsection (1) or (2) is not paid on or before the 15th January in each year, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.
- (6) In subsection (5) —  
“**court**” means the Grand Court or a court of summary jurisdiction, as the case may be.

## **PART III - Mutual Fund Administration**

### **Person to be authorised to administer mutual funds**

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

### **Types of Mutual Fund Administrators Licences**

- 11.** (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**

- 12.** (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 Authority 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 Authority may not grant a Mutual Fund Administrators Licence until it has been satisfied by the applicant —
- (a) that that applicant has sufficient expertise to administer regulated mutual funds;
  - (b) that that applicant's business as a mutual fund administrator will be administered by persons who are fit and proper persons to be directors or, as the case may be, managers or officers in their respective positions;
  - (c) in the case of an application for a licence that is not a restricted Mutual Fund Administrators Licence and, subject to subsection (3), that that applicant has a net worth of at least four hundred thousand dollars (or the equivalent in another currency);
  - (d) in the case of an application for a licence that is not a restricted Mutual Fund Administrators Licence, that 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
  - (e) 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 Authority may waive compliance with subsection (2)(c) if it is otherwise satisfied as to the financial viability of the applicant.
- (4) Where, in accordance with subsection (2)(d), 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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.
- (6) The Authority 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 a person who

contravenes this provision commits an offence and is 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 information that person knows or should reasonably know is false or misleading, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

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

- 13.** (1) 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 the Authority has given its approval to the issue, transfer, disposal or dealing, as the case may be, and any conditions of the approval are complied with.
- (2) The Authority may, in respect of a licensed mutual fund administrator whose shares are publicly traded on a stock exchange recognised by the Authority, waive the obligation to obtain approval under subsection (1), and any such waiver —
- (a) shall be subject to a condition that the licensed mutual fund administrator shall, as soon as reasonably practicable, notify the Authority of —
- (i) any change in control of the licensed mutual fund administrator;
  - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensed mutual fund administrator; or
  - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the parent company of the licensed mutual fund administrator;
- (b) shall be subject to a condition that the licensed mutual fund administrator shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensed mutual fund administrator in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and other conditions as the Authority may deem necessary.
- (3) Any person who contravenes this section commits an offence and is liable on conviction to a fine of twenty thousand dollars.



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

14. (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 a person who contravenes this provision commits an offence and is 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).
- (6) Without prejudice to subsections (1) to (5), if an annual fee referred to in subsection (2) or (3) is not paid on or before the 15th January in each year, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.
- (7) In subsection (6) —  
“court” means the Grand Court or a court of summary jurisdiction, as the case may be.

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

15. (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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.

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

16. (1) A licensed mutual fund administrator shall not provide mutual fund administration to a mutual fund unless it has satisfied itself that —
- (a) each promoter of the mutual fund is of sound reputation;
  - (b) the administration of the mutual fund will be undertaken by persons who have sufficient expertise to administer the mutual fund and are of sound reputation;
  - (c) in the case of a mutual fund to which section 4(1)(b) applies, the business of the mutual fund and any offer of equity interest in it will be carried out in a proper way,
  - (d) the mutual fund, if it is not incorporated or established in the Islands, is incorporated or established in a country or territory approved by the Authority for the purposes of this subsection, or is otherwise regulated by the Authority.
- (2) Subsection (1) shall be deemed to be a condition of every Mutual Fund Administrators Licence for the purposes of this Law.

**Licensed mutual fund administrators to give notice of certain matters**

17. 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 Authority written notice of its knowledge or belief giving its reason for that knowledge or belief, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of two hundred thousand dollars.

**Name of licensed mutual fund administrators restricted**

18. (1) The Authority 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 —
- (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 Authority 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 Authority's opinion, it would have refused by virtue of subsection (1), the Authority may direct the licensed mutual fund administrator to change that name to a name approved by the Authority.
- (3) A licensed mutual fund administrator shall comply with a direction given to it in accordance with subsection (2), and a person who contravenes this provision commits an offence and is liable on conviction to a fine of two thousand dollars, plus one hundred dollars in respect of each day during which the mutual fund administrator failed to comply with the direction.

