

## **CHAPTER 320B**

### **MUTUAL FUNDS 2002-22**

This Act came into operation on 12th December, 2002.

#### **Amended by:**

This Act has not been amended

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

2002



**CHAPTER 320B**

**MUTUAL FUNDS  
2002-22**

*Arrangement of Sections*

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**BARBADOS**

## MUTUAL FUNDS

2002-22

*An Act to provide for the regulation, authorisation and control of mutual funds and their managers and administrators carrying on business in or from within Barbados and for related matters.*

[Commencement: 12th December, 2002]

## PRELIMINARY

*Citation***Short title**

1. This Act may be cited as the *Mutual Funds Act*.

*Interpretation***Definitions**

- 2.(1) In this Act,

“accountant” has the meaning assigned to it by section 2 of the *Institute of Chartered Accountants of Barbados (Incorporation) Act*, Cap. 369A;

“auditor” means a person referred to in section 153 of the *Companies Act*, Cap. 308;

“company” means a body corporate that is incorporated or registered under the *Companies Act*, Cap. 308 or the law of any other jurisdiction;

“Court” means the High Court;

“equity interest” means a share, the beneficial interest in a trust unit or a partnership interest, a quota in a society with restricted liability or other security or note that

- (a) carries an entitlement to participate in the profits or gains of company, registered unit trust partnership or society; and
- (b) may or may not be redeemable or repurchasable at the option of the investor before the commencement of winding-up or dissolution of the company, registered unit trust, society or partnership;

“Exchange” means the Barbados Stock Exchange Inc. as defined in section 2 of the *Securities Act*, Cap. 318A;

“general administration licence” means a licence referred to in section 17;

“general partner” means

- (a) in respect of a limited partnership registered under the *Limited Partnerships Act*, Cap. 312, a general partner as defined in that Act; or
- (b) in respect of a partnership constituted under the laws of a jurisdiction other than Barbados, a person who would be a general partner of the partnership if the partnership were constituted under the *Limited Partnerships Act*, Cap. 312;

“inspector” means a person appointed under section 40(2) of the *Securities Act*, Cap. 318A;

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

“licensed mutual fund administrator” means the holder of a general administration licence or a restricted administration licence granted under this Act;

“licensor” means the Securities Commission;

“material change” means a change in the business operations, assets or ownership of a mutual fund that would reasonably be expected to have a significant effect on the conduct of business and the value of the assets of a mutual fund;

“Minister” means the Minister responsible for Finance;

“mutual fund” means

- (a) a registered unit trust;
- (b) a company;
- (c) a partnership; or
- (d) a society,

that has been granted a licence under this Act for the purpose of carrying on mutual fund business in or from Barbados in compliance with this Act, but does not include

- (i) a person licensed under
  - (A) Part II of the *Financial Institutions Act*, Cap. 324A, other than a finance company;
  - (B) the *Insurance Act*, Cap. 310;
  - (C) the *Exempt Insurance Act*, Cap. 308A;
- (ii) a friendly society within the meaning of the *Friendly Societies Act*, Cap. 379;
- (iii) a society, credit union or association within the meaning of the *Co-operative Societies Act*, Cap. 378A;

- (iv) any company or partnership, whether Barbadian or foreign, that is primarily engaged in any industrial, commercial or charitable enterprise;

“mutual fund administration” means

- (a) the management of (including the control of all or substantially all the assets of) the mutual fund or the administration of the mutual fund;
- (b) the provision of the principal office of the mutual fund in Barbados;
- (c) the provision of an operator to the mutual fund; or
- (d) the provision of the administrative services to a mutual fund including the accounting, valuation or reporting services,

but does not include

- (i) the provision of a registered office to a mutual fund where the usual corporate secretarial and related services are provided;
- (ii) in relation to a mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the *International Business Companies Act*, Cap. 77, the *Companies Act*, Cap. 308, the *Limited Partnerships Act*, Cap. 312, any law relating to trusts or this Act;
- (iii) the provision of investment advice or management or trading execution services;

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

- (a) a company incorporated under the *Companies Act*, Cap. 308;
- (b) an external company registered under the *Companies Act*, Cap. 308;
- (c) a partnership;

(d) an international business company within the meaning of the *International Business Companies Act*, Cap. 77 to the extent that the conduct of the administration is within section 6 of the Act; or

(e) a society;

“mutual fund administration licence” means a general administration licence or a restricted administration licence;

“mutual fund business” means

(a) the holding of equity interests in the form of shares and 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;

(b) the investment of the pooled resources in securities, in accordance with the mutual fund investment policies and objectives; and

(c) the single or continuous issue or offer for issue of shares or units for sale that entitles the purchaser or holder of the shares or units

(i) to receive, on demand or within a specified period after demand, an amount representing the holders’ proportionate interests in the net assets of the mutual fund;

(ii) to withdraw at any time part or all of the investment in the fund; and

(iii) in the case of an open-ended fund, to withdraw, at any time, investment in the fund by submitting his shares or units to the fund;

“mutual fund licence” means a licence granted under section 4, 5 or 6;

“offering document”, in respect of a mutual fund, means a document or series of documents on the basis of which

(a) equity interests in the mutual fund are offered for sale; or

(b) persons are invited to subscribe for or purchase equity interests in the mutual fund

but does not include

(i) 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

(ii) 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 9;

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

(a) where the mutual fund is a registered unit trust, a trustee of that trust;

(b) where the mutual fund is a partnership, a general partner in that partnership;

(c) where the mutual fund is a company, a director of that company; or

(d) where the mutual fund is a society, the manager or other person in whom the management of the society vests;

“partnership” means

(a) a limited partnership registered under the *Limited Partnerships Act*, Cap. 312 or a partnership under the *Partnership Act*, Cap. 313; and

(b) a partnership constituted under the laws of a jurisdiction other than Barbados;

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

“promoter”, in respect of a mutual fund or proposed mutual fund,

- (a) means any person, whether within or outside Barbados, who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund;
- (b) does not include a professional adviser acting for or on behalf of a person referred to in paragraph (a);

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

“registered office” means,

- (a) in respect of a company incorporated under the *Companies Act*, Cap. 308, the registered office registered in accordance with that Act;
- (b) in the case of an external company registered under the *Companies Act*, Cap. 308, the principal office of the company in Barbados;
- (c) in the case of a limited partnership registered under the *Limited Partnerships Act*, Cap. 312, the principal place of business of that partnership for the purposes of that Act;
- (d) in the case of a registered unit trust, the registered office of the trustee in Barbados or the place of business of an individual trustee; or
- (e) in the case of a society with restricted liability, the registered office of the society in Barbados;

