

THE LAWS OF THE VIRGIN ISLANDS

No. 6 of 1996

THE MUTUAL FUNDS ACT¹

(as amended, 2004)

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Preliminary

Short title and Commencement.

1. This Act may be cited as the Mutual Funds Act, 1996 and shall come into force on such date as the Governor may appoint by proclamation published in the Gazette.

Interpretation.

2.(1) In this Act, unless the context otherwise requires,

“administrator” means a person who,

(a) for valuable consideration provides a mutual fund with administrative services alone or together with accounting services; or

(b) is entitled to provide to mutual funds (by whatever name called) such services and facilities as provided in paragraph (a) under the laws of a recognised Country or Jurisdiction;

“auditor” means a person who is entitled to practice as public accountant and to perform audits under the laws of the Territory or of a recognised Country or Jurisdiction;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;

“company” means a body corporate, wherever incorporated or constituted;

“constitutional documents” means

(a) in the case of a company, the memorandum and articles of association or other instrument of incorporation;

(b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;

(c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

“custodian” means the person who holds the property of the mutual fund in safe keeping;

“existing entity” means

(a) a public fund,

(b) a private or professional fund, or

(c) a manager or administrator,

which was carrying its business or, in the case of a public, private or professional fund, was managing or administering its affairs in or from within the Territory immediately before the coming into force of this Act;

“financial year” means the period not exceeding twelve months at the end of which the balance of the accounts is struck, and may be up to eighteen months in the case of the first or last period or when the

period is changed;

“Governor” REPEALED

“investor” means a person who owns or holds shares (as herein defined) issued by a mutual fund;

“manager” means a person not being an officer or an employee of a person licensed under this Act or a mutual fund which has delegated management functions to a person licensed under this Act, who,

(a) for valuable consideration, provides a mutual fund with management services alone or together with investment advice or administrative services; or

(b) is entitled to provide to mutual funds (by whatever name called), such services or advice as provided in paragraph (a) under the laws of a recognised Country or Jurisdiction;

“Minister” REPEALED

“mutual fund” or “fund” means a company incorporated, a partnership formed, a unit trust organised or other similar body formed or organised under the laws of the Territory or of any other country or jurisdiction which

(a) collects and pools investor funds for the purpose of collective investment and

(b) issues shares (as herein defined) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be,

and includes

(i) an umbrella fund whose shares are split into a number of different class funds or sub-funds, and

(ii) a fund which has a single investor which is a mutual fund not registered or recognised under this Act,

but excludes any arrangements which are designated by regulations as not being mutual funds;

“officer” includes

(a) a director, alternate director, the president, a vice-president, and any other person designated as an officer of a company by by-law, by resolution of the directors or by any other instrument;

(b) a general partner of a partnership; and

(c) a trustee of a unit trust;

“partnership” means a contractual relation which subsists between persons carrying on a business in common with a view of profit and includes a partnership formed under the laws of the Territory or of any other country or jurisdiction notwithstanding any statutory definition thereof to the contrary;

“person” includes an individual natural person, a mutual fund, any company, partnership, unit trust or trustee;

“private fund” means a mutual fund

(a) the constitutional documents of which specify that it will have no more than fifty investors;

(b) the constitutional documents of which specify that the making of an invitation to subscribe for or purchase shares issued by the mutual fund is to be made on a private basis; or

(c) which is designated as a private fund by regulations;

“professional fund” means a mutual fund

(a) the shares of which are made available only to professional investors and the initial investment in which, in respect of the majority of each of such investors, is not less than one hundred thousand dollars in the United States currency or its equivalent in any other currency; or

(b) which is designated as a professional fund by regulations;

“professional investor” means a person

(a) whose ordinary business involves, whether for its own account or the accounts of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or

(b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of one million dollars in the United States currency or its equivalent in any other currency and that he consents to being treated as a professional investor;

“promoter” means a person acting alone or in conjunction with others directly or indirectly who takes the initiative in forming or organising the business of a mutual fund, but does not include an underwriter who receives underwriting commission without taking any part in the founding or organising of the mutual fund business;

“prospectus” means any prospectus or similar document the purpose of which is to make an invitation to the public or any section thereof to subscribe for or purchase shares issued by a public fund;

“public fund” means a mutual fund which is not a private fund or a professional fund;

“recognised Country or Jurisdiction” means any Country or Jurisdiction recognised by the Commission under subsection (3);

“Registrar” REPEALED

“regulations or the regulations” means regulations made under this Act

“security” means any document or instrument constituting evidence of title to or interest in the capital assets, property, profits, earnings or royalties of any person, as herein defined, and includes