### ***Repealed***

**18A. Repealed** by section 3 of the *Mutual Funds (Amendment) Law, 2014* [Law 16 of 2014].

### **Misrepresentation as fund administrator**

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

### **Licensed mutual fund administrators to have annual audit**

- 20.** (1) A licensed mutual fund administrator shall have its accounts audited annually by an auditor approved by the Authority, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.
- (2) A licensed mutual fund administrator shall, in such manner as the Authority may from time to time direct, 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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.

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

- 21.** 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 a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.

**Certain licensed mutual fund administrators to have two directors**

- 22.** A licensed mutual fund administrator that is a company shall, at all times, have at least two directors, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of twenty thousand dollars.

**PART III A – EU Connected Funds****Meaning of “attestation” and “confirmation of status”**

- 22A.** For the purposes of this Part “attestation” or “confirmation of status” means the method, whether by letter or any other manner which the Authority considers appropriate, by which the Authority may be required to confirm the details of an EU Connected Fund to an overseas regulatory authority or a Member State.

**Option to elect to be licensed or registered**

- 22B.** An EU Connected Fund may elect to apply for a licence or to apply to be registered under this Law as an EU Connected Fund and shall apply to the Authority for licensing or registration in the manner prescribed.

**Notice to the Authority**

- 22C.** (1) Within three months of a date to be specified by Order made by Cabinet, an EU Connected Fund that is marketing in a country or territory within the EEA shall, in the manner designated by the Authority, notify the Authority that the EU Connected Fund is marketing in a country or territory within the EEA.
- (2) An EU Connected Fund that commences marketing in a country or territory within the EEA after the date specified in subsection (1) shall, within twenty-one days of the commencement of marketing in a country or territory within the EEA, in the manner designated by the Authority, notify the Authority that the EU Connected Fund is marketing in a country or territory within the EEA.
- (3) An EU Connected Fund which fails to comply with this section commits an offence and is liable on conviction to a fine of five thousand dollars.





**Power to grant licence or to register**

**22D.** Where an application is made under section 22B, the Authority, after considering the application, may grant a licence to or register an EU Connected Fund in the manner that the Authority considers appropriate.

**EU Connected Fund that is already licensed or registered under Law**

**22E.** For the purposes of section 22B, an EU Connected Fund includes a company, unit trust or partnership that is already registered or licensed as a mutual fund under this Law.

**Compliance with this Law**

**22F.** An EU Connected Fund that elects to apply to be licensed or registered pursuant to section 22B and is granted a licence or is registered under this Law shall comply with the applicable provisions of this Law.

**Obligation to provide information**

**22G.** The Authority may provide attestation or confirmation of the status of an EU Connected Fund but before the attestation or confirmation of status is provided by the Authority, the EU Connected Fund shall submit to the Authority the prescribed information.

**Compliance with this Law**

**22H.** The Authority, with respect to an EU Connected Fund shall have the power to request information from or about the EU Connected Fund in order for the Authority to effectively comply with any obligation that the Authority may have in relation to a memorandum of understanding with respect to the AIFMD.

## **PART IV - Supervision and Enforcement**

### **Division 1 - Regulated Mutual Funds or regulated EU Connected Funds**

**Special audits of regulated mutual funds or regulated EU Connected funds**

- 23.** (1) The Authority may, at any time, instruct a regulated mutual fund or a regulated EU Connected Fund to have its accounts audited and to submit them to the Authority within such time as the Authority specifies.
- (2) The operator of a regulated mutual fund or a regulated EU Connected Fund shall ensure that an instruction given to the mutual fund or the EU Connected Fund in accordance with subsection (1) is complied with within the specified time, and a person who contravenes this provision commits an offence and is liable

on conviction to a fine of ten thousand dollars plus five hundred dollars in respect of each day after the specified time during which the regulated mutual fund or the regulated EU Connected Fund failed to comply with the instruction.