“registered unit trust” means a trust that is

- (a) established by a trustee which for valuable consideration issues trust units in the undertaking of the trust entitling the holder thereof to a share in the 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 Barbados or the law of any other approved jurisdiction; and
- (b) registered in accordance with the *Income Tax Act*, Cap. 73;

“restricted administration licence” means a mutual fund administrator’s licence that contains the restriction referred to in subsection (2) of section 17;

“Securities Commission” means the commission established by section 3 of the *Securities Act*, Cap. 318A;

“share” includes

- (a) quotas issued by a society;
- (b) a trust unit;
- (c) in the case of a company limited by guarantee, an interest of a member of the company;
- (d) in the case of a partnership, a share in that partnership;

“society” means a society with restricted liability within the meaning of the *Societies With Restricted Liability Act*, Cap. 318B;

“trust unit” means a unit of participation in a registered unit trust.

(2) A reference to the words “to file” means to file with the Securities Commission.

(3) A reference in this Act to “mutual fund” shall be construed as a reference to a mutual fund that is based in Barbados.

(4) A mutual fund shall be regarded as based in Barbados where in the case of

- (a) a registered unit trust,
  - (i) the trustee, the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in Barbados or one or more companies or individuals any one of whom has a place of business in Barbados;
  - (ii) the trust instrument of which is governed by the laws of Barbados;

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- (b) a company,
- (i) any profits or income or benefits received therefrom arise from the operation of a company incorporated or registered in Barbados or having a place of business in Barbados or uses an address in Barbados;
  - (ii) the administrator, the investment adviser or the investment manager of which is either a company or companies incorporated or registered in Barbados or is one or more companies or individuals, any one of whom has a place of business in Barbados or uses an address in Barbados; or
- (c) a partnership,
- (i) one or more of the general partners is incorporated or registered in Barbados or is a person resident in Barbados;
  - (ii) the partnership articles are governed by the laws of Barbados; or
  - (iii) the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in Barbados or one or more companies or individuals, any one of whom has a place of business in Barbados; or
- (d) a society with restricted liability,
- (i) it is organised in Barbados and in respect of which a certificate of organisation is issued in accordance with section 8 of the *Societies With Restricted Liability Act*, Cap. 318B; or
  - (ii) the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in Barbados or one or more companies or individuals, any one of whom has a place of business in Barbados.

PART I  
LICENSING OF MUTUAL FUND

**Mutual fund to be licensed**

**3.(1)** No person shall carry on or attempt to carry on mutual fund business in or from Barbados unless that person is the holder of a licence issued under this Act.

(2) For the purpose of this section a mutual fund is carrying on or attempting to carry on business in or from Barbados

- (a) where it is incorporated, registered or established in Barbados to engage in mutual fund business; or
- (b) where
  - (i) regardless of where it is incorporated, registered or established, its management, the control of all or substantially all of its assets, or its administration is carried on in Barbados; or
  - (ii) it otherwise falls within the description of a mutual fund based in Barbados; and

it engages or proposes to engage in mutual fund business.

(3) A person who contravenes subsection (1) is guilty of an offence.

**Grant of licence**

**4.** A mutual fund may, upon application, be licensed to carry on business in or from Barbados where

- (a) it is based in Barbados or has a registered office in Barbados;
- (b) it has applied for and has been granted a licence under this Act; and

- (c) the equity interests are listed on a stock exchange including an “over-the-counter market” specified by the Securities Commission by notice in the *Gazette*; or
- (d) the minimum equity interest that may be purchased by a prospective investor in the fund is not less than \$100 or its equivalent in any other currency.

#### **Limited investors mutual fund licence**

5. Where a mutual fund is one in which

- (a) the equity interests are held by not more than 15 investors the majority of whom are capable of appointing or removing the operator of the fund; and
- (b) in the case where any of the investors is a corporation, that corporation does not have more than 4 beneficial owners,

the mutual fund may, in accordance with this Act, be granted a limited investor licence to carry on mutual fund business in Barbados.

#### **Exempt mutual fund licence**

6.(1) A mutual fund that is licensed in a foreign jurisdiction approved by the Minister and which is not suspended from operation in that jurisdiction may be granted a licence as an exempt mutual fund.

(2) An exempt mutual fund shall, prior to applying for a licence, appoint an agent to represent it in Barbados.

#### **Disqualification from status of mutual fund**

7. Any company, trust or partnership or society whether Barbadian or foreign which is primarily engaged in any industrial, commercial or charitable enterprise shall not be considered to be a mutual fund notwithstanding that a portion of its activities shall involve the management of its investments, and in

cases of doubt an application may be made to the Securities Commission to determine whether or not the applicant is a mutual fund.

### **Mutual fund licences**

**8.(1)** An application for a mutual fund licence, a limited investor licence or an exempt mutual fund licence shall

- (a) be made to the licensor in the prescribed form; and
  - (b) be accompanied by
    - (i) the constitutive document of the fund;
    - (ii) in the appropriate case, by the offering document referred to in section 9;
    - (iii) by details necessary to satisfy the licensor that the applicant satisfies the requirements of section 4, 5 or 6, as the case may be;
    - (iv) by details necessary to satisfy the licensor in accordance with subsection (2); and
    - (v) by the prescribed application fee.
- (2) The licensor shall not grant a mutual fund licence unless
- (a) it is satisfied that
    - (i) each promoter proposed to be appointed by or associated with the mutual fund is of sound reputation;
    - (ii) the administration of the mutual fund will be undertaken by persons that
      - (A) have sufficient expertise to administer the mutual fund; and
      - (B) are of sound reputation; and
    - (iii) the business of the mutual fund and any offer of equity interest in it will be carried out in a proper manner; or

- (b) the operator of a mutual fund undertakes to ensure that when carrying on business in or from Barbados the mutual fund complies with all conditions contained in its licence;
- (c) in the case where a mutual fund is not incorporated in Barbados it
  - (i) has a place that will be its principal office in Barbados; and
  - (ii) has appointed a person who is resident in Barbados and who has been approved by the Securities Commission as its agent.
- (3) The licensor may grant a mutual fund licence subject to such conditions as it considers appropriate.
- (4) A person shall not, in connection with an application for a mutual fund licence, supply to the licensor information that he knows or ought reasonably to know is false or misleading.
- (5) A person who contravenes subsection (4) is guilty of an offence.