(a) bonds, debentures, notes, mortgages and other evidence of indebtedness;

(b) any share, stock, document or instrument commonly known as a security; and

(c) any document or instrument constituting evidence of an option, subscription or other interest in a security or constituting evidence of an interest in an association of legatees or heirs;

“share” means share in the share capital of a mutual fund company and includes an interest in a mutual fund partnership and a unit in a mutual fund unit trust;

“underwriter” means a person who,

- (a) as principal, agrees to purchase shares issued by mutual funds with a view to offering them to the public; or
- (b) as agent for a mutual fund, offers for sale or sells to the public shares issued by the mutual fund;

“unit trust” means an arrangement creating a trust under the laws of the Territory or of any other country or jurisdiction in which unit holders participating in the arrangement are the beneficiaries of the trust.

(1A) For the purpose of

(a) paragraph (b) of the definition of “private fund”, an invitation to subscribe for or purchase shares issued by a mutual fund on a private basis includes an invitation which is made

(i) to specified persons (however described) and is not calculated to result in shares becoming available to other persons or to a large number of investors; or

(ii) by reason of a private or business connection between the person making the invitation and the investor; and

(b) paragraph (a) of the definition of “professional fund”, the minimum investment limit referred to in that paragraph shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the professional fund.

(2) In this Act,

(a) every company incorporated and every partnership formed or unit trust organised under the laws of the Territory for the purpose of carrying on business as a mutual fund, a manager or administrator shall, if carrying on business anywhere outside the Territory, be deemed to be carrying on business from within the Territory;

(b) the expression “carrying on business from within the Territory” includes carrying on business outside the Territory from a place of business or a registered office within the Territory;

(c) a mutual fund which is not incorporated, formed or organised or carrying on its business in or from within the Territory shall be deemed to be carrying on business in the Territory if it solicits an individual within the Territory to purchase its shares, except where the purchase is a result of an approach made by the individual without any solicitation being made.

(3) The Commission may recognise any Country or Jurisdiction for the purposes of this Act and shall cause a notice of such recognition to be published in the Gazette.

PART I - Administration

Duties of the Commission.

3.(1) REPEALED

(2) The Commission has

(a) the duty to supervise mutual funds and managers and administrators in accordance with this Act;

(b) in and for the discharge of that duty, the powers conferred upon it by this Act;

(c) the power to prescribe such forms as it considers necessary for the purposes of this Act or the regulations; and

(c) the authority to issue directives and policy guidelines for the purposes of this Act or the regulations.

(3) The Commission may, upon request by any person to whom this Act applies and the payment of the fee set out in Part I of Schedule 2 or such other amount as may be prescribed by regulations, issue to such person a certificate of compliance in such form as the Commission thinks fit.

(4) The Commission or any of its employees shall not knowingly have any financial interest in any person registered, recognised or licensed under this Act.

Delegation of Power.

4. REPEALED

Annual report.

5.(1) The Commission shall, on or before the 30th day of April in each year, prepare and deliver to the Governor in Council a report consisting of

(a) a summary of the nature and number of

(i) filings made under this Act;

(ii) registrations, recognitions and licences granted under this Act;

(iii) enforcement proceedings or disciplinary measures taken under this Act; and

(b) a general commentary on the law relating to the mutual funds industry and on the practice and development of that law.

(2) Upon receiving the report referred to in subsection (1), the Governor in Council shall, as soon as practicable, cause the report to be laid before the Legislative Council.

Records of the Registrar.

6.(1) The Commission shall keep separate registers for all

(a) registered public funds;

(b) recognised private funds; and

(c) licensed managers and administrators.

(2) The registers required under subsection (1) shall show

(a) the information required under section 26(a), (b) and (c) with respect to each registered public fund, recognised private fund and licensed manager or administrator;

(b) the date of registration, recognition or licence, as the case may be; and

(c) the status of such registration, recognition or licence if cancelled and the date thereof.

(3) Registers kept by the Commission shall be in such form as it may determine and, subject to section 38, shall be open to public inspection during ordinary office hours on payment of an inspection fee of five dollars or such other amount as may be prescribed by regulations.

Mutual Funds Advisory Committee.

7.(1) There shall be a Committee called the Mutual Funds Advisory Committee which shall consist of not more than five persons appointed by the Commission from among members of the private sector who are known to it to have adequate knowledge of and experience in the mutual funds industry.

(2) The Commission shall designate one of the persons appointed under subsection (1) as Chairman of the Mutual Funds Advisory Committee.