#### **Authority may require information in respect of alleged breach of section 4**

- 24.** (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 4(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.
- (2) A person who fails to comply with an instruction given to that person in accordance with subsection (1) commits an offence and is 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 that person knows or should reasonably know is false or misleading, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

#### **Authority may take action in respect of unregulated mutual funds**

- 25.** 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 4(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.

### **Division 2 - Licensed Mutual Fund Administrators**

#### **Special audits of licensed mutual fund administrators**

- 26.** (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.
- (2) A licensed mutual fund administrator shall comply with an instruction given to it under subsection (1), and a person who contravenes this provision commits an offence and is liable on conviction to a fine of ten thousand dollars plus five hundred dollars in respect of each day after the specified time during which the mutual fund administrator failed to comply with the instruction.



**Authority may require information in respect of alleged breach of section 10**

- 27.** (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 10, 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) A person who fails to comply with an instruction given to him under subsection (1) commits an offence and is 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 that person knows or should reasonably know is false or misleading, and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

**Authority may take action in respect of unlicensed mutual fund administrator**

**28.** 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 10,

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 any mutual fund being administered by that person, and the Grand Court has power to grant such orders.

## **PART V - Duties and Powers of Authority**

**Authority to administer Law**

- 29.** (1) It is the duty of the Authority to administer this Law and in particular to examine and make determinations with respect to —
- (a) applications for mutual fund administrators' licences under sections 11 and 12;
- (aa) an application for licensing or registration of an EU Connected Fund under section 22B;
- (b) applications for mutual funds licences under section 5;
- (c) proposals for waivers under section 12(3);
- (d) proposals for approvals or waivers under section 13;
- (e) proposals for refusals or directions under section 18; and
- (f) requirements and applications under section 31(10) and (11).

- (2) The Authority shall —
- (a) maintain a general review of mutual fund business and any EU Connected Fund business in the Islands and submit an annual report thereon to the Cabinet;
  - (b) be responsible for supervision and enforcement in respect of persons to whom this Law applies, and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of section 4(2), 7, 10 or 19; and
  - (c) whenever the Authority considers it necessary, examine, by way of scrutiny of prescribed regular returns, on-site inspections or auditors' reports, or in such other manner as the Authority may determine, the affairs or business of any regulated mutual fund or any regulated EU Connected Fund or licensee for the purpose of a general review under paragraph (a) or for the purpose of satisfying itself that this Law and any regulations made under this Law or under the *Proceeds of Crime Law (2020 Revision)* are being complied with.
- (3) The Authority may in writing authorise any other person to assist it in the exercise and performance of its powers and functions under this Law.

### **Powers of Authority in respect of regulated mutual funds or regulated EU Connected Funds**

30. (1) The Authority may take all or any of the actions specified in subsection (3) if it is satisfied that —
- (a) a regulated mutual fund or a regulated EU Connected Fund is or is likely to become unable to meet its obligations as they fall due;
  - (b) a regulated mutual fund or a regulated EU Connected Fund is carrying on or attempting to carry on business or is winding-up its business voluntarily in a manner that is prejudicial to its investors or creditors;
  - (ba) a regulated mutual fund or EU Connected Fund has contravened any provision of this Law or of the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (c) a regulated mutual fund, 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 5(5);
  - (cc) a regulated EU Connected Fund is carrying on business without complying with any condition of its licence;
  - (d) the direction and management of a regulated mutual fund or a regulated EU Connected Fund, has not been conducted in a fit and proper manner; or



