

SAINT VINCENT AND THE GRENADINES

MUTUAL FUNDS ACT, 1997

as amended by

MUTUAL FUNDS (AMENDMENT) ACT, 1998

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The following is an official consolidated version of the Mutual Funds Act, 1997 (Act No. 6 of 1997) as amended by the Mutual Funds (Amendment) Act, 1998 (Act No. 12 of 1998) and is prepared according to the authority vested in the Minister pursuant to section 26 of the Mutual Funds Regulations, 1999.

Preliminary

Short title and Commencement 1. This Act may be cited as the Mutual Funds (Amendment and Consolidation) Act, 1998 and shall come into force on such date as the Governor-General may appoint by proclamation published in the *Gazette*.

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

“accredited fund” means a mutual fund

(a) the shares of which are made available only to accredited investors and the initial investment in which, in respect of the majority of such investors, is not less than twenty-five thousand dollars per investor in the United States currency or its equivalent in any other currency; provided, such minimum investment threshold shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the fund; or

(b) which is designated as an “accredited fund” by regulations;

“accredited investor” means a person

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

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

“Act” means the Mutual Funds (Amendment and Consolidation) Act, 1998;

“administrator” means as person who,

- (a) for a valuable consideration provides a mutual fund with administrative services alone or together with accounting services; or
- (b) is entitled to provide to mutual funds (by whatever name called) such services and facilities as provided in paragraph (a) under the laws of a recognised Country or Jurisdiction;

“auditor” means a person who is entitled to practice as a public accountant and to perform audits under the laws of Saint Vincent and The Grenadines or of a recognised Country or Territory or has qualified as an accountant and auditor by examination 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.

“Authority” means the Saint Vincent and the Grenadines Offshore Finance Authority established by Section 3 of the Offshore Finance Authority Act, 1996;

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

“constituted” means

- (a) in the case of a company, incorporated under the Companies Act, 1994 or under the International Companies Act, 1996;
- (b) in the case of a trust, settled by deed or agreement which chooses the law of the State as the proper law; or
- (c) in the case of a partnership, formed or established under the laws of the State;

“constitutional documents” means

- (a) in the case of a company, the articles of incorporation, memorandum and articles of association or other instrument of incorporation;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;
- (c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

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

“existing entity” means

- (a) a public fund,
- (b) a private or accredited fund, or
- (c) a manager or administrator,

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

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

“investor”, in respect of a mutual fund, means the legal holder of record or legal holder of a bearer instrument representing a share issued by a mutual fund, but does not include a promoter of or a professional adviser to that fund;

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

- (a) for valuable consideration, provides a mutual fund with management services alone or together with investment advice or administrative services; or
- (b) is entitled to provide to mutual funds (by whatever name called), such services or advice as provided in paragraph (a) under the laws of a recognised country or jurisdiction;

“Minister” means the Minister for Finance;

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

- (a) collects and pools investor funds for the purpose of collective investment, and
- (b) issues shares (as herein defined) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be, and includes
 - (i) an umbrella fund whose shares are split into a number of different class funds or sub-funds, and
 - (ii) a fund which has a single investor which is a mutual fund not registered or recognised under this Act,

but excludes activities licensed under the Banking Act Cap 63, the International Banks Act, 1996, the International Insurance (Amendment and Consolidation) Act, 1998, and the Insurance Act Cap 103, as each of the same may have been or may be amended, unless the Authority determines otherwise, and any arrangements which are designated by the regulations as not being mutual funds;

“officer” includes

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

- (b) a general partner of a partnership; or
- (c) a trustee of a unit trust;

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

“person” includes an individual natural person, a mutual fund, any company, partnership, unit trust or trustee, or other legal or juridical entity recognised under the laws of any country or jurisdiction;

“private or accredited fund” means a mutual fund

- (a) the constitutional documents of which specify that it will have no more than fifty investors;
- (b) the constitutional documents of which specify the making of an invitation to subscribe for or purchase shares issued by the mutual fund is to be made on a private basis, which shall include-
 - (i) an invitation made to specified persons and is not calculated to result in shares becoming available to other persons or to a large number of investors, or
 - (ii) by reason of a private or business connection between the person making the invitation and the investor; or
- (c) which is designated as a private or accredited fund by the regulations;

“professional advisor” means a barrister, a solicitor, an attorney-at-law, a lawyer, a certified public accountant or chartered accountant, or an auditor;

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

advisor acting for or on behalf of such a person;

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

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

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

“Registrar” means the Registrar of Mutual Funds appointed under this Act or such other person as may be performing the duties of the Registrar under this Act;