(3) The Mutual Funds Advisory Committee shall

(a) advise the Commission on any matter referred to it by the Commission relating to the mutual funds industry;

(b) on its own motion report and make recommendations to the Commission on any matter relating to mutual funds as it sees fit; and

(c) have power to establish subject to the approval of the Commission

(i) its own working rules and procedures; and

(ii) as many sub-committees as it thinks necessary.

PART II - Public Funds

Registration.

8. No public fund shall carry on its business or manage or administer its affairs in or from within the Territory unless it is registered under this Act.

Application for registration.

9.(1) A public fund may apply to the Commission for registration to carry on business in or from within the Territory.

(2) An application shall be

- (a) made in the form and contain the information as set out in Schedule 1; and
- (b) accompanied by
 - (i) a statement setting out the nature and scope of the business to be carried on by the applicant in or from within the Territory, including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business;
 - (ii) the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations;
 - (iii) the instrument by which the applicant is constituted or such other proof as may be satisfactory to the Commission that the applicant is lawfully constituted under the laws of the Territory or of any other country or jurisdiction;
 - (iv) the notices required under section 26; and
 - (v) such other documents or information as the Commission may reasonably require for the purpose of determining the application.

Application for consent to be registered.

10.(1) The promoters of a public fund that is proposed to be formed, may apply to the Commission for his consent to register such proposed public fund upon being lawfully constituted under the laws of the Territory or of any other country or jurisdiction and upon complying with the requirements of this Act.

(2) An application for consent under subsection (1) shall be

- (a) in the form of a letter setting out the particulars of the proposed public fund; and
- (b) accompanied by the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations.

(3) The consent of the Commission shall be

- (a) in such form as the Commission may direct; and
- (b) valid for a period of three months from the date it is granted subject to there being no change, that the Commission considers material, in any of the particulars contained in the application for consent.

(4) The promoters of a proposed public fund may, upon the expiry of the three months period referred to in subsection (3)(b), apply for the renewal of the Commission's consent subject to

- (a) supplying such documents or information as the Commission may require; and
- (b) the payment of the application fee required under subsection (2) (b).

Power to grant registration or consent.

11.(1) The Commission may, in its discretion, grant or refuse to grant

- (a) registration under section 9; or
- (b) its consent under section 10.

(2) Notwithstanding subsection (1), the Commission shall refuse to grant registration or its consent, as the case may be, if

- (a) the public fund has a name which is undesirable or misleading;
- (b) the public fund does not have a custodian who is functionally independent of the manager or administrator; or
- (c) it determines that it is not in the public interest that such registration or consent should be granted.

(3) Except as provided in section 32, where the Commission, in the exercise of its powers under subsection (1) (a) or (b), makes a decision refusing to grant registration or consent it shall not be bound to assign any reasons for its decision which shall not be subject to appeal or review.

Registration procedure.

12.(1) Where the Commission grants registration pursuant to section 9, it shall

- (a) register the public fund in the register maintained by it for the purpose under section 6; and
- (b) issue a certificate to the registered public fund showing the date of registration.

(2) Where the Commission grants its consent under section 10, the promoters of the proposed public fund shall, within the three months period referred to in section 10 (3) (b) from the date of granting such consent or the renewal thereof, deliver to the Commission.

- (a) REPEALED
- (b) satisfactory proof that the proposed public fund is lawfully constituted in the Territory or elsewhere;
- (c) the application fee required under section 9 (2) (b) (ii); and
- (d) the notices referred to in section 9 (2) (b) (iv).

(3) If the Commission is satisfied that the proposed public fund has complied with the requirements of subsection (2), the Commission shall register the public fund and issue to it a certificate of registration in accordance with the procedure set out in subsection (1).

(4) The Commission shall not register the proposed public fund if the public fund

- (a) has not received a consent for registration under section 10; or
- (b) has not complied with any of the requirements of subsection (2).

(5) Any person aggrieved by a decision of the Commission under subsection (4) may appeal to the Financial Services Appeal Board established under the Financial Services Commission Act, 2001.

Accounting records and financial statements.

13.(1) Every registered public fund shall

(a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and

(b) keep such accounting records and financial statements available for examination by the Commission or any person authorised by the Commission at

(i) the public fund's place of business or registered office in the Territory; or

(ii) such other place as the public fund's officers may see fit, provided that copies of such records and statements or such other documents or information as the Commission may consider adequate are kept at the public fund's place of business or registered office in the Territory.

(2) The financial statements required under subsection (1) shall be

(a) audited by an auditor acceptable to the Commission (in this Act called "the approved auditor") in accordance with generally accepted auditing standards;

(b) accompanied by the report of the approved auditor thereon which shall include a statement of the accounting principles under which statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements; and

(c) provided to or made available for examination by all investors of the registered public fund.