- (e) a person holding a position as a director, manager or officer of a regulated mutual fund or a regulated EU Connected Fund is not a fit and proper person to hold the respective position.
- (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 or a regulated EU Connected Fund —
- (a) to change its name in accordance with a direction given to it under section 6(2);
  - (b) to have its accounts audited in accordance with section 8(1) or to send its audited accounts to the Authority in accordance with section 8(2);
  - (c) to pay its prescribed annual licence or registration fee in accordance with section 9; or
  - (d) to have its accounts audited or to submit the audited accounts to the Authority when instructed to do so under section 23(1).
- (3) For the purposes of subsection (1), the actions the Authority may take in respect of a regulated mutual fund or a regulated EU Connected Fund are to —
- (a) cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of the mutual fund;
  - (aa) cancel the licence or registration of a regulated EU Connected Fund;
  - (b) impose conditions or further conditions on any Mutual Fund Licence the mutual fund holds and to amend or revoke those conditions;
  - (bb) impose conditions or further conditions on a licence granted to a regulated EU Connected Fund pursuant to section 22C or amend or revoke conditions attached to that licence;
  - (c) require the substitution of any promoter or operator of the mutual fund or the regulated EU Connected Fund;
  - (d) appoint a person to advise the fund or the regulated EU Connected Fund on the proper conduct of its affairs; and
  - (e) appoint a person to assume control of the affairs of the mutual fund or the regulated EU Connected 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 or the regulated EU Connected 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 or a regulated

- EU Connected Fund of any action it is taking or intending to take in respect of the mutual fund or the regulated EU Connected 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 Authority by virtue of the appointment is an amount due to the Authority payable by the mutual fund or the regulated EU Connected 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 or the regulated EU Connected Fund.
  - (8) The powers referred to in subsection (7) include the power to terminate the business of the mutual fund or the regulated EU Connected Fund.
  - (9) A person appointed in respect of a mutual fund or a regulated EU Connected 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 or the EU Connected 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 or the EU Connected Fund making, where appropriate, recommendations in respect of the mutual fund or the EU Connected Fund; and
    - (c) if that person's 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 that person's obligations in respect of the relevant mutual fund or EU Connected Fund satisfactorily, the Authority may revoke the appointment and appoint some other person in that person's place.
  - (11) On receipt of any information or a report under subsection (9) in respect of a mutual fund or the regulated EU Connected Fund, the Authority may —
    - (a) require the mutual fund or the regulated EU Connected Fund to reorganise its affairs in a manner specified by the Authority;
    - (b) if the mutual fund or the regulated EU Connected Fund is a company, apply to the Grand Court under section 94 of the *Companies Law (2020 Revision)* for the company to be wound up by the Court in accordance with that Law;



- (c) if the mutual fund or the regulated EU Connected 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 or the regulated EU Connected Fund is a partnership governed by the laws of the Islands, apply to the Grand Court for an order to dissolve the partnership,

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 or the regulated EU Connected Fund, and take any other action provided for in that subsection or subsection (3).
- (13) Where a regulated mutual fund or regulated EU Connected 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) Without prejudice to any other powers of the Authority, the Authority may at any time cancel a Mutual Fund Administrators Licence, if the Authority is satisfied that the mutual fund administrator has ceased to carry on or to attempt to carry on business or has been placed in voluntary winding-up or is dissolved.
- (15) 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 or the regulated EU Connected Fund.
- (16) Without prejudice to any other power of the Authority, the Authority may, at any time, cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of a mutual fund if the Authority is satisfied that the fund has ceased to carry on or to attempt to carry on business as a mutual fund or has been placed in winding-up or is dissolved.
- (16A) The Authority may, at any time, cancel a licence granted or registration, under section 22C if the Authority is satisfied that the regulated EU Connected Fund has ceased to carry on business as an EU Connected Fund or has been placed in winding-up or is dissolved.
- (17) Nothing in this section shall be construed as limiting any power conferred on the Authority by section 29 or by any other provision of this Law or the regulations made hereunder.

