ANGUILLA

REVISED REGULATIONS OF ANGUILLA

under

MUTUAL FUNDS ACT
R.S.A. c. M107

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.

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MUTUAL FUNDS REGULATIONS *Revises R.A. 28/2004, in force 15 October 2004* *Consolidates R.A. 3/2008, in force 29 February 2008*	R.R.A. M107-1 *(15/12/2004)* *(15/12/2008)* *(15/12/2014)*	3

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Revised Regulations of Anguilla: M107-1

MUTUAL FUNDS ACT (R.S.A. c. M107)

MUTUAL FUNDS REGULATIONS

Note: These Regulations are enabled under section 29 of the Mutual Funds Act, R.S.A. c. M107.[1]

(Am. in L.R. 15/12/2014)

Interpretation

1. In these Regulations—

"Act" means the Mutual Funds Act;

"Commission" means the Financial Services Commission created by the Financial Services Commission Act;

"$" means the currency of the United States of America.

Application for registration of a public fund

2. An application for registration of a public fund—

(a) under section 6 of the Act where the fund has been constituted under the laws of Anguilla shall be made in the forms as set out in Schedule 1 and Schedule 4 (where applicable);

(b) which has been constituted under the laws of a jurisdiction other than Anguilla shall be made in the forms as set out in Schedule 1 and Schedule 4 (where applicable).

Application for recognition of a private or professional fund

3. An application for recognition of a private or professional fund under section 15 of the Act may be made in the forms as set out in Schedule 1 and Schedule 4 (where applicable).

Application for licensing of a manager or an administrator

4. An application for the licensing of a manager or an administrator or both under section 19 of the Act shall be made in the forms as set out in Schedule 2 and Schedule 4 (where applicable).

Application for approval of issue or transfer of shares or other interests

5. An applicant who has been granted a licence under section 20 of the Act shall apply for an approval of an issue or transfer of shares or other interests in the form as set out in Schedule 5.

Application for approval of directors

6. An applicant who has been granted registration under section 7 or a licence under section 20 of the Act shall apply for approval of a director in the form as set out in Schedule 6.

[1] This Note has been corrected to reflect the renumbering of the Act by Act 4 of 2013.

Notice of issue or transfer of shares or other interests or change of a director

7. An applicant who has been granted recognition under section 16 of the Act shall inform the Commission in writing where there has been an issue or transfer of shares or other interests or a change of a director giving the name(s) of the person(s) to whom the shares or other interests were issued or transferred and the name(s) of the new director(s).

Fees

8. The payment of fees and late payment penalties by applicants under sections 2, 3 and 4 above are as set out in Schedule 3.

Citation

9. These Regulations may be cited as the Mutual Funds Regulations, Revised Regulations of Anguilla, M107-1.

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SCHEDULE 1

(Section 2)

Anguilla

MUTUAL FUNDS ACT

(Section 6 or 15)

APPLICATION TO BE REGISTERED AS A PUBLIC FUND OR RECOGNISED AS A PRIVATE OR PROFESSIONAL FUND

Notes

Complete all sections giving reasons for non-compliance, if any, and attaching supplementary sheets where appropriate.

Completed forms should be submitted to:—

FINANCIAL SERVICES COMMISSION
P.O. BOX 1575
THE VALLEY
ANGUILLA
Tel: 1 264 497 5881
Fax: 1 264 497 5872

And be accompanied by the non-refundable Application Fee set out in Schedule 3

---

1. State the type of fund: Public, Private or Professional.

2. Name of the fund.

3. Address of the applicant's place of business in Anguilla.

4. Name and address of the person(s) (individual or otherwise) resident in Anguilla who is/are authorized to represent the applicant and to accept service of documents on its behalf.

5. Address of any place(s) of business that the applicant may have outside of Anguilla.

6. Date the fund commenced business as a mutual fund (if applicable).

7. State the legal constitution of the fund: company, partnership or unit trust.

8. State the country or jurisdiction of where the fund is constituted.

9. State the title of the law under which the fund is constituted.

10. Who are the directors of the fund? Please give full names and addresses. (NB: A public fund must have at least 2 natural persons as directors).