#### **Offering document**

- 9.(1)** An offering document in respect of equity interests in a mutual fund shall
- (a) contain information that discloses fully the nature of the proposed investment in the fund and the risks inherent in such an investment;
  - (b) describe the equity interests in all material respects;
  - (c) 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; and
  - (d) contain such other details as are prescribed.
- (2) The information referred to subsection (1) shall be up-to-date and represented accurately.

- (3) Subsection (1) shall be without prejudice to any duty of disclosure under
- (a) the common law; or
  - (b) any other law.
- (4) A mutual fund that is engaged in, or likely to be engaged in, the continuous offering of equity interests
- (a) shall be required to comply with Division D of Part II of the *Companies Act*, Cap. 308;
  - (b) shall, wherever there is a material change that affects any information contained in the offering document referred to in subsection (1),
    - (i) make available to a prospective investor or investors who had received the original offering document;
    - (ii) file with the Securities Commission, within 7 days of the occurrence of the change,an amended offering document containing the details of the change and any other amendment and relevant information.

### **Restriction on choice of name**

- 10.(1)** The licensor may refuse to grant a mutual fund licence in respect of a mutual fund with a name that
- (a) is identical to that of any company, firm, business or other entity, whether or not within Barbados, or which so nearly resembles the name of such 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 Barbados or elsewhere; or
  - (c) is likely to suggest, falsely, that the fund
    - (i) has a special status in relation to or derived from the Crown; or

- (ii) has a connection with a department of Government or activity of the Government.
- (2) Where, in the opinion of the licensor, a mutual fund is carrying on business in or from Barbados in a name that the licensor would have refused by virtue of subsection (1), the licensor may direct the mutual fund to change its name to a name approved by the licensor.
- (3) The operator of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (2).

### **Revocation of licence**

- 11.(1)** The licensor
- (a) shall revoke a licence
    - (i) where the mutual fund has ceased to engage in mutual fund business;
    - (ii) where the holder of the licence is placed in liquidation or is dissolved;
    - (iii) where the payment of the licence fee is in arrear and the licensee
      - (A) has failed to pay the licence fee after the expiry of one month's notice, in writing, informing of the licensor's intention to revoke the licence; and
      - (B) has failed, within the notification period, to show good reason why the licence should not be revoked; and
  - (b) may revoke a licence where the licensee
    - (i) fails to comply with the requirements of the Act or regulations;
    - (ii) fails to comply with any direction of the Securities Commission.
- (2) The revocation of a licence shall not have the effect of discharging the operator, administrator, trustee, custodian or anyone concerned in the operation

of the fund from any contractual obligation or fiduciary duty owed to the fund or holder of funds at the time the licence is revoked.

**Payment of annual licence fee**

**12.(1)** A mutual fund shall pay the prescribed annual licence fee on or before 31st January in each year.

(2) Where an annual fee referred to in subsection (1) is not paid on or before 31st January there is payable with respect to every month that the fee remains outstanding an additional fee equal to that annual fee for each month or part of a month during which the annual fee remains unpaid.

(3) A licence shall not be renewed where the annual fee remains unpaid for a period exceeding 3 months unless the licensee satisfies the licensor that there were good and substantial reasons for the failure to renew.

**Securities Commission to be informed of material changes**

**13.** A mutual fund shall inform the Securities Commission of

- (a) a change of its registered office or its principal office, as the case may be;
- (b) a change of its operator; or
- (c) any material change to its structure, organisation or administration

within 7 days of the occurrence of such a change.

**Prohibition re: publication of information**

**14.(1)** No person shall

- (a) offer or distribute to the public any circular, advertisement or document that
  - (i) does not comply with the provisions of this Act or regulations;

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- (ii) is intended to invite or may be regarded as inviting members of the public to subscribe for shares in a mutual fund that is not authorised to carry on mutual fund business under this Act;
- (b) make a false or misleading statement concerning
- (i) the financial status of a mutual fund;
  - (ii) the nature or performance of an investment in respect of which the mutual fund has an interest; or
  - (iii) the operations of a mutual fund; or
- (c) give false or misleading information in respect of the directors, managers, trustees, advisers or auditors of the mutual fund.
- (2) A person who contravenes this section is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both such fine and imprisonment.

### **Misrepresentation as mutual fund**

**15.(1)** A person or entity, other than a mutual fund that is granted a licence under this Act, shall not represent in any way that it is carrying on business in or from Barbados as a mutual fund.

- (2) A person who contravenes subsection (1) is guilty of an offence.

## PART II

### ADMINISTRATION OF MUTUAL FUND

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

**16.(1)** A person shall not carry on a business as a mutual fund administrator unless the person holds

- (a) a general administration licence; or
- (b) a restricted administration licence.

(2) The Securities Commission may grant a mutual fund administration licence in accordance with the provisions of this Act and subject to such conditions as it considers appropriate.

(3) A person who contravenes subsection (1) is guilty of an offence.

### **Types of mutual fund administration licences**

**17.(1)** The holder of a general administration licence is authorised to act or carry on business as a mutual fund administrator in respect of an unlimited number of mutual funds.

(2) The holder of a restricted administration licence is authorised to act or carry on business as a mutual fund administrator solely in respect of the mutual funds specified in the licence.

(3) The Securities Commission may grant to a person a restricted administration licence if, upon application made to it by that person it is satisfied that the applicant will be administering only specified mutual funds.

(4) A restricted administration licence shall not be granted to a person who does not have a registered office in Barbados.

### **Administration licences**

**18.(1)** An application for a general administration licence or a restricted administration licence

(a) shall be made to the Securities Commission in the prescribed form; and

(b) shall be accompanied by

(i) such information as the Securities Commission requires to determine the application; and

(ii) the prescribed application fee.

(2) A person shall not, in connection with an application for a mutual fund administrator's licence, supply to the Securities Commission information that he knows or should reasonably know is false or misleading.

(3) A person who contravenes subsection (2) is guilty of an offence.