**Powers of Authority in respect of licensed mutual fund administrators**

31. (1) The Authority may take any actions specified in subsection (3) if it is satisfied that —
- (a) a licensed mutual fund administrator is or is likely to become unable to meet its obligations as they fall due;
  - (aa) a licensed mutual fund administrator has contravened any provision of this Law or of the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (ab) a licensed mutual fund administrator who is a “corporate services provider” as defined in Part XVIIIA of the *Companies Law (2020 Revision)*, Part 12 of the *Limited Liability Companies Law (2020 Revision)* or Part 8 of the *Limited Liability Partnership (Amendment) Law, 2018 [Law 42 of 2018]\**, has contravened that Part;
  - (b) a licensed mutual fund administrator 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;
  - (c) a licensed mutual fund administrator 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;
  - (d) the direction and management of a licensed mutual fund administration business has not been conducted in a fit and proper manner;
  - (e) a person holding a position as a director, manager or officer of a licensed mutual fund administration business is not a fit and proper person to hold the respective position; or
  - (f) a person acquiring control or ownership of a licensed mutual fund administration business in the circumstances set out in section 13(2)(a) is not a fit and proper person to have such control or ownership.
- (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 14(1), to pay the prescribed annual fee in respect of a regulated mutual fund in accordance with section 14(2) or to pay its prescribed fee in accordance with section 14(3);
    - (ii) to provide a guarantee or other financial support or to increase its net worth in accordance with a direction given under section 15;





- (iii) to satisfy itself with respect to a mutual fund or any promoter or operator of a fund as required by section 16;
  - (iv) to give the Authority written notice in respect of the affairs of a regulated mutual fund as required by section 17;
  - (v) to change its name in accordance with a direction given to it under section 18(2);
  - (vi) to have its accounts audited in accordance with section 20(1) or to send its audited accounts to the Authority in accordance with section 20(2);
  - (vii) to have at least two directors as required by section 22; or
  - (viii) to have its accounts audited, and to submit the audited accounts to the Authority when instructed to do so under section 26;
- (b) the issue by the administrator of shares without the Authority's approval, contrary to section 13;
- (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 21; or
- (d) any shares in the administrator being disposed of or dealt in without the Authority's approval, contrary to section 13.
- (3) For the purposes of subsection (1), the actions the Authority may take in respect of a licensed mutual fund administrator are to —
- (a) revoke any Mutual Fund Administrators Licence the mutual fund administrator holds;
  - (b) impose conditions or further conditions on its Mutual Fund Administrators Licence and to amend or revoke those conditions;
  - (c) require the substitution of any director or similar senior officer or a general partner of the administrator;
  - (d) appoint a person to advise the administrator on the proper conduct of its mutual fund administration; and
  - (e) appoint a person to assume control of the affairs of the administrator relating to mutual fund administration.
- (4) If the Authority 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.
- (5) A person appointed under subsection (3)(d) or (e) is appointed at the expense of the relevant administrator, and any expenses incurred by the Authority by virtue of the appointment is an amount due to the Authority, payable by the administrator.

- (6) A person appointed under subsection (3)(e) 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)(d) or (e) 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 that person's appointment, or within such other period as the Authority may specify, prepare and supply to 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 that person's 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)(d) or (e) —
- (a) fails to comply with an obligation under subsection (8); or
  - (b) in the Authority's opinion, is not carrying out that person's obligations in respect of the mutual fund administrator satisfactorily,
- the Authority may revoke the appointment and appoint some other person in that person's place.
- (10) On receipt of any information or a report under subsection (8) in respect of a licensed mutual fund administrator, the Authority may —
- (a) require the administrator to reorganise its affairs in a manner specified by the Authority; or
  - (b) if the administrator is a company, apply to the Grand Court in accordance with section 94 of the *Companies Law (2020 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)(d) or (e) as the Authority considers appropriate.
- (11) If the Authority 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.



- (12) Without prejudice to any other power of the Authority, the Authority 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 Authority revokes its Mutual Fund Administrators Licence in accordance with subsection (3) the partnership is to be taken to have been dissolved.