11. If it is a public fund, who is the promoter? Please give full name and address and if a corporate entity full details of beneficial shareholders and directors or if a partnership full details of general partners or if a unit trust full details of the trustees.

12. (a) Proof of classification – private fund.

(i) Do the fund's constitutional documents limit it to no more than 99 investors? (YES or NO).

(ii) If the answer is YES, state the relevant provision in the constitutional documents.

(iii) If the answer is NO, state the provision that requires invitations to purchase shares to be made on a private basis. (See Guidance Note at the end of this Schedule)

(iv) Explain the method of making such an invitation and an indication of how many invitations will be made.

12. (b) Proof of classification – professional fund. Describe how it will be ensured that the fund meets the conditions for a professional fund. (See Guidance Note 2)

12. (c) State the name, jurisdiction of incorporation (if applicable), address of place of business, and business activity of the following persons.

(a) Manager(s)

(b) Administrator

(c) Investment Advisor

(d) Custodian

13. Is the fund currently registered, licensed, recognized, or authorized under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction or has the fund been so registered, licensed, recognized or authorized in the past? (YES or NO):

If YES please supply full details:

14. Has the fund, or any of its officers, managers, administrators, investment advisers or custodians been the subject of:

(a) A refusal of an application for registration, recognition, licensing or authorization by any authority in any country or jurisdiction? or

(b) Suspension, cancellation or revocation of registration, licensing, recognition or authorization in any country or jurisdiction?

If YES, to either of these questions, provide full details including reasons.

15. State the address in Anguilla (if applicable) or out of Anguilla (if applicable) where the fund's accounting records and financial statements (or copies thereof) will be kept.

16. (Applicable to public funds only). Specify name of auditors and attach evidence of the auditor's acceptance of their appointment or their willingness to act.

17. (Applicable to public funds only). Specify name of legal counsel, if any, and attach evidence of their willingness to act.

18. (Applicable to public funds only) Please provide a prospectus which sets out as a minimum the following information:

(a) Investment objectives, and types of investments and markets to be invested in

(b) Investment restrictions

(c) Risk factors of the fund

(d) Minimum and maximum investment, if applicable, for investors

(e) Any rights and restrictions on shares, partnership interest, or units being offered

(f) Actual or expected size of shareholder investor base

(g) Valuation arrangements and frequency of valuations

(h) Redemption mechanisms

(i) Fee structure

(j) Custody arrangements

19. Provide evidence of approval of the prospectus by the directors of the fund.

20. (Applicable to private and professional funds only) Provide a business plan that addresses the issues raised in paragraphs (a), (b), (c), (f), (g) and (h) of question 18 above.

21. (Application to public funds only). All directors, promoters and beneficial owners of 10% or more of the net equity of the fund must complete Schedule 4.

Application is accordingly hereby made for the registration or recognition of the fund specified above and it is certified that all the particulars contained in the Application and in the documents accompanying it or otherwise furnished in the support hereof are true and correct and that any change to the information submitted will be communicated to the Financial Services Commision forthwith.

Dated this …….day of ……., 20…… .

……..
Name of Applicant

By its Director/Secretary or other duly authorized person

Signed ……

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorise said authorities to provide you with whatever information you may request.

(Signed)

GUIDANCE NOTES

1. The Act requires submission of proof that the fund is a private fund within the meaning of the Act. The fund's constitutional documents must contain a specific provision that states that it will have no more than 99 investors or that invitations to purchase shares in the fund must be made on a "private basis." This could be evidenced by a prohibition placed on the making of invitations to purchase shares other than to specified persons (however described) and in a manner which is not calculated to lead to shares becoming available to other persons or to a large number of persons; or a restriction to invitations which are made only by reason of a private business connection between the respective parties. In all cases, an indication of the number of invitations that will be made to purchase shares must be provided.

2. The shares of a professional fund must be made available only to "professional investors" defined in the Act as either persons whose ordinary business involves dealing in investments of the same kind as those of the fund or persons who have signed an appropriate declaration. A majority of the investors in a professional fund must each initially invest at least US$100,000. A copy of the fund(s) offering document, or extracts thereof, which stipulate minimum initial investment and subscription conditions must be provided.