**Conditions to be satisfied prior to grant of administration licence**

**19.(1)** The Securities Commission may not grant a mutual fund administration licence unless it is satisfied that

- (a) the applicant
  - (i) has sufficient expertise and capability to administer mutual funds;
  - (ii) is of sound reputation; and
  - (iii) has given an undertaking, in writing, that it will administer the mutual funds for which it is responsible in a proper manner;
- (b) in the case of an application for a general administration licence, unless a waiver has been granted pursuant to subsection (2),
  - (i) the applicant has a stated equity capital of at least \$1 000 000 or the equivalent in a currency approved by the Securities Commission; or
  - (ii) if the applicant is a company, it has
    - (A) stated equity capital of not less than \$1 000 000 or the equivalent in a currency approved by the Securities Commission; or
    - (B) stated equity capital of at least \$1 000 000 or the equivalent in another acceptable currency plus liability insurance cover of not less than \$1 000 000 or the equivalent in a currency approved by the Securities Commission;
- (c) in the case of an application for a general administration licence, the applicant has
  - (i) a place which will be its principal office in Barbados; and
  - (ii) 2 individuals resident in Barbados to be its agents in Barbados; and

(d) in the case of an application for a restricted administration licence, the applicant has a registered office in Barbados.

(2) Where, in accordance with subsection (1)(c)(ii), a mutual fund administrator has appointed 2 individuals resident in Barbados to act as its agents in Barbados, the administrator may appoint them to act either separately or jointly.

**Securities Commission may direct mutual fund administrators to increase capital value, etc.**

**20.(1)** Where the Securities Commission is satisfied that the stated capital of a mutual fund administrator is less than any amount prescribed by subsection (1)(b) of section 19, or there is reasonable cause to do so, the Securities Commission may direct a mutual fund administrator

- (a) to provide such guarantees or insurance cover or other financial support as the Securities Commission shall think fit; or
- (b) to increase its stated capital to such amount as the Securities Commission shall consider appropriate.

(2) A mutual fund administrator shall comply with a direction given under subsection (1).

**Name of mutual fund administrators restricted**

**21.(1)** The Securities Commission may refuse to grant a mutual fund administration 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 Barbados, 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 a connection with some person or authority, whether within Barbados 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) Where subsequent to granting a mutual fund administration licence the Securities Commission discovers that the mutual fund administrator is authorised to carry on business as a mutual fund administrator in or from Barbados in a name that in the opinion of the Securities Commission it would have refused by virtue of subsection (1), the Securities Commission may direct the mutual fund administrator to change its name to a name approved by the Securities Commission.
- (3) A mutual fund administrator shall comply with a direction given to it in accordance with subsection (2).

### **Revocation of mutual fund administration licence**

**22.(1)** The Securities Commission may at any time revoke a mutual fund administration licence where

- (a) the Securities Commission is satisfied that the licensee has ceased to carry on business as a mutual fund administrator;
- (b) the licensee is placed in liquidation or is dissolved;
- (c) the licensee is in breach of any other duty or obligation prescribed by this Act; or
- (d) the licensee fails to comply with any direction given to the licensee by the Securities Commission.
- (2) Where a mutual fund administrator is a partnership formed under the laws of Barbados and the Securities Commission revokes its mutual fund administration licence in accordance with subsection (3) the partnership is deemed to have been dissolved.

**Duties of administrator**

- 23.(1)** A mutual fund administrator
- (a) shall manage the fund in accordance with this Act and the constitutive documents of the fund in the exclusive interest of the holders of shares in the fund;
  - (b) shall comply with the conditions contained in the mutual fund administration licence;
  - (c) shall discharge all obligations respecting the administration of the fund with due diligence;
  - (d) shall not change the principal office or any agent without first giving the Securities Commission notice of the intention to do so;
  - (e) shall ensure that the financial resources required for the discharge of the obligations of administration are adequate and a surplus of assets over liabilities of not less than 10 per cent is maintained; and
  - (f) shall, whenever the minimum surplus referred to in paragraph (e) is not maintained, inform the Securities Commission, immediately, of that fact and of the extent of the deficiency.
- (2) An administrator shall be liable to the holder of shares in the fund for any loss resulting from the failure to fulfil the obligations imposed upon it or for the improper fulfilment of such obligations.

**Appointment of directors, etc.**

- 24.(1)** A mutual fund administrator shall not appoint a director or similar senior officer, unless the administrator first obtains, in writing, approval of the Securities Commission to the appointment except where the administrator
- (a) is a licensee under the *International Financial Services Act*, Cap. 325;
- or

- (b) has a valid licence to carry on banking business or trust business within the meaning of the *Financial Institutions Act*, Cap. 324A or both such banking business and trust business.
- (2) A mutual fund administrator that is a company shall at all times have at least 2 directors approved by the Securities Commission.
- (3) A director or senior officer referred to in this section
  - (a) shall be a fit and proper person;
  - (b) shall possess the necessary qualifications and expertise for the proper performance of the duties and the discharge of the responsibilities of the office;
  - (c) shall not be a person that has been convicted of an arrestable offence or an offence involving dishonesty; and
  - (d) shall not be a bankrupt or insolvent person.

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

- 25.(1) Where a mutual fund administrator is a company,
- (a) subject to subsection (2), the company shall not issue shares; and
  - (b) no person owning or having an interest in shares in the company shall transfer or otherwise dispose of or deal in those shares or that interest
- unless
- (i) the Securities Commission has given its approval to the issue, transfer, disposal or dealing as the case may be; or
  - (ii) all conditions of the approval or waiver are complied with.
- (2) Subsection (1) shall not apply to a mutual fund administrator that
- (a) is a licensee under the *International Financial Services Act*, Cap. 325; or

- (b) has a current licence granted to it to carry on banking business or trust business within the meaning of the *Financial Institutions Act*, Cap. 324A or both such banking business and trust business.

### **Restriction on advertisement and other representations**

**26.(1)** A person other than one authorised to carry on business as a mutual fund administrator under this Act shall not

- (a) carry on or attempt to carry on business in or from Barbados with the words “fund management” or “fund manager” or “fund administrator” or any of their derivatives in the English language or any other language in its name or title;
  - (b) represent in any way that he is carrying on business in or from Barbados as a mutual fund administrator;
  - (c) issue any advertisement inviting the public to purchase shares in a mutual fund or to enter into any agreement connected therewith;
  - (d) issue or cause to be issued any misleading advertisement.
- (2) Every person that contravenes this section is guilty of an offence.