Duty to publish and file a prospectus.

14.(1) No registered public fund shall in or outside the Territory make an invitation to the public or any section thereof to purchase its shares unless prior to such invitation it publishes in writing a prospectus signed by or on behalf of the board of directors (by whatever named called) or in the case of a partnership, unit trust or other similar body, the equivalent governing body of the fund which approved the contents of the prospectus or authorised its publishing, and files a copy thereof with the Commission.

(2) Every prospectus shall

(a) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;

(b) contain a summary statement of investors' rights as provided in section 16; and

(c) be accompanied by or contain reference to the availability of the financial statements for the last financial year of the fund and the auditor's report thereon if the fund has completed a financial year in operation.

(3) REPEALED.

(4) If all or any part of the prospectus is not in the English language, the Commission may require that an English translation of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Commission be filed along with the prospectus.

(5) Where in a prospectus any of the disclosures required under subsection (2) (a) ceases to be accurate in a material particular, the registered public fund shall within fourteen days of the change occurring publish an amendment thereto giving accurate disclosures and provide a copy thereof to each of its investors and to the Commission.

Certificate of compliance.

15.(1) Every registered public fund, wherever it is constituted, which carries on business outside the Territory under the laws of another country or jurisdiction, shall every year, within three months of the end of its financial year, file with the Commission of certificate of compliance from the competent authority that is responsible for the regulation and supervision of the conduct of its business in that other country or jurisdiction.

(2) A registered public fund to which subsection (1) applies is deemed to have complied with that subsection if it is proven to the satisfaction of the Commission that the required certificate could not be obtained for reasons beyond the control of the fund.

(3) Where a registered public fund which carries on business outside the Territory carries on business in more than one country or jurisdiction other than the Territory, the certificate required to be filed under subsection (1) shall be from the competent authority in the country or jurisdiction in or from which it carries on its principal business.

Investors' rights.

16.(1) If a registered public fund publishes a prospectus or any amendment thereto that contains misrepresentation relating to any of the disclosures required under section 14 (2) (a), a person who purchased any shares pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person referred to in subsection (1) may elect to exercise a right of action

(a) for the rescission of the purchase, or

(b) for damages,

jointly and severally against the fund, and every member of the board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation, had he made reasonable investigations consistent with his duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.

(3) For the purposes of this section, "misrepresentation" means

(a) an untrue or misleading statement of any of the disclosures required under section 14 (2) (a); or

(b) an omission to disclose any of such disclosures.

(4) No person is liable under this section if he proves that the purchaser purchased the shares offered by the prospectus or amendment thereto with knowledge of the misrepresentation.

(5) The right of action for rescission or for damages conferred by subsection (2) is in addition to and without derogation from any other right the plaintiff may have at law.

Limitation of action and amount recoverable.

17.(1) Notwithstanding any provision of law to the contrary, any action pursuant to section 16 (2) may not be commenced after

(a) one hundred and eighty days from the day that the plaintiff first had knowledge of the misrepresentation, or

(b) one year from the date of the purchase transaction that gave rise to the cause of action,

whichever is earlier.

(2) In any action under section 16 (2), the amount recoverable shall not exceed the amount at which the shares were purchased or subscribed, including any fees or other charges paid by the Plaintiff.

PART III - Private and Professional Funds

Recognition.

18.(1) Subject to subsection (2), no private or professional fund shall carry on its business or manage or administer its affairs in or from within the Territory unless it is recognised under this Act.

(2) A professional fund may carry on its business or manage or administer its affairs in or from within the Territory for a period of up to fourteen days without being recognised under this Act.

Application for recognition.

19.(1) A private or professional fund that is constituted under the laws of the Territory may be recognised under this Act if it provides

(a) proof satisfactory to the Commission that it

(i) is a private or professional fund within the meaning of this Act; and

(ii) is lawfully constituted under the laws of the Territory; and

(b) the notices required under section 26.

(2) A private or professional fund that is constituted outside the Territory may apply for recognition under this Act by sending to the Commission a letter setting out the nature and scope of its business which shall be accompanied by

(a) the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations;

(b) the notices required under section 26; and

(c) proof satisfactory to the Commission that the applicant is

(i) a private or professional fund within the meaning of this Act; and

(ii) lawfully constituted under the laws of another country or jurisdiction.

(3) In the case of a professional fund, the matters required by subscriptions (1) and (2) shall be provided within fourteen days of the commencement of it business.

Power to grant recognition.

