

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M107

MUTUAL FUNDS ACT

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 8/2004, in force 1 October 2004
Act 6/2008, in force 27 February 2008
Act 4/2013, in force 25 September 2013

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MUTUAL FUNDS ACT

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MUTUAL FUNDS ACT

PART 1

PRELIMINARY

Interpretation

1. (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;

(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 recognized Country or Jurisdiction;

"auditor" means a person who has qualified as an accountant by examination of, and holds a practicing certificate issued by, one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member of good standing of one of the above Institutes recognised by the Commission as such for the purposes of this Act;

"Commission" means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

"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, the articles of incorporation 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;

"Court" means the High Court;

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

"dollar" or "$" means a dollar in the currency of the United States of America;

"existing entity" means—

(a) a public fund;

(b) a private or professional fund; or

(c) a manager or administrator;

which was carrying on its business in or from within Anguilla immediately before 1st October 2004;

"family trust fund" means a fund which has been established for the benefit of one or more members of the same family including father, sons, daughters, including adopted and stepchildren and the immediate blood relations and respective spouses of any of these persons;

"financial year" means the period at the end of which the balance of accounts is determined for the purpose of preparing the financial statements of a mutual fund, which period may be up to 18 months in the case of the first or last such period, or in the case of a change in the date from which the period is determined, but which shall not otherwise exceed 12 months in duration;

"Governor" means the Governor in Council;

"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;

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

(c) is designated as being a manager by the Commission.

"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 Anguilla or of any other Recognized 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—

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

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

but excludes any body which is designated by regulations as not being a mutual fund;

"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 relationship which subsists between persons carrying on a business in common with a view of profit and includes a partnership formed under the laws of Anguilla or the laws of such other recognized Country or Jurisdiction thereof notwithstanding any statutory definition to the contrary;

"person" includes an individual natural person, a mutual fund, any company, partnership, unit trust or trustee or other legal entity recognised as such under the laws of another recognized Country or Jurisdiction;

"private fund" means a mutual fund—

(a) the constitutional documents of which specify that it will have no more than 99 investors;

(b) the constitutional documents of which specify that an invitation to subscribe for or purchase shares issued by the mutual fund is not to be made to the public. An invitation is not made to the public if it is made—

(i) to specified persons (however described) and is not calculated to result in shares becoming available to other persons, or

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

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

"professional fund" means—

(a) a mutual fund, the shares of which are made available only to professional investors and the initial investment in which, in respect of each of the persons constituting a majority of such investors, is not less than $100,000 or its equivalent in any other currency, but this minimum initial investment limit shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the professional fund;

(b) a mutual fund which—

(i) was carrying on business or engaged in an activity as a mutual fund on 1st October 2004,

(ii) the initial investments in respect of the majority of each of the investors in the mutual fund have been not less than $100,000 or its equivalent in any other currency, and

(iii) the shares of the mutual fund are, after 1st October 2004, made available only to professional investors; or

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

"professional investor" means a person—

(a) whose ordinary business involves dealing in investments; or

(b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of $1,000,000 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 a mutual fund, but does not include an underwriter who receives an underwriting commission without taking any part in the founding or organising of the mutual fund business;

"prospectus" means any 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);

"regulations" or "the regulations" means regulations made under this Act;

"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 Anguilla or of any other recognised Country or Jurisdiction in which unit holders participating in the arrangement are the beneficiaries of the trust.

(2) In this Act—

(a) in every company incorporated and every partnership formed or unit trust organised under the laws of Anguilla for the purpose of carrying on business as a mutual fund, a

manager or administrator shall, if carrying on business anywhere outside Anguilla, be deemed to be carrying on business from within Anguilla;

(b) the expression "carrying on business from within Anguilla" includes carrying on business outside Anguilla from a place of business or a registered office within Anguilla;

(c) a mutual fund which is not incorporated, formed or organised or carrying on its business in or from within Anguilla shall be deemed to be carrying on business in Anguilla if it makes an invitation to subscribe for or purchase shares to an individual natural person within Anguilla, except where the purchase is a result of an approach made by the individual natural person without any invitation to subscribe for or purchase shares 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 2

ADMINISTRATION

Duties of the Commission

2. (1) The Commission has—

(a) the duty to regulate 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 authority to prescribe such forms as it considers necessary for the purposes of this Act or the regulations; and

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

(2) The Commission may, upon request by any person to whom this Act applies and the payment of such fee as may be prescribed by regulation, issue to such person a certificate of compliance in such form as the Commission thinks fit.

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

Registers of the Commission

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

(a) registered public funds;

(b) recognised private funds;

(c) recognised professional funds; and

(d) licensed managers and administrators.

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

(a) the information required under section 22(1) with respect to each registered public fund, recognised private fund, recognised professional 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 shall be open to public inspection during ordinary office hours on payment of an inspection fee of $5 or such other amount as may be prescribed by regulation.

Mutual Funds Advisory Committee

4. (1) There shall be a Committee called the Mutual Funds Advisory Committee which shall consist of not more than 5 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 3

PUBLIC FUNDS

Registration

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

Application for registration

6. (1) A public fund may apply to the Commission for registration to carry on its business or manage or administer its affairs in or from within Anguilla.