### **Provision of principal office of mutual fund**

**27.(1)** A mutual fund administrator may provide the principal office to a mutual fund and shall prior to providing such office

- (a) submit, in writing, to the Securities Commission the prescribed details in respect of the mutual fund; and
  - (b) pay the prescribed licence fee in respect of the mutual fund.
- (2) A mutual fund administrator shall, on or before 31st January in each year after the date when it started to provide the principal office to a mutual fund, pay the prescribed annual renewal fee in respect of that mutual fund.
- (3) A mutual fund administrator shall on or before 31st January in each year pay the prescribed annual licence fee for its own licence.

(4) If an annual fee referred to in subsection (2) or (3) is not paid on or before 31st January in any year, there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

### **Mutual fund administrators to be satisfied in respect of mutual funds**

**28.** A mutual fund administrator shall not provide a principal office to a mutual fund unless it is satisfied 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
  - (i) have sufficient expertise to administer the mutual fund; and
  - (ii) are of sound reputation; and
- (c) the business of the mutual fund and any offer of equity interests in it will be carried out in a proper manner.

### **Mutual fund administrators to give notice of certain matters**

**29.(1)** Where a mutual fund administrator knows or has reason to believe that a mutual fund to which it provides a principal office or a promoter or operator

- (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 Act; 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 Securities Commission written notice of its knowledge or belief giving its reason for that knowledge or belief.

(2) Where a mutual fund administrator fails to comply with subsection (1), the licensor may revoke the licence of the mutual fund administrator.

**PART III**  
**APPOINTMENT AND ROLE OF AGENTS**

**Agents**

- 30.(1)** An agent shall be appointed in respect of every
- (a) exempt mutual fund;
  - (b) mutual fund, other than an exempt mutual fund, that is incorporated in a foreign jurisdiction.
- (2) The appointment of the agent referred to in subsection (1) shall be maintained by the fund throughout the period during which it is to conduct business in Barbados.
- (3) An agent shall have the authority to
- (a) receive applications and payment for shares from persons in Barbados;
  - (b) issue receipts in respect of moneys received in accordance with paragraph (a);
  - (c) issue copies of the offering document, contracts and other documents relating to the fund to persons proposing to invest in the fund;
  - (d) receive redemption notices, transfer instructions and conversion notices from holders of shares for immediate transmission to the administrator or the fund;
  - (e) accept any notices or correspondence which holders of shares may wish to serve on the fund, trustee, custodian or the administrator, as the case may be;

- (f) inform the Securities Commission immediately if redemption of shares ceases or is suspended and the reason for such cessation or suspension;
  - (g) make available for inspection by holders of shares in Barbados, free of charge, information respecting the method of valuation of shares and all constitutive documents of the fund and offer for sale at a reasonable price to holders of shares, such information and constitutive documents of the fund;
  - (h) provide holders of shares with the financial reports of the fund and with information on the fund, including information respecting sales;
  - (i) deliver to the Securities Commission, upon request, all accounts and records relating to the sale and redemption of shares of the fund in Barbados; and
  - (j) represent the fund and the administrator in relation to all matters in which any holder of shares normally resident in Barbados has a pecuniary interest or which relate to shares sold in Barbados.
- (4) Notwithstanding subsection (3), an agent is not required to take responsibility for the acts and omissions of the administrator or, where the mutual fund is a company, the directors of the fund.

#### PART IV

### SUPERVISION AND ENFORCEMENT

#### *Mutual Funds*

#### **Constitutive documents of mutual fund**

- 31.(1)** The constitutive documents of a fund
- (a) shall contain the information prescribed by the regulations;
  - (b) subject to subsection (2), shall not be altered in a manner that has the effect of altering materially the interests of holders of shares unless

such alteration is made by a special or extraordinary resolution of the holders of shares whose shares carry voting rights.

(2) An alteration may be made by the directors or trustees of a mutual fund where

- (a) such alteration is necessary in order to enable compliance by the fund with statutory or prudent fiscal management; and
- (b) the directors or trustees, as the case may be, certify, in writing, that they are satisfied that the alteration is necessary for the purpose referred to in paragraph (a).

(3) Nothing in a constitutive document shall provide that the trustee, custodian, administrator, operator or a director of a fund may be exempted from liability to holders, imposed by law or the law of the fund's domicile, in the case of wilful default or negligence in the discharge of any duty or obligation.

#### **Submission of financial statement and audited accounts**

**32.(1)** A mutual fund shall submit to the Securities Commission in respect of a financial year

- (a) a statement containing the prescribed information respecting its activities; and
- (b) its audited accounts

within 4 months after the end of the financial year or within such further period as the Securities Commission may allow.

(2) The accounts of a mutual fund shall be audited annually by an auditor approved by the Securities Commission.

**Special audits of mutual funds**

**33.(1)** Notwithstanding section 32, the Securities Commission may at any time

- (a) carry out an inspection of the books of a mutual fund without giving prior notice to the fund; or
- (b) instruct a mutual fund to have its accounts audited and to submit them to the Securities Commission within such time as the Securities Commission shall specify.

(2) The operator of a mutual fund shall ensure that an instruction given to the mutual fund in accordance with subsection (1) is complied with within the specified time.

**Promoter or operator to give inspector access to records**

**34.(1)** Where requested to do so by the inspector, the promoter or operator of a mutual fund shall give the inspector access to, or provide at any reasonable time all records relating to, the mutual fund.

(2) The inspector may copy or take an extract of a record he is given access to or is provided with in accordance with subsection (1).

**Promoter or operator to give Securities Commission information**

**35.(1)** Where requested to do so by the Securities Commission, a promoter or operator of a mutual fund shall give the Securities Commission such information or such explanation in respect of the fund as the Securities Commission may reasonably require to enable it to carry out its duties under this Act.

(2) A person that gives information or an explanation for the purpose of subsection (1) shall not give the Securities Commission information or an explanation that he knows or ought reasonably to know is false or misleading.

(3) A person who contravenes subsection (2) is guilty of an offence.

**Mutual fund administrators to have annual audit**

**36.(1)** The accounts of a mutual fund administrator shall be audited annually by an auditor approved by the Securities Commission.

(2) A mutual fund administrator shall submit its audited accounts in respect of a financial year of the administrator to the Securities Commission within 4 months after the end of that financial year or within such further period as the Securities Commission may allow.

**Special audits of mutual fund administrators**

**37.(1)** Notwithstanding section 36, the Securities Commission may at any time direct a mutual fund administrator to have its accounts audited and to submit them to the Securities Commission within such time as the Securities Commission shall specify.

(2) A mutual fund administrator shall comply with a direction given to it in accordance with subsection (1).

(3) A person who contravenes this section is guilty of an offence.