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SCHEDULE 2

(Section 4)

Anguilla

MUTUAL FUNDS ACT

(Section 19)

APPLICATION TO BE LICENSED AS A MANAGER, ADMINISTRATOR OR BOTH

Notes

Complete all sections giving reasons for non-compliance, if any, and attaching supplementary sheets where appropriate.

Completed forms should be submitted to:—

FINANCIAL SERVICES COMMISSION
P. O. BOX 1575
THE VALLEY
ANGUILLA
Tel: 1 264 497 5881
Fax: 1 264 497 5872

And be accompanied by the non-refundable Application Fee set out in Schedule 3.

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1. Name of the applicant.

2. Type of licence: Manager, Administrator or Both

3. Registered office of the applicant.

4. Business address if different.

5. Contact person for this application along with contact details including telephone and fax numbers and email address.

6. Date of incorporation.

7. Company registration number.

8. Name and statute under which the company is formed.

9. State the date of the end of the financial year.

10. Name and address of the applicant's auditor. State the contact person.

11. Name and address of the applicant's legal counsel. State the contact person.

12. State the authorized share capital.

13. State the paid-up share capital.

14. State the method by which paid-up share capital was raised.

15. (If applicable) state the amount and nature of the loan capital.

16. State the name, addresses and number of shares held by each shareholder. (If nominees hold shares by a corporate secretary, entity or trust, state who holds the ultimate beneficial interest).

17. State all the directors of the applicant. The appointment of a non-Anguillian corporate director may not be acceptable for an applicant for licensing. An applicant must have at least two directors.

18. Name and addresses of any Regulatory Authority to which the Applicant or other group companies report. (Note: The Commission may seek references from any Regulatory Authority or other agency).

19. Name and address of banks with whom the manager/administrator will maintain clients' money accounts. (Indicate the main bankers).
20. Has the applicant, in the last seven years, received an indication from any bank that an account has not been kept in a satisfactory manner? If so, explain the circumstances.

21. Has the applicant or any of its directors been the subject of a:

    (a) Refusal of an application for registration, licensing, recognition or authorization by any authority in any country or jurisdiction?

    (b) Suspension, cancellation or revocation of registration, licence, recognition or authorization by any authority in any country or jurisdiction?

    (c) Regulatory or enforcement action by any authority in any country or jurisdiction?

    Provide full details including reasons for the answer to each question if the answer is "YES"

22. Has a judgment been rendered or any suit, action or proceedings pending against the applicant or any director thereof, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation, misappropriation or similar conduct?

23. Has any director of the applicant been, or is being, charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings in relation to fraud, theft, deceit, misrepresentation or misappropriation arising out of operating or dealing in mutual funds, collective investment schemes/funds, securities, banking or insurance business or company management?

    Provide full details if the answer is "YES."

24. Has a Director of the Applicant, in any country or jurisdiction been -

    (a) Declared bankrupt or been a party to bankruptcy or insolvency?

    (b) Subject to proceedings relating to winding-up, dissolution or creditors' arrangements?

    (c) Subject to proceedings relating to receivership or creditors' compromise?

    Provide full details if the answer to any of the above is YES.

25. Provide details of any matter which you believe may be relevant to the assessment of the fit and proper status of the Applicant or any of its Directors.

26. Provide details of the applicants' indemnity cover (if applicable). A copy of the policy should be enclosed.

27. All directors of the applicant must complete Schedule 4.

Application is accordingly hereby made for the licence specified above and it is certified that all the particulars contained in the Application and in the documents accompanying it or otherwise furnished in the support hereof are true and correct and that any change to the information submitted will be communicated to the Commision forthwith.

Dated this …….day of ……, 20…… .

……..
Name of Applicant

By its Director/Secretary or other duly authorized person

Signed ……...

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorise said authorities to provide you with whatever information you may request.