20.(1) The Commission may, in its discretion, grant or refuse to grant recognition under section 19(1) or (2).

(2) Where the Commission refuses to grant recognition under section 19(2), the provisions of section 11(3) shall apply mutatis mutandis.

(3) The Commission shall not refuse to grant recognition under subsection (1) of section 19 unless

(a) the applicant fails to comply with the requirements of that subsection; or

(b) it determines that it is not in the interests of investors or in the public interest that recognition should be granted.

(4) Where the Commission refuses to grant recognition on the ground set out in subsection (3)(a), it shall give the applicant notice in writing of its decision and the reasons therefor and the applicant may appeal such decision pursuant to section 33.

(5) Where the Commission refuses to grant recognition on any of the grounds set out in subsection (3)(b), the provisions of section 11(3) shall apply mutatis mutandis.

Recognition procedure.

21. Where the Commission grants recognition to a private fund, it shall

(a) enter the particulars relating to the private fund in the register maintained by it for the purpose under section 6; and

(b) issue a certificate of recognition to the private fund showing the date of recognition.

PART IV - Managers and Administrators

Licensing.

22.(1) No person shall, in or from within the Territory, carry on or hold himself out as carrying on business as manager or administrator of a mutual fund unless that person is licensed for the purpose under this Act.

(2) Subsection (1) does not apply to a person who

(a) is not ordinarily resident or domiciled in the Territory;

(b) is a manager or administrator of mutual funds (by whatever name called) under the laws of a recognised country or jurisdiction; and

(c) has received written permission from the Commission to carry on business as manager or administrator of mutual funds in or from within the Territory.

Application for a licence.

23.(1) A person who wishes to do so may make an application to the Commission to carry on business in or from within the Territory as

- (a)* manager;
- (b)* administrator; or
- (c)* both manager and administrator of mutual funds.

(2) An application shall be accompanied by

- (a)* the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations;
- (b)* a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and
- (c)* such other documents or information as the Commission may reasonably require for the purpose of considering the application.

Power to grant licences.

24.(1) The Commission may, in its discretion, grant or refuse to grant a licence to any applicant.

(2) The Commission shall not grant a licence unless it is satisfied that the applicant

- (a)* is a fit and proper person to be engaged in the business proposed;
- (b)* has or has available to him adequate knowledge, expertise, resources and facilities necessary for the nature and scope of the business proposed; and
- (c)* has appointed an auditor satisfying such conditions as may be prescribed by the Commission.

(3) Notwithstanding subsections (1) and (2), the Commission shall refuse to grant a licence if it determines that it is not in the public interest that a licence should be granted.

(4) Where the Commission refuses to grant a licence to an applicant, the provisions of section 11(3) shall apply *mutatis mutandis*.

Licensing Procedure.

25. Where the Commission grants a licence to an applicant, it shall

- (a)* enter the particulars of the applicant in the register maintained by it for the purpose under section 6; and
- (b)* issue a licence to the applicant showing the date on which the licence is granted.

Code of Practice.

25A.(1) The Commission may, with the approval of the Governor in Council, by Order prescribe a Code of Practice directing the holder of a licence under section 24 to comply with the requirements of the Code which may include matters relating to

- (a)* conduct of business;
- (b)* financial resources;
- (c)* the giving of notice of specified events;
- (d)* advertising;
- (e)* clients' money and custody of investments; and
- (f)* accounting records and audit requirements.

(2) A Code of Practice prescribed under subsection (1) may provide for such enforcement mechanisms as the Commission may, with the approval of the Governor in Council, consider necessary to ensure compliance with the provisions of the Code.

PART V - General

Notices to accompany applications.

26.(1) In addition to any other requirement under this Act, every application for registration, recognition or a licence made under this Act shall be accompanied by a notice of

- (a)* the address of the applicant's place of business and its address for service in the Territory;
- (b)* the name and address of a person resident in the Territory who is authorised to represent the applicant and to accept service on its behalf; and
- (c)* the address of any place or places of business that the applicant may have outside the Territory.

(2) If any information contained in any of the notices required to accompany the application pursuant to subsection (1) is altered at any time thereafter, the applicant, upon being a registered public fund, a recognised private or professional fund or a licensed manager or administrator, as the case may be, shall give in writing to the Commission particulars of the alteration within twenty-one days after the alteration is made.

Form and conditions of certificates and licences.

27.(1) A certificate or a licence may be granted subject to terms, conditions, restrictions or limitations as the Commission sees fit to specify therein.

(2) A certificate or a licence shall

- (a)* be in such form as may be directed by the Commission;

- (b) be admitted in all courts as prima facie evidence of the facts stated therein;
and
- (c) remain in force until it is cancelled.