(2) An application for registration under subsection (1) shall be—

(a) made in the form and contain the information as set out in the regulations; 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 Anguilla, including the name of any other recognized Country or Jurisdiction where the applicant is carrying on or intends to carry on business,

(ii) the application fee of such other amount as may be prescribed by regulation,

(iii) certified copies of the instruments 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 Anguilla or of any other recognized Country or Jurisdiction,

(iv) the notices required under section 22(1), and

(v) such other documents or information as the Commission may reasonably require for the purpose of determining the application.

Power to grant registration

7. (1) The Commission may, in its discretion, grant or refuse to grant registration under section 6.

(2) Notwithstanding subsection (1), the Commission shall refuse to grant registration if—

(a) the public fund or proposed public fund, as the case may be, has a name which is undesirable or misleading;

(b) the public fund or proposed public fund, as the case may be, does not have a custodian who is independent of the manager or administrator; or

(c) it determines that it is not in the public interest that such registration should be granted.

(3) Where the Commission, in the exercise of its powers under paragraph (2)(c), makes a decision refusing to grant registration it shall not be bound to assign any reasons for its decision which shall not be subject to appeal or review.

Registration procedure

8. (1) Where the Commission grants registration pursuant to section 6, it shall—

(a) register the public fund in the register maintained by it for the purpose under section 3; and

(b) issue a certificate to the registered public fund showing the date of registration.

(2) The Commission shall not register the proposed public fund if the public fund has not complied with any of the requirements of section 6(2).

Accounting records and financial statements

9. (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) make 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 Anguilla, 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 necessary are made available to the Commission.

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

(a) audited by an auditor acceptable to the Commission in accordance with generally accepted auditing standards;

(b) accompanied by the report of the 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

10. (1) No registered public fund shall in or outside Anguilla 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 name called) or in the case of a partnership, every partner other than a limited partner, and in the case of a unit trust, every trustee which approved the contents of the prospectus or authorised its publishing, and files a copy thereof with the Commission.

(2) Every prospectus published pursuant to subsection (1) 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 12; 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) 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.

(4) Where in a prospectus any of the disclosures required under paragraph (2)(a) ceases to be accurate in a material particular, the registered public fund shall within 14 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

11. (1) Every registered public fund, wherever it is constituted, which carries on business outside Anguilla shall every year, within 3 months of the end of its financial year, file with the Commission a certificate of compliance from the competent authority that is responsible for the regulation and supervision of the conduct of its business in that other recognized 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 Anguilla carries on business in more than one recognized Country or Jurisdiction other than Anguilla, the certificate required to be filed under subsection (1) shall be from the competent authority in the recognized Country or Jurisdiction in or from which it carries on its principal business.

Investors' rights

12. (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 10(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;

against the fund.

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

(a) an untrue or misleading statement of any of the disclosures required under sections 10(2)(a) and 10(4); 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

13. (1) Notwithstanding any provision of law to the contrary, any action pursuant to section 12(2) may not be commenced after—

(a) 180 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 12(2), the amount recoverable shall not exceed the amount for which the shares were purchased or subscribed, including any fees or other charges paid by the plaintiff.

PART 4

PRIVATE AND PROFESSIONAL FUNDS

Recognition

14. (1) No private fund and, subject to subsection (2), no professional fund shall carry on its business or manage or administer its affairs in or from within Anguilla 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 Anguilla for a period of up to 14 days without being recognised under this Act.

(3) Notwithstanding subsection (1), a private or professional fund which is a fund which is maintained by a group of family trusts for the sole purpose of facilitating investment and without any solicitation being made for the sale of a right to participate in such fund shall be exempt from recognition under this Act.

Application for recognition

15. (1) A private or professional fund that is constituted under the laws of Anguilla 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 Anguilla; and

(b) the notices required under section 22(1).

(2) A private or professional fund that is constituted under the laws of a recognized Country or Jurisdiction other than Anguilla may apply for recognition under this Act by sending to the Commission a letter setting out the nature and scope of its business to be carried on from or within Anguilla which shall be accompanied by—

(a) the application fee set out in the regulations or such other amount as may be prescribed by regulation;

(b) the notices required under section 22(1); 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 recognized Country or Jurisdiction.

(3) In the case of a professional fund, the matters required by subsections (1) and (2) shall be provided within 14 days of the commencement of its business.

Power to grant recognition

16. (1) The Commission may, in its discretion, grant or refuse to grant recognition under section 15(1) or (2).

(2) Where the Commission refuses to grant recognition under section 15(2), the provisions of section 7(3) shall apply *mutatis mutandis*.

(3) The Commission shall not refuse to grant recognition under section 15(1) unless—

(a) the applicant fails to comply with the requirements of that section; 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 paragraph (3)(a), it shall give the applicant notice in writing of its decision.