**Securities Commission may require information in respect of alleged breach of section 4 or 5**

**38.(1)** Where the Securities Commission has reasonable grounds for believing that a person is carrying on or attempting to carry on business

(a) as a mutual fund in or from Barbados in contravention of section 4 or 5;

(b) as a mutual fund administrator in breach of section 16,

the Securities Commission may instruct that person to give to it such information or explanation as it may reasonably require to enable it to carry out its duties under this Act.

- (2) A person shall comply with an instruction given to him in accordance with subsection (1).
- (3) A person that gives information or an explanation for the purpose of subsection (1) shall not give the Securities Commission information or an explanation that he knows or ought reasonably to know is false or misleading.
- (4) A person who contravenes subsection (2) or (3) is guilty of an offence.

## PART V

### POWERS OF THE SECURITIES COMMISSION

#### **Securities Commission to administer Act**

**39.** The Securities Commission is charged with the administration of this Act.

#### **Securities Commission may take action in respect of unregulated mutual funds**

**40.(1)** Where it appears to the Securities Commission that a mutual fund or mutual fund administrator is carrying on or attempting to carry on business in or from Barbados in breach of the provisions of the Act, the Securities Commission may apply to the Court for such order as it thinks fit

- (a) to preserve the assets of the investors in the mutual fund; or
- (b) to protect the creditors of the mutual fund.

(2) The Court shall have the power to grant such orders as it thinks fit for the purposes of subsection (1).

#### **Powers of Securities Commission in respect of mutual funds**

**41.(1)** The Securities Commission may take all or any of the actions specified in subsection (3) if it is satisfied that a mutual fund

- (a) is or is likely to become unable to meet its obligations as they fall due;

- (b) is carrying on or attempting to carry on business, or is winding up its business voluntarily, in a manner that is prejudicial to its investors or creditors; or
  - (c) is carrying on or attempting to carry on business without complying with any condition of its mutual fund licence contrary to subsection (2) (b) of section 8.
- (2) For the purpose of ascertaining whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Securities Commission shall immediately enquire into the reason for any failure by the mutual fund
  - (a) to change its name in accordance with a direction given to it under subsection (2) of section 10;
  - (b) to have its accounts audited in accordance with subsection (2) of section 32 or to send its audited accounts to the Securities Commission in accordance with that section;
  - (c) to have its accounts audited or to submit the audited accounts to the Securities Commission when directed to do so under subsection (1) of section 33;
  - (d) to give an inspector access to records when requested to do so under section 34; or
  - (e) to give the Securities Commission information or an explanation when requested to do so under section 35.
- (3) For the purpose of subsection (1), the actions the Securities Commission may take in respect of a mutual fund are
  - (a) the revocation of any mutual fund licence which the mutual fund holds;
  - (b) the imposition of conditions or further conditions on any mutual fund licence which the mutual fund holds and the amendment or revocation of those conditions;

- (c) the stipulation of a requirement that any promoter or operator of the mutual fund be replaced;
  - (d) the appointment of a person to advise the fund on the proper conduct of its affairs;
  - (e) the appointment of a custodian, pursuant to an order of the Court, to assume control of the affairs of the mutual fund.
- (4) Where the Securities Commission takes any of the actions set out in subsection (3) it may apply to the Court for such orders as it considers necessary to protect the interests of investors in and creditors of the mutual fund.
- (5) The Securities Commission shall,
- (a) where it considers it necessary or appropriate to do so and if it is practical to do so, inform the investors of a mutual fund of any action it is taking or intending to take in respect of the mutual fund; and
  - (b) where a custodian is appointed to assume control of the fund, inform the investors of the appointment.
- (6) A person appointed under subsection (3)(d) or (e) is appointed at the expense of the relevant mutual fund and any expenses incurred by the Securities Commission by virtue of the appointment are an amount due to the Securities Commission and payable by the mutual fund.
- (7) A custodian appointed under subsection (3)(e) has, independently of any authorisation or approval of an operator, all the powers necessary of any operator to administer the affairs of the mutual fund in the best interests of the investors and creditors of the mutual fund.
- (8) The powers referred to in subsection (7) include the power on the direction of the Securities Commission to terminate the conduct of business of the mutual fund if it is adjudged insolvent.
- (9) Subject to subsection (2) of section 42, a custodian appointed under subsection (3)(e) shall be appointed for such period as the Securities Commission considers necessary in the interest of the mutual fund or until a new promoter or

operator, as the case may be, approved by the Securities Commission is appointed by the mutual fund.

**Powers of an appointee**

**42.(1)** A person appointed in respect of a mutual fund under subsection (3) (d) or (e) of section 41 shall

- (a) when requested to do so by the Securities Commission, supply the Securities Commission with such information in respect of the mutual fund as is specified by the Securities Commission;
- (b) within 3 months of his appointment, or within such other period as the Securities Commission may specify, prepare and supply to the Securities Commission a report on
  - (i) the affairs of the mutual fund; and
  - (ii) the activities that the fund is likely to be engaged in;
- (c) supply to the Securities Commission such other information and reports as the Securities Commission shall specify at the times specified by the Securities Commission.

(2) Where a person referred to in subsection (1)

- (a) fails to comply with an obligation under subsection (1); or
- (b) fails to satisfy the Securities Commission that he is carrying out his obligations in respect of the relevant mutual fund satisfactorily,

the Securities Commission may revoke the appointment and appoint another person in his place.

**Securities Commission may direct re-organisation or winding-up**

**43.(1)** On receipt of any information or a report submitted pursuant to section 42 in respect of a mutual fund, the Securities Commission may

- (a) require the mutual fund to re-organise its affairs in a manner specified by the Securities Commission;
- (b) if the mutual fund is a company, apply to the Court in accordance with the provisions of the *Companies Act*, Cap. 308 for the company to be wound-up by the Court in accordance with that Act;
- (c) if the mutual fund is a registered unit trust governed by the laws of Barbados, apply to the Court for an order directing the trustee to wind-up the fund;
- (d) if the mutual fund is a partnership governed by the laws of Barbados, apply to the Court for an order to dissolve the partnership; or
- (e) if the mutual fund is a society registered under the *Societies with Restricted Liability Act*, Cap. 318B, apply to the Court for an order to dissolve the society

and may take such action in respect of the appointment of the person appointed under subsection (3)(d) or (e) of section 41 or of a liquidator as the Securities Commission considers appropriate.