Annual fees.

28.(1) Where

- (a) a public fund is granted registration,
- (b) a private or professional fund is granted recognition, or
- (c) a person is granted a licence,

there shall be payable for the year in which such registration, recognition or licence is granted the fee set out in paragraph (A) of Part III of Schedule 2, or such other amounts as may be prescribed by regulations.

(2) On or before the 31st day of March every year following the year in which registration, recognition or licence is granted there shall be payable the annual fee set out in paragraph (B) of Part III of Schedule 2 or such other amounts as may be prescribed by regulations.

(3) An unpaid annual fee may be sued for by the Commission by action as a civil debt to be recoverable summarily and the Commission may require, and the court may order, the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

Cancellation etc. of certificates or licences.

29. With respect to a registered public fund or a recognised private fund, or a licenced manager or administrator, the Commission, may, subject to sections 30 and 31, cancel a certificate or a licence, as the case may be,

- (a) at the request of the holder thereof; or
- (b) where the holder thereof
 - (i) has ceased to carry on business in or from within the Territory;
 - (ii) has contravened any provision of this Act, the regulations or the Code of Practice prescribed under section 25A, or any term, condition, restriction or limitation attached to the holder's certificate or licence, as the case may be;
 - (iii) has been convicted of an offence under this Act or of a criminal offence in any country or jurisdiction;
 - (iv) has knowingly and wilfully supplied false, misleading or inaccurate information or failed to disclose information required for the purposes of any provision of this Act or the regulations;
 - (v) is carrying on business in a manner detrimental to the interests of mutual funds investors or to the public interest; or
 - (vi) is declared bankrupt or is being wound-up, liquidated or dissolved.

Cancellation procedure.

30.(1) Before cancelling a certificate or a licence under paragraph (b) of section 29, the Commission shall

- (a) give the holder thereof notice in writing of the grounds on which it intends to do so;
- (b) afford the holder an opportunity to make written representations to it within a period of thirty days after receipt of the notice; and
- (c) take any such representations into consideration.

(2) Where in the exercise of its powers under section 29(b) the Commission decides to cancel a certificate or licence, it shall give notice in writing to the holder thereof of such cancellation and the reasons therefor.

Appeal of cancellations.

31. The holder of a certificate or a licence aggrieved by the decision cancelling such certificate or licence may appeal such decision in accordance with section 33.

Appeal by existing entities.

32. Notwithstanding any provision in this Act, where the Commission, in exercise of its powers under section 11(1)(a), 20(1) or 24(1) refuses to grant registration, recognition or a licence, as the case may be, to an existing entity, it shall give such entity a notice in writing of its decision and the reasons therefor and the existing entity may appeal such decision in accordance with section 33.

Appeal procedure.

33. An appeal under section 20(4), 31 or 32 shall lie to the Financial Services Appeal Board established under the Financial Services Commission Act, 2001.

Grant or cancellation to be published

34. The Commission shall publish in the Gazette, in such form as it thinks fit, notice of every grant or cancellation of a certificate or a licence under this Act.

Power to grant exemptions.

35.(1) Where the Commission is satisfied that to do so would not be prejudicial to the public interest, it may direct that all or any of the provisions of this Act or the regulations shall

- (a) not apply, or
- (b) apply subject to such modifications as he may specify in the direction,

to any person or any class of persons.

- (2) A direction under this section may be
- (a) subject to any conditions as the Commission may see fit to specify therein; and
 - (b) revoked at any time at the discretion of the Commission.
- (3) REPEALED.

Restriction on the use of the words “fund” or “mutual fund”.

- 35A. Except with the written consent of the Commission, no person shall
- (a) use or continue to use the words “fund” or “mutual fund”, either in English or in any other language, in the name, description or title under which that person is carrying on business in or from within the Territory; and
 - (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on business as a fund or mutual fund.

Access to information and records.

36. For the purpose of discharging its duties under this Act and the regulations and subject to the provisions of the Financial Services (International Co-operation) Act, 2000 and the Financial Services Commission Act, 2001, the Commission or any person acting under its authority may, at all reasonable times, in writing, direct any person to whom this Act applies to

- (a) furnish information, or
- (b) provide access to any records, books, or other documents,

relating to the business of that person being carried on under this Act which, in the opinion of the Commission, are necessary to enable it to ascertain compliance with the provisions of this Act or the regulations.

Immunity and actions by the Registrar.

37. REPEALED

Confidentiality

38. REPEALED

Exemption from certain enactments.