(Signed)

_____

SCHEDULE 3

(Section 8)

Anguilla

MUTUAL FUNDS ACT

(Sections 6, 15, 19)

APPLICATION FEES TO BE REGISTERED, RECOGNISED OR GRANTED A LICENCE

MUTUAL FUNDS ACT
(Section 24[2])

ANNUAL FEES TO BE REGISTERED, RECOGNISED OR GRANTED A LICENCE

MUTUAL FUNDS ACT
(Section 11)

FOR THE ISSUANCE OF A CERTIFICATE OF COMPLIANCE

Application fees

The fee for:

(a) An application for registration under section 6	$500
(b) An application for recognition under section 15	$350
(c) An application for a licence under section 19	$250

Licence fees

Fee payable for the year in which registration, recognition or licence is granted pursuant to sections 7, 16 and 20

Where registration, recognition or licence is granted on or before 30th June in any year, the fee payable is

(a) For a registered public fund	$500
(b) For a recognized professional or private fund	$350
(c) For a person licensed as a manager or administrator	$500
(d) For a person licensed as both manager and administrator	$1000

[2] This section has been corrected to reflect the renumbering of the Act by Act 4 of 2013.

Where registration, recognition or licence is granted on or after 1st July in any year, the fee payable is

(a) For a registered public fund	$250
(b) For a recognized private or professional fund	$175
(c) For a person licensed as a manager or administrator	$250
(d) For a person licensed as both manager and administrator	$500

Thereafter, the annual fee payable pursuant to sections 7, 16 and 20

(a) For a registered public fund	$500
(b) For a recognized private or professional fund	$350
(c) For a person licensed as a manager or administrator	$500
(d) For a person licensed as both manager and administrator	$1000

Date by which Annual Fees must be paid

In accordance with section 25 of the Act, the annual fee shall be paid on or before the 15th day of January of each year.

If the annual fee is paid after the 15th day of January in any year but before the 1st day of March in the same year, a late payment penalty of 5% of the annual fee is payable in addition to the annual fee.

If the annual fee is paid after the 15th day of January in any year but during the month of March in the same year, a late payment penalty of 25% of the annual fee is payable in addition to the annual fee.

If the annual fee is paid after the 31st day of March in any year but on or before the 30th day of June in the same year, a late payment penalty of 50% of the annual fee is payable in addition to the annual fee.

If the annual fee and any applicable penalties are not paid on or before the 30th day of June in the year in which the annual fee is due and payable, section 26 of the Act shall apply.

(R.A. 3/2008, s. 1 and am. in L. R. 15/12/2014)

SCHEDULE 4

(Section 4)

INFORMATION IN SUPPORT OF AN APPLICATION TO REGISTER OR RECOGNISE A MUTUAL FUND OR FOR A LICENCE AS MANAGER OR ADMINISTRATOR OF A MUTUAL FUND IN ANGUILLA

Details required from each shareholder, beneficial shareholder or director of an applicant company, and comptroller if not a director, and such other person(s) as they may require.

1. Full name:

2. Former name (if different from name given above):

3. Date and place of birth:

4. Nationality (if naturalised attach a copy of the naturalisation certificate, and state former nationality):

5. Full home address at present time:

6. List home addresses in full for previous five years where different from that given above, and give the related dates:

7. Marital status. If married give full name of spouse including maiden name of wife.

8. Passport particulars (enclose copies of relevant pages).

9. Please provide a detailed curriculum vitae giving full details of your profession or occupation over the past ten (10) years; include the names and addresses of all employers and the nature of your employment give all relevant dates and state briefly the reasons for changes:

10. Give a list of all companies in which you have held or hold an interest of 25% or more during the past ten years. Give brief particulars of the nature of the business of all such companies:

11. Give details of academic and professional qualifications and date(s) obtained:

12. Have you ever been employed in, or had an interest in

    (a) A financial services activity or

    (b) (State YES or NO). A gambling activity in any country?