(5) Where the Commission refuses to grant recognition on any of the grounds set out in paragraph (3)(b), the provisions of section 7(3) shall apply *mutatis mutandis.*

Recognition procedure

17. Where the Commission grants recognition to a private or professional fund, it shall—

(a) enter the particulars relating to the private or professional fund in the relevant register maintained by it for the purpose under section 3; and

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

PART 5

MANAGERS AND ADMINISTRATORS

Licensing

18. (1) No person shall carry on or hold himself out as carrying on business in or from within Anguilla as a 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 Anguilla;

(b) is a manager or administrator of mutual funds (by whatever name called) formed or organised under the laws of a recognised recognized 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 Anguilla.

(3) The Commission may exempt a person from the provisions of subsection (1) if, upon application made to it accompanied by the prescribed application fee, the Commission is satisfied that the applicant will not be managing or administering more than one specified mutual fund, whether registered or recognized in Anguilla or another jurisdiction, as evidenced by a written undertaking.

(4) The Commission may otherwise exempt a person from the provisions of subsection (1) in accordance with the provisions of section 25.

Application for a licence

19. (1) A person who wishes to do so may make an application for a licence under section 18(1) to the Commission to carry on business in or from within Anguilla 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 of such other amount as may be prescribed by regulation;

(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

20. (1) The Commission may, in its discretion, grant or refuse to grant a licence to any applicant under section 19(1).

(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) An applicant which provides services to one private mutual fund or one professional mutual fund and whose business is only to appoint other service providers or to receive fees or both, is exempted from the requirement to appoint an auditor under paragraph (2)(c).

(4) 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.

(5) Where the Commission refuses to grant a licence to an applicant, the provisions of section 7(3) shall apply *mutatis mutandis*.

Licensing procedure

21. 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 3; and

(b) issue a licence to the applicant showing the date on which the licence is granted.

(Act 4/2013, s. 53)

PART 6

GENERAL

Notices to accompany applications

22. (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 Anguilla;

(b) the name and address of a person resident in Anguilla 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 Anguilla.

(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 21 days after the alteration is made.

Form and conditions of certificates and licences

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

(2) A certificate of registration or recognition 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

24. (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 fees as may be prescribed by regulation.

(2) On or before the 15th day of January every year following the year in which registration, recognition or a licence is granted there shall be payable the annual fee and any penalties for late payment of such fee as may be prescribed by regulation.

(Act 6/2008, s. 1)

(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.

(Act 4/2013, s. 53)

Power to grant exemptions

25. (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 it 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.

Restriction on the use of the words "fund", "mutual fund" or "unit trust"

26. Except with the written consent of the Commission, no person shall—

(a) use or continue to use the words "fund", "mutual fund" or "unit trust" 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 Anguilla; 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.

(Act 4/2013, s. 53)

Exemption from certain enactments

27. (1) No company which is licensed under this Act is—

(a) required to be licensed under the Trades, Businesses, Occupations and Professions Licensing Act;

(b) subject to the provisions of the Stamp Act.

(2) 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 or professional fund who is not ordinarily resident or domiciled in Anguilla;

are in all respects exempt from any and all stamp duty.

Offences and penalties

28. (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, or in any prospectus issued in respect of a private or professional mutual fund;

(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

commits an offence under this Act and is liable on summary conviction to a fine of not less than $10,000 and not more than $25,000 or to imprisonment for a period of 12 months.

(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, or a trust, a fine of $50,000; and

(b) in the case of an individual natural person, to a fine of $5,000 or to imprisonment for a period of one month or to both.

(3) A prosecution for an offence under this Act may be commenced within 5 years from the date of the commission of the offence but not thereafter.

Regulations

29. The Governor may, on the advice of the Commission, make regulations—

(a) prescribing fees payable under this Act;

(b) designating arrangements which are not mutual funds;

(c) designating mutual funds or a class or classes thereof as private or professional funds;

(d) designating a class or sub-classes of a public fund;

(e) authorising the Commission to require that any document, statement, report, certificate, release, agreement, or other information that is reasonably necessary to enable the Commission to ascertain compliance with this Act be filed with, furnished or delivered to it;

(f) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act;

(g) prescribing any matter required to be or which may be prescribed under this Act;

(h) 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 registered public fund or a sub-class of such fund;

(i) relating to the matters which should be contained in a prospectus of a registered 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

30. (1) Any manager or administrator who, on 1st October 2004, 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 3 months of the coming into force of this Act, comply with the provisions of this Act.

(2) Any mutual fund which, on 1st October 2004, is carrying on its business or managing or administering its affairs in or from within Anguilla shall, within 6 months from that date, comply with the provisions of this Act.

(3) Where a mutual fund fails to comply with subsection (2), it shall pay a non-compliance penalty of $5,000 for each month or part thereof during which it fails to comply with that subsection up to a period of 12 months.

(4) If after the period of 12 months prescribed under subsection (3) a mutual fund fails to comply with the provisions of the Act, it commits an offence and may be proceeded against under section 28(2).

(5) Where a mutual fund is proceeded against under section 28(2), it shall, in addition to any penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).

Citation

31. This Act may be cited as the Mutual Funds Act, Revised Statutes of Anguilla, Chapter M107.