- 39.(1) Notwithstanding any statutory provision or rule of law to the contrary
- (a) a public fund that is registered or a private or professional fund that is recognised under this Act, and

(b) an investor in any such registered public fund or recognised private fund who is not ordinarily resident or domiciled in the Territory,

are in all respects exempt from any and all of the provisions of the Income Tax Act, the Stamps Act, and the Registration and Records Act.

(2) Notwithstanding the provisions of Part IX (section 235A) of the Companies Act, a company that is incorporated outside the Territory which establishes a place of business within the Territory to carry on business in accordance with the provisions of this Act as

- (a) a registered public fund,
- (b) a recognised private fund, or
- (c) a licensed manager or administrator,

is exempt from the provisions of that Part IX (section 235A) of the Companies Act.

Offences and penalties.

40.(1) A person who,

- (a) wilfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Act or the regulations,
- (b) wilfully makes any statement or gives any information required for the purposes of this Act or the regulations that he knows to be false or misleading,
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or the regulations, or
- (d) being in charge of or having possession of or control over any information, records, books or other documents referred to in section 36, refuses or wilfully neglects to comply with any lawful direction given under that section,

commits an offence under this Act and is liable on summary conviction to a fine of not less than five thousand dollars and not more than fifty thousand dollars or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

(2) Any person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided commits an offence against this Act or the regulations, as the case may be and is liable on summary conviction,

- (a) in the case of a body corporate or unincorporated, a fine of not more than fifty thousand dollars; and
- (b) in the case of an individual, to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one month or to both such fine and imprisonment.

(3) A prosecution for an offence under this Act may be commenced within five years from the date of the commission of the offence but not thereafter.

Power of the Minister to vary the Schedule.

41. The Governor in Council may, on the advice of the Commission, by Notice published in the *Gazette*,
- (a) vary the form of Schedule 1 provided such variation does not, in any material respect, change the substance of the Schedule; or
 - (b) subject to the affirmative resolution procedure of the Legislative Council modify, delete, repeal or replace any Schedule to this Act in whole or in part.

Regulations.

42. The Governor in Council may, on the advice of the Commission, make regulations,
- (a) prescribing fees payable under this Act;
 - (b) Repealed.
 - (c) Repealed.
 - (d) designating arrangements which are not mutual funds;
 - (e) designating mutual funds or a class or classes thereof as private or professional funds;
 - (ea) designating a class or sub-classes of a public fund;
 - (f) authorising the Registrar to require that any document, statement, report, certificate, release, agreement, or other information be filed with, furnished or delivered to him;
 - (g) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act;
 - (h) prescribing any matter required to be or which may be prescribed under this Act;
 - (i) relating to
 - (i) the constitution, powers and duties of the manager, administrator and custodian;
 - (ii) the issue and redemption of shares;
 - (iii) the appointment, removal and powers and duties of auditors;
 - (iv) the restriction or regulation of investment and borrowing powers;
 - (v) the preparation of periodical reports;
 - (vi) the rights of investors; and
 - (vii) the contents of constitutional documents, in respect of a public fund or a sub-class of such fund;
 - (ia) relating to the matters which should be contained in a prospectus of a public fund or a sub-class of such fund; and

- (j) generally for the better administration of this Act and for carrying the intent and purpose of its provisions into effect.

Transitional.

43.(1) Any person performing the functions of a manager an administrator who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity in relation to which he is required to be licensed under this Act shall, within three months of the coming into force of this Act, comply with the requirements of this Act.

(2) Any person who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity as a mutual fund shall, within nine months from that date, comply with the provisions of this Act.

(3) Where a person fails to comply with subsection (2), it shall pay a non-compliance penalty of five thousand dollars for each month or part thereof during which it fails to comply with that subsection up to a period of twelve months.

(4) If after the period of twelve months prescribed under subsection (3) a person fails to comply with subsection (2), he commits an offence and may be proceeded against under section 40 (2).

(5) Where a person is proceeded against under section 40 (2), it shall, in addition to any penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).