13. In relation to the proposed operation are you acting wholly or partly as a nominee or agent for, or trustee of another person, persons or organisations? (State YES or NO):

    If YES, give the name and address of the person, or persons, or organisations and the precise nature of your relationship and/or the arrangement:

14. Give the full details of your financial interest in the proposed operation, and the percentage ownership that this will represent:

15. Have you or your spouse ever been declared bankrupt or been the subject of a bankruptcy petition, or ever received a judgment against you in a civil court? (State YES or NO):

    If YES give full details:

16. Has any company or firm of which you or your spouse was a partner, director or comptroller been the subject of a winding up petition? (State YES or NO):

17. Have you ever applied for a financial services licence in any other jurisdiction? (State YES or NO).

    If YES state type of licence, name of company, location and period held and where granted:

18. Have you ever been the subject of an investigation in relation to a financial institution, related institution or gambling/lottery or refused a financial services licence or had an interest in any group which has been refused a licence or related finding of suitability? (State YES or NO):

If YES to either of the above, state where, when and for what reason:

19. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer or comptroller, anywhere, had its authorization revoked? If so give particulars.

20. Have you ever appeared before any licensing agency or similar authority for any reason whatsoever? For example, as a witness. (State YES or NO):

If YES provide details:

21. Have you as an individual, member of a partnership, or owner, director or officer of a corporation, ever been a party to a lawsuit as either a plaintiff, or defendant as a result of misconduct? (State YES or NO):

If YES give details below: (List all cases without exception, including bankruptcies):

Plaintiff/Defendant:

Court and Case Number:

Location:

Result:

22. (i) Have you ever been convicted of any criminal offence in any country (excluding MINOR traffic offences); or

(ii) Have you ever been arrested, detained, charged, indicted or summoned to answer for any criminal offence including of which the result is still pending:

If you have answered YES to either (i) or (ii) please give details. (List all cases without exception):

Date of Arrest or Detention

Age

Charge

Location

Result

23. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer, or comptroller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.

24. Will you participate actively in the management or operation of the proposed operation? (State YES or NO):

    If YES give full details:

25. Has your interest in the proposed operation been assigned, pledged or hypothecated to any person, persons, firms, partnerships or companies; or have you entered into any agreement, whereby your interest is to be assigned or pledged or sold either wholly or in part? (State YES or NO):

26. Have you made any arrangements for persons, firms or companies to advance money, or other equity, to you to assist in financing your investment in the proposed operation? (State YES or NO):

27. Do your assets exceed your liabilities, including contingent liabilities, and are they likely to remain so for the foreseeable future? (State YES or NO):

28. Explain how you intend to finance your investment in the proposed operation, if applicable:

29. Give below any further information relating to your finances which you wish to be taken into account:

30. Give the names, addresses and telephone numbers of three referees. Referees should not be relatives. They should be told that the Commission might wish to contact them.

It is certified that all the particulars contained in this information declaration and in the documents accompanying it or otherwise furnished in the support hereof are true and correct.

Dated this …….day of ……., 20…… .

……..
Name

By its Director/Secretary or other duly authorised person

Signed ……..

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorise you to contact all relevant authorities and authorise said authorities to provide you with whatever information you may request.

(Signed)

_____

SCHEDULE 5

(Section 5)

Anguilla

MUTUAL FUNDS ACT

(Section 20)

APPLICATION FOR APPROVAL OF ISSUE OR TRANSFER OF SHARES OR OTHER INTERESTS

Financial Services Commission
P.O. Box 1575
The Valley
Anguilla

Dear Sir

Name of company

Re:

We apply herewith for your approval of the issue/transfer/ other dispositions* of shares/ other interests* in the above-mentioned company.

Name and address of allottee or transferee of shares or other interests*

_____

_____

_____

If the interests being issued, transferred or otherwise disposed of are not shares, please give a description thereof* _____

_____

_____

Number of shares and/or percentage of total interests to which application relates _____

_____

We attach Schedule 4 of these Regulations (Information in support of an Application) duly completed by any new allottee or transferee.

Yours faithfully

* *Complete and/or delete as appropriate.*

SCHEDULE 6

(Section 6)

Anguilla

MUTUAL FUNDS ACT

(Section 20)

APPLICATION FOR APPROVAL OF DIRECTORS

Financial Services Commission
P.O. Box 1575
The Valley
Anguilla

Dear Sir

Re:

We apply herewith for approval for the appointment of

_____* as a director of this licensed institution

We attach herewith Schedule 4 (Information in support of an Application) of these Regulations duly completed with respect to the aforementioned person(s).

Yours faithfully

* *Completed and /or delete as appropriate*