(2) Where the Securities Commission takes action under subsection (1) it may

- (a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of investors and creditors of the mutual fund; and
- (b) take any other action provided for in that subsection or subsection (3).

(3) Where a mutual fund is a partnership formed under the laws of Barbados and the Securities Commission revokes any mutual fund licence of the mutual

fund in accordance with subsection (3)(a) of section 41, the partnership is thereupon dissolved.

(4) Where the Court makes an order on an application made in accordance with subsection (1)(c), the Court may grant the trustee such indemnity as it considers appropriate to be satisfied from the assets of the mutual fund.

**Powers of Securities Commission in respect of mutual fund administrators**

**44.(1)** The Securities Commission may take all or any of the actions specified in subsection (3) if it is satisfied that a mutual fund administrator

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business or is winding-up its mutual fund administration business in a manner that is prejudicial to
  - (i) its creditors; or
  - (ii) investors in any mutual fund it is administering or the creditors of any such mutual fund; or
- (c) is carrying on or attempting to carry on the business of mutual fund administration without complying with any condition of its mutual fund administrator's licence contrary to subsection (2) of section 16.

(2) For the purpose of ascertaining whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Securities Commission shall immediately enquire into the reason for

- (a) any failure by a mutual fund administrator
  - (i) to give the Securities Commission notice that it has started to provide the principal office of a mutual fund in accordance with subsection (1) of section 27, to pay the prescribed annual fee in respect of a mutual fund in accordance with subsection (2) of section 27 or to pay the prescribed fee in accordance with subsection (3) of section 27;

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- (ii) to provide a guarantee or insurance cover or other financial support or to increase its stated capital in accordance with a direction given under section 20;
  - (iii) to satisfy itself of the adequacy of the financial resources of a mutual fund administrator or any promoter or operator of a fund as required by section 20;
  - (iv) to give the Securities Commission written notice in respect of the affairs of a mutual fund as required by section 29;
  - (v) to change its name in accordance with a direction given to it under subsection (2) of section 21;
  - (vi) to have its accounts audited in accordance with subsection (1) of section 36 or to send its audited accounts to the Securities Commission in accordance with subsection (2) of section 36;
  - (vii) to have at least 2 directors as required by section 19;
  - (viii) to have its accounts audited and to submit the audited accounts to the Securities Commission when directed to do so pursuant to subsection (1) of section 37;
  - (ix) to give the Securities Commission information or an explanation when requested to do so under section 31; or
  - (x) to give the inspector access to records when requested to do so under section 38;
- (b) the issue by the administrator of shares without the Securities Commission's approval, contrary to section 25;
  - (c) the appointment of a director or similar senior officer of the administrator, without the Securities Commission's approval, in writing, contrary to section 24; or
  - (d) any shares in the administrator being disposed of or dealt in without the Securities Commission's approval, contrary to section 25.

- (3) For the purposes of subsection (1), the actions the Securities Commission may take in respect of a mutual fund administrator are
- (a) the amendment or imposition of conditions contained in its mutual fund administration licence;
  - (b) the stipulation of a requirement that any director or similar senior officer or a general partner of the administrator be replaced;
  - (c) the appointment of a person to advise the administrator on the proper conduct of its mutual fund administration;
  - (d) the appointment of a custodian pursuant to an order of the Court to assume control of the affairs of the administrator relating to mutual fund administration.
- (4) When the Securities Commission takes action under subsection (3), it may
- (a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of
    - (i) its creditors; or
    - (ii) investors in the funds administered by the administrator or the creditors of any such fund; and
  - (b) upon obtaining an order, take any other action provided for in that subsection.
- (5) A person appointed under subsection (3)(c) or (d) is appointed at the expense of the relevant mutual fund administrator and any expenses incurred by the Securities Commission by virtue of the appointment are an amount due to the Securities Commission and payable by the administrator.
- (6) Subject to subsection (7), a person appointed under subsection (3)(d) has, independently of any authorisation or approval of an operator, all the powers

necessary to administer the affairs of the administrator relating to mutual fund administration in the best interests of

- (a) its creditors; and
- (b) investors in the funds administered by the administrator or the creditors of any such funds.

(7) Subject to subsection (2) of section 45, a custodian appointed under subsection (3) shall be appointed for such period as the Securities Commission considers necessary in the interest of the mutual fund or until a new administrator, approved by the Securities Commission, is appointed by the mutual fund.

(8) No appointment of a custodian pursuant to subsection (3)(d) shall be made where the administrator is in receivership or a liquidator has been appointed.

#### **Information to be supplied to Securities Commission**

**45.(1)** A person appointed in respect of a mutual fund administrator pursuant to subsection (3)(c) or (d) of section 44 shall

- (a) when requested to do so by the Securities Commission, supply the Securities Commission with such information in respect of the administration of mutual funds as is specified by the Securities Commission;
  - (b) within 3 months after his appointment, or within such further period as the Securities Commission may specify, prepare and supply to the Securities Commission a report on the administration of mutual funds and the activities that the fund is likely to be engaged in; and
  - (c) supply to the Securities Commission such other information and reports as the Securities Commission shall specify, at the times specified by the Securities Commission.
- (2) Where a person appointed under subsection (3)(c) or (d) of section 44
- (a) fails to comply with an obligation under subsection (1); or

(b) fails to satisfy the Securities Commission that he is carrying out his obligations in respect of the mutual fund administrator satisfactorily, the Securities Commission may revoke the appointment and appoint some other person in his place.

### **Securities Commission authorised to take action**

**46.(1)** On receipt of any information or a report submitted in respect of a mutual fund pursuant to section 45 in respect of a mutual fund administrator, the Securities Commission may, where it is satisfied that it is in the interest of

- (a) creditors of the administrator; or
- (b) the mutual fund being administered by the administrator,

require the administrator to re-organise its affairs in a manner specified by the Securities Commission or, if the administrator is a company, apply to the Court in accordance with the provisions of the *Companies Act*, Cap. 308 for the company to be wound-up by the Court in accordance with that Act and may take such action in respect of the appointment of the person appointed under subsection (3)(c) or (d) of section 44 as the Securities Commission shall consider appropriate.

(2) Where the Securities Commission takes action under subsection (1), it may apply to the Court for an order to take such other action as it considers necessary to protect the interests of

- (a) creditors of the mutual fund administrator; and
- (b) investors in the funds administered by the administrator or the creditors of any such funds.