### **Authority may attend winding-up proceedings**

- 32.** (1) Where a petition for the winding-up of —
- (a) a regulated mutual fund or a regulated EU Connected Fund;
  - (b) a licensed mutual fund administrator;
  - (c) a person who has at any time been a regulated mutual fund; or
  - (d) a person who has at any time been a licensed mutual fund administrator,
- is presented by a person other than the Authority, the Authority shall be served by the petitioner with a copy of the petition and may appear at the hearing of the petition and the provisions of subsections (2) and (3) shall apply.
- (2) A document which relates to a petition for winding-up and which is required to be sent to any person specified in subsection (1)(a), (b), (c) or (d), or to any of their respective creditors, shall also be sent to the Authority.
- (3) A person appointed for the purpose by the Authority may —
- (a) attend a meeting of creditors of a person specified in subsection (1)(a), (b), (c) or (d);
  - (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
  - (c) make representations as to any matter for decision at any such meeting.

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

- 33.** (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, Part XVIIIA of the *Companies Law (2020 Revision)*, Part 12 of the *Limited Liability Companies Law (2018 Revision)* or Part 8 of the *Limited Liability Partnership (Amendment) Law, 2018 [Law 42 of 2018]* 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 that police officer may reasonably need to assist it or that police officer —

- (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, Part XVIIIA of the *Companies Law (2020 Revision)*, Part 12 of the *Limited Liability Companies Law (2018 Revision)* or Part 8 of the *Limited Liability Partnership (Amendment) Law, 2018 [Law 42 of 2018]* 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, Part XVIIIA of the *Companies Law (2020 Revision)*, Part 12 of the *Limited Liability Companies Law (2018 Revision)* or Part 8 of the *Limited Liability Partnership (Amendment) Law, 2018 [Law 42 of 2018]* 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**

- 34.** No person shall hinder the Authority in the exercise of any of its powers under this Law, and a person who contravenes this provision commits of an offence and is liable on conviction to a fine of two hundred thousand dollars.



## PART VI - Miscellaneous Provisions

### Obligation of auditors

35. (1) If an auditor, in the course of carrying out an audit of the accounts of a regulated mutual fund or a regulated EU Connected Fund, obtains information or suspects that the mutual fund or the EU Connected Fund is —
- (a) unable or likely to become unable to meet its obligations as they fall due;
  - (b) carrying on or attempting to carry on business or winding-up its business voluntarily in a manner that is prejudicial to its investors or creditors;
  - (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
  - (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
  - (e) carrying on or attempting to carry on business otherwise than in compliance with —
    - (i) this Law or any regulations made hereunder;
    - (ii) the *Monetary Authority Law (2020 Revision)*;
    - (iii) the *Anti-Money Laundering Regulations (2020 Revision)*; or
    - (iv) a condition of the licence,
- the auditor shall immediately give the Authority written notice of that auditor’s information or suspicion and, in the case of suspicion, that auditor’s reason for that suspicion.
- (2) If an auditor, in the course of carrying out an audit of the accounts of a licensed mutual fund administrator, obtains information or suspects that the mutual fund administrator is —
- (a) unable or likely to become unable to meet its obligations as they fall due;
  - (b) carrying on or attempting to carry on business or winding-up its mutual fund administration business voluntarily in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or the creditors of any such mutual fund; 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;
  - (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
  - (e) carrying on or attempting to carry on business otherwise than in compliance with —
    - (i) this Law or any regulations made hereunder;

- (ia) in respect of a licensed mutual funds administrator, Part XVIIIA of the *Companies Law (2020 Revision)*, Part 12 of the *Limited Liability Companies Law (2020 Revision)* and Part 8 of the *Limited Liability Partnership Law, 2017 [Law 13 of 2017]*, if the licensee is a “corporate services provider” as defined in that Part;
- (ii) the *Monetary Authority Law (2020 Revision)*;
- (iii) the *Anti-Money Laundering Regulations (2020 Revision)*; or
- (iv) a condition of the licence,