SCHEDULE 1

(Section 9(2)(a))

APPLICATION FOR REGISTRATION OF A PUBLIC FUND

1. **Applicant:** state name and address of the fund
2. **Constitution:**
 - (a) state the legal form of the fund
 - (i) company
 - (ii) partnership
 - (iii) unit trust
 - (b) state the name of the country or Jurisdiction where the fund is constituted
 - (c) state the title of the law under which the fund is constituted
3. **Officers:** following officers of the fund
 - (a) state name, address, place of birth and citizenship of each of the following officers of the fund
 - (i) directors;
 - (ii) general partners; or
 - (iii) trustees
 - (b) state educational and professional qualifications of each of the officers mentioned in sub-paragraph (a)
 - (c) give details of business, occupation or employment of each of the officers mentioned in sub-paragraph (a)
4. **References:** give two personal references a bank reference and where it is the practice to make one available in the relevant jurisdiction, a police clearance certificate for each of the officers mentioned in paragraph 3 (a)
5. **Functionaries:** state names, addresses and business activities of each of the fund's
 - (a) managers;
 - (b) administrators;
 - (c) investment advisers; and
 - (d) custodians.
6. **Prior Registration:** state if the fund is now or has been registered, licensed, recognised or authorised under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction.
7. **Refusal or Disciplinary** has the fund, and of its officers mentioned in paragraph 3(a), managers, administrators investment advisers or custodians been the subject of

Measure

- (a) refusal of an application for registration, licensing, recognition or authorisation, or
- (b) suspension, cancellation or revocation of registration, licence, recognition or authorisation

by any authority in any country or jurisdiction?

give details and reasons

8. **Civil Proceedings:** has a judgment been rendered or any suit, action or proceedings pending against any of the officers mentioned in paragraph 3(a) or any of the functionaries listed in question 5 above, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct?

give details

9. **Offences:** has any of the officers mentioned in paragraph 3(a) or any of the functionaries listed in question 5 above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities?

10. **Bankruptcy:** has any of the officers mentioned in paragraph 3(a) or any of the functionaries listed in question 5 above been

- (a) declared bankrupt or been party to bankruptcy or insolvency proceedings,
- (b) subject to proceedings relating to winding-up, dissolution or creditors' arrangement, or
- (c) subject to proceedings relating to receivership or Creditors' compromise

in any country or jurisdiction?

AFFIDAVIT

I of (address),

in my capacity as director/general partner/trustee,* acting for and on behalf of, the applicant public mutual fund herein, do depose and say that I have read and understood the questions in the application submitted herewith and hereby certify under oath that the answers and statements provided in respect of the application are true, correct and complete to the best of my knowledge, information and belief.

Sworn before me

Name and signature

.....

of deponent.

Commissioner of Oaths

.....

in the city of this

.....

.....day of, .

*Delete as appropriate.

SCHEDULE 2

FEES

PART I

(Section 3(3))

Fee for issuing a Certificate of Compliance

The fee for issuing a Certificate of Compliance pursuant to section 3(3) is \$25.00

PART II

Application Fees

(Sections –
9 (2) (b) (ii)
10 (2) (b)
19 (2) (a)
23 (2) (a))

The fee for

- | | | |
|-----|---|----------|
| (a) | an application for registration under section 9(2)(b)(ii) is | \$500.00 |
| (b) | an application for consent to be registered under section 10(2)(b) is | \$100.00 |
| (c) | an application for recognition under section 19(2)(a) is | \$350.00 |
| (d) | an application for a licence under section 23(2)(a) is | \$250.00 |

PART III

Annual Fees

(Section 28 (1) and (2))

(A) Fee payable for the year in which registration, recognition or licence is granted pursuant to section 28(1):

(1) Where registration, recognition or licence is granted on or before the 30th day of June in any year, the fee payable for that year is

- (a) \$500.00 by a registered public fund;
- (b) \$350.00 by a recognised private or professional fund;
- (c) \$500.00 by a person licensed as manager or administrator; and
- (d) \$1000.00 by a person licensed as both manager and administrator.

(2) Where registration, recognition or licence is granted on or after the 1st day of July in any year, the fee payable for that year is

- (a) \$250.00 by a registered public fund;

- (b) \$175.00 by a recognised private or professional fund;
- (c) \$250.00 by a person licensed as manager or administrator; and
- (d) \$500.00 by a person licensed as both manager and administrator.

(B) The annual fee payable pursuant to section 28(2) is

- (a) \$500.00 by a registered public fund;
- (b) \$350.00 by a recognised private or professional fund;
- (c) \$500.00 by a person licensed as manager or administrator; and
- (d) \$1000.00 by a person licensed as both manager and administrator.

¹ Based on The Mutual Funds Act (No. 6 of 1996) and consolidating amendments made by The Mutual Funds (Amendment) Act, 1997 (“6/1997”), The Mutual Funds (Amendment) Act, 2001 (“3/2001”), the Financial Services Commission Act, 2001 (“12/2001”) and the Insolvency (Amendment and Consequential Provisions) Act 2004 (“11/2004”).

Important

This is an unofficial consolidation of The Mutual Funds Act and the amendments thereto. Whilst every effort has been made to ensure correctness, no responsibility is assumed for errors which may appear.