### **Securities Commission or inspector must not be hindered**

**47.(1)** A person shall not hinder the Securities Commission or the inspector in the exercise of any of their powers under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence.

**Immunity**

**48.** Neither the Securities Commission nor any officer of the Securities Commission shall be liable for anything done or omitted to be done in good faith in the discharge or purported discharge of his duties or functions under this Act.

PART VI  
MISCELLANEOUS

**Publication of grant or revocation of licence**

**49.** Where the licensor issues or revokes a licence, the licensor shall publish a notice of the issue or revocation in the *Official Gazette* and one newspaper in circulation on a daily basis in Barbados.

**Prohibited disclosure of information**

**50.(1)** Subject to subsections (2) and (3), the Securities Commission, an inspector or any person performing services for or on behalf of the Commission, a mutual fund administrator and any member of their staff shall not

- (a) disclose any information relating to
  - (i) any application made for a licence under this Act;
  - (ii) the affairs of a mutual fund;
  - (iii) the affairs of a mutual fund administrator; or
  - (iv) the affairs of an investor in a mutual fund,

which is acquired in the course of their duties or the exercise of their functions under this Act; and

- (b) use any information referred to in paragraph (a) for their own benefit.

- (2) Subsection (1)(a) shall not apply to a disclosure
- (a) necessary for the effective regulation of a mutual fund;
  - (b) lawfully required or permitted by a court; or
  - (c) permitted or authorised by any other Act.
- (3) The Securities Commission may disclose to a mutual fund regulating authority outside Barbados general information of a statistical nature about a mutual fund or mutual fund administrator that does not disclose the identity of investors.
- (4) A person who contravenes subsection (1) is guilty of an offence.

### **Appeal**

**51.** A person aggrieved by any action taken by the Securities Commission under this Act has a right of appeal to the Court.

### **Liability of trustee or custodian for loss**

- 52.(1)** The administrator, trustee or custodian
- (a) shall be liable to the investors for any loss suffered by them as a result of failure to perform obligations or its improper performance of them;
  - (b) shall be liable for any act or omission of any agent with whom bearer securities or investments or instruments of the fund are deposited.
- (2) Where borrowing is undertaken for the account of the fund, assets of the fund may be registered in the name of the lender or of a nominee for the lender and the trustee or custodian shall be liable for the acts and omissions of the lender and its agent in relation to such assets.

**Obligation of auditors**

**53.** Where an auditor in the course of carrying out an audit of the accounts of a mutual fund or of a mutual fund administrator becomes aware or has reason to believe that the mutual fund or the mutual fund administrator

- (a) is carrying on business without keeping sufficient or accurate records to allow its accounts to be properly audited; or
- (b) is carrying on business or is winding-up its business in a manner that is prejudicial to its investors or creditors

the auditor shall immediately give the Securities Commission written notice of his knowledge or belief giving his reason for that knowledge or belief.

**Offences**

**54.(1)** A person who commits an offence under

- (a) section 3, 8, 16, 18, 35, 37 or 38 is liable on conviction on indictment to a fine of \$100 000 or to imprisonment for 3 years or to both such fine and imprisonment;
- (b) section 15 or 50 is liable on summary conviction to a fine of \$50 000 or to imprisonment for 2 years or to both such fine and imprisonment;
- (c) section 21 is liable on summary conviction to a fine of \$5 000 or to imprisonment for 6 months or to both such fine and imprisonment and to an additional fine of \$1 000 in respect of each day during which the person has failed to comply with the direction;
- (d) section 26 or 37 is liable on summary conviction to a fine of \$25 000 or to imprisonment for 12 months or to both such fine and imprisonment and to an additional fine of \$1 000 in respect of each day after the specified time, during which the person failed to comply with the instructions.

(2) Any person who

- (a) knowingly refuses or neglects to do anything that is properly required to be done by him under this Act; or
- (b) without reasonable cause contravenes any section of this Act for which no other penalty is provided

is guilty of an offence and shall be liable on summary conviction to a fine of \$25 000 or to imprisonment for 2 years or to both such fine and imprisonment.

(3) Where a person

- (a) upon an examination, oath or affirmation required under this Act;
- (b) in any affidavit, deposition or solemn affirmation relating to any matter under this Act; or
- (c) otherwise in or about any matter arising under this Act

gives false evidence, he is guilty of an offence under the *Perjury Act*, Cap. 142 and shall be liable on conviction to the penalties set out in that Act.

(4) No prosecution may be instituted for an offence under this Act except by, or with the consent of, the Director of Public Prosecutions.

### **Exemption from property transfer tax and stamp duty**

**55.** Notwithstanding any enactment to the contrary,

- (a) a mutual fund authorised to carry on business under this Act; and
- (b) an investor in any such mutual fund

are exempt from the provisions of the *Stamp Duty Act*, Cap. 91 and the *Property Transfer Tax Act*, Cap. 84A with respect to transactions concerning the acquisition or transfer of shares in mutual funds.

**Regulations**

**56.(1)** The Minister, after consultation with the Securities Commission, may make regulations for carrying out the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations respecting

- (a) the operation of mutual funds;
- (b) the compliance requirements of exempt mutual funds;
- (c) the role of trustees, custodians and mutual fund administrators in relation to mutual funds;
- (d) the type and content of advertisement published by mutual funds;
- (e) the filing of documents;
- (f) any other matter that is required to be prescribed under this Act.

(2) Subject to subsection (3), the Minister may by order, upon application of a mutual fund, exempt the mutual fund from any regulation.

(3) An exemption referred to in subsection (2) shall be granted only where the Minister is satisfied, after consultation with the Securities Commission, that such exemption

- (a) will not prejudice the interests of holders of shares in mutual funds; and
- (b) will not undermine the efficaciousness of the administration and accountability of mutual funds.

**Transitional provisions**

**57.** From 12th December, 2002

- (a) a mutual fund or a mutual fund administrator who is the holder of a valid licence issued under this Act shall continue to be licensed as if the licence were issued under this Act;

- (b) any act performed or anything done under the former Act shall be regarded as having been performed under this Act;
- (c) any liability incurred or any contravention performed under the former Act shall be regarded as having been incurred or performed under this Act.

### **Savings**

**58.** The *Mutual Fund (Fees) Regulations, 2000* shall be deemed to have been made under this Act and shall continue to have full effect as if they were made under this Act.

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[2000/84]

### **Repeal of Act**

**59.** [*The Mutual Funds Act is repealed.*]

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[1998-45]