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

- (3) Without prejudice to subsection (9), if it appears to the Authority that an auditor has failed to comply with subsection (1) or (2), the Authority may disqualify that auditor from being an auditor of a regulated mutual fund or a regulated EU Connected Fund or a licensed mutual fund administrator; but the Authority may remove any disqualification imposed under this subsection if satisfied that the auditor in question will in future comply with subsection (1) or (2), as the case may be.
- (4) A regulated mutual fund or a regulated EU Connected Fund or a licensed mutual fund administrator shall not appoint as an auditor a person disqualified under subsection (3).
- (5) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a regulated mutual fund or a regulated EU Connected Fund or a licensed mutual fund administrator or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.
- (6) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission concerned was in bad faith.
- (7) A reference in this section to an auditor carrying out an audit of the accounts of a regulated mutual fund or a regulated EU Connected Fund or a licensed mutual fund administrator includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.
- (8) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.



- (9) Nothing in subsection (1) or (2) shall impose on an auditor carrying out an audit of the accounts of a regulated mutual fund or a regulated EU Connected Fund or a licensed mutual fund administrator an obligation to do anything that that auditor would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.

## Appeals

- 36.** (1) An appeal lies to the Grand Court from any decision of the Authority revoking a licence under sections 22C, 30(3)(a) or (16) or section 31(3)(a) or (12).
- (2) An appeal against the decision of the Authority shall be on motion, and the appellant, within twenty-one days after the day on which the Authority has given its decision, shall serve a notice in writing signed by the appellant or that appellant's attorney-at-law on the Authority of that appellant's intention to appeal and of the general ground of that appellant's appeal.
- (3) Notwithstanding subsection (2), a person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Grand Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Grand Court upon hearing of such application may extend the time prescribed by this section as it deems fit.
- (4) Subject to subsection (5), the Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the Grand Court without delay a copy of the decision and all papers relating to the appeal.
- (5) The Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.
- (6) The Clerk of the Grand Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Grand Court may direct.
- (7) At the hearing of the appeal, the appellant shall, before going into the case, state all the grounds of appeal on which that appellant intends to rely and shall not, unless by leave of the Grand Court, go into any matters not raised by such statements.
- (8) The Grand Court may adjourn the hearing of an appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Grand Court thereon to the Authority.
- (9) An appeal against a decision of the Authority shall not have the effect of suspending the execution of such decision.

### Indemnity

37. Neither the Authority 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

38. 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

39. (1) The Cabinet may make regulations —
- (a) prescribing anything by this Law required to be prescribed;
  - (b) exempting any person or class of persons or business or class of business from any provision of this Law;
  - (c) prescribing forms to be used;
  - (d) prescribing any returns to be made under this Law;
  - (e) prescribing any fees payable; and
  - (f) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Law and its administration.
- (2) Regulations made under this Law may —
- (a) make different provision in relation to different cases or circumstances;
  - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or
  - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary or expedient for the purposes of the regulations.
- (3) Regulations made under this Law may create an offence punishable by a fine not exceeding ten thousand dollars.
- (4) 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

40. (1) Mutual fund administration may be carried on by a licensed mutual fund administrator without reference to the *Trade and Business Licensing Law (2019 Revision)*.





- (2) A mutual fund or an EU Connected Fund may carry on business without reference to the *Trade and Business Licensing Law (2019 Revision)*.

### **Savings and transitional provisions**

- 41.** (1) Section 4(3)(a)(i) does not apply to a mutual fund which, immediately before the 14th November, 2006, was carrying on business in or from the Islands; and section 4(3)(a)(i) of the Law as contained in the *Mutual Funds Law (2003 Revision)* shall continue to apply to such mutual fund.
- (2) Section 10 does not apply to a mutual fund administrator who, immediately before the 14th November, 2006, was exempted in accordance with section 10(2) of the Law as contained in the *Mutual Funds Law (2003 Revision)*; and section 10(2), (3), (4) and (5) of the Law as contained in the *Mutual Funds Law (2003 Revision)* continues to apply to such mutual fund administrator.
- (3) A power conferred on the Authority by section 30(3) may be exercised in respect of a matter arising before, on or after the 14th November, 2006.
- (4) Section 32 does not apply in respect of a winding-up petition presented before the 14th November, 2006.
- (5) Section 35 does not apply to an audit that was concluded before the 14th November, 2006.

**Publication in consolidated and revised form authorised by the Cabinet this 7th day of January, 2020.**

**Kim Bullings**  
*Clerk of Cabinet*



## ENDNOTES

*\*Notes: (not forming part of the Law) —*

1. *With regard to sections 31(ab), 33(1) and 35(2)(e)(ia), it should be noted that Part 8 of the Limited Liability Partnership (Amendment) Law, 2018 [Law 42 of 2018] was not in force as of 31st December, 2019.*

### Table of Legislation History:

SL #	Law #	Legislation	Commencement	Gazette
	13/2019	Mutual Funds (Amendment) Law, 2019	8-Aug-19	LG28/2019/s4
		<b>Mutual Funds Law (2019 Revision)</b>	19-Feb-19	LG2/2019/s8
43/2018		Mutual Funds (Amendment) Law, 2015 (Commencement) Order, 2018	31-Dec-18	GE99/2018/s1
	12/2015	Mutual Funds (Amendment) Law, 2015	1-Jan-19	GE73/2015/s2
		<b>Mutual Funds Law (2015 Revision)</b>	17-Jul-15	GE53/2015/s21
	16/2014	Mutual Funds (Amendment) Law, 2014	20-Oct-14	G21/2014/s2
		<b>Mutual Funds Law (2013 Revision)</b>	11-Oct-13	GE82/2013/s16
	31/2012	Mutual Funds (Amendment) Law, 2012	10-Jan-13	GE4/2013/s7
		<b>Mutual Funds Law (2012 Revision)</b>	22-Oct-12	G22/2012/s1
	32/2011	Mutual Funds (Amendment) Law, 2011	22-Dec-11	GE113/2011/s1
		<b>Mutual Funds Law (2009 Revision)</b>	20-Jul-09	G15/2009/s5
	12/2008	Mutual Funds (Amendment) Law, 2008	7-Aug-08	GE21/2008/s3
		<b>Mutual Funds Law (2007 Revision)</b>	6-Aug-07	G16/2007/s4
	29/2006	Mutual Funds (Amendment) Law, 2006	14-Nov-06	G23/2006/s2
		<b>Mutual Funds Law (2003 Revision)</b>	28-Jul-03	G15/2003/s6
38/2003		Mutual Funds (Amendment) Law, 2002 (Commencement) Order, 2003	12-Mar-03	GE10/2003/s6
	36/2002	Mutual Funds (Amendment) Law, 2002	17-Mar-03	GE5/2003/s3
		<b>Mutual Funds Law (2001 Revision)</b>	30-Apr-01	GE8/2001/s5
	4/2001	Mutual Funds (Amendment) (Prudent Administration) Law, 2001	26-Apr-01	GE7/2001/s4
		<b>Mutual Funds Law (1999 Revision)</b>	2-Aug-99	G16/1999/s9
	9/1998	Mutual Funds (Amendment) Law, 1998	17-Aug-98	G17/1998/s7
	16/1996	Monetary Authority Law, 1996 (Part)	9-Dec-96	G25/1996/s4
		<b>Mutual Funds Law (1996 Revision)</b>	24-Jun-96	G13/1996/s3
	18/1993	Mutual Funds (Amendment) Law, 1993	13-Dec-93	G25/1993/s1
	13/1993	Mutual Funds Law, 1993	26-Jul-93	G15/1993/s9

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