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

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

- (a) bonds, debentures, notes, mortgages and other evidence of indebtedness;
- (b) any share, stock, document or instrument commonly known as a security; and
- (c) any document or instrument constituting evidence of an option, subscription or other interest in a security or constituting evidence of an interest in an association of legatees or heirs;

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

“State” means the State of Saint Vincent and the Grenadines;

“underwriter” means a person who,

- (a) as principal, agrees to purchase shares issued by mutual funds with a view to offering them to the public; or

- (b) as agent for a mutual fund, offers for sale or sells to the public shares issued by the mutual fund;

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

(2) In this Act,

- (a) every company incorporated and every partnership formed or unit trust organised under the laws of the State for the purpose of carrying on business as a mutual fund, a manager or an administrator shall, if carrying on business anywhere outside of the State be deemed to be carrying on business from within the State;
- (b) the expression “carrying on business from within the State includes carrying on business outside the State from a place of business or a registered office within the State;
- (c) a mutual fund which is not incorporated, formed, organised or carrying on its business in or from within the State shall be deemed to be carrying on business in the State if it solicits a person within the State to purchase its shares, except where the purchase is a result of an approach made by the person without any solicitation being made.

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

PART I

Administration

Appointments

3. (1) The Authority shall, with the approval of the Cabinet, appoint a Registrar of Mutual Funds and a Deputy Registrar of Mutual Funds.

(2) The Authority may appoint such other staff as it may deem necessary to administer this Act.

(3) The Registrar has

- (a) the duty to supervise mutual funds, managers and

administrators in accordance with the Act;

- (b) in and for the discharge of that duty, the powers conferred upon him by this Act;
- (c) the power to prescribe such forms as he considers necessary for the purposes of this Act or the regulations; and
- (d) the authority to issue directives and policy guidelines for the purposes of this Act or the regulations.

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

(5) The Registrar, the Deputy Registrar or any employee of the office of the Registrar shall not, knowingly, have any financial interest in any person registered, recognised or licensed under this Act.

Delegation of power.

4. (1) The authority may in writing delegate any of the powers conferred upon it by this Act to the Registrar and thereupon this Act shall be read as if those powers were originally conferred upon the Registrar.

(2) The Registrar may delegate any of his powers or duties under this Act to the Deputy Registrar and thereupon this Act shall be read as if those powers or duties were originally conferred or imposed upon the Deputy Registrar.

Annual Report

5. (1) The Registrar shall, on or before the 31st day of December in each year, prepare and deliver to the Authority a report consisting of -

- (a) a summary of the nature and number of
 - (i) filings made under this Act;
 - (ii) registrations, recognitions and licenses granted under this Act;
 - (iii) enforcement proceedings or disciplinary measures taken under this Act; and
- (b) a general commentary on the law relating to the mutual

funds industry and on the practice and development of that law.

(2) On receiving the report delivered to it pursuant to subsection (1), the Authority shall submit the report to the Minister.

Records of the Registrar.

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

- (a) registered public funds;
- (b) recognised private or accredited funds; and
- (c) licensed managers and administrators.

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

- (a) the information required under sections 26(a), (b) and (c) with respect to each registered public fund, recognised private or accredited 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 Registrar shall be in such form as he may determine and, subject to section 38, shall be open to public inspection during ordinary office hours on payment of an inspection fee of twenty-five dollars or such other amount as may be prescribed by regulations.

Advisory role of the Authority

7. The Authority shall -

- (a) advise the Minister on any matter referred to it by him relating to the mutual funds industry;
- (b) on its own motion report and make recommendations to the Minister on any matter relating to mutual funds as it sees fit; and
- (c) have power to establish

- (i) its own working rules and procedures; and
- (ii) as many sub-committees as it thinks necessary.

PART II
Public Funds

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

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

(2) An application 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 the State including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business;

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

(iii) the constitutional documents by which the applicant is constituted or such other proof as may be satisfactory to the Authority that the applicant is lawfully constituted under the laws of the State or of any other country or jurisdiction;

(iv) the notices required under section 26; and

(v) such other documents or information as the Authority may reasonably require for the

purpose of determining the application.

Application for consent to be registered.

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

- (2) An application for consent under subsection (1) shall be -
- (a) in the form prescribed in the regulations; and
 - (b) accompanied by the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations.

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

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

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

Power to grant registration or consent

11. (1) The Authority may, with the written approval of the Minister grant or refuse to grant -

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

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

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

(3) Except as provided in section 32, where the Authority refuses to grant registration or its consent, it shall not be bound to assign any reasons for its refusal, which shall not be subject to appeal or review in any court.

Registration
procedure

12. (1) Where the Authority grants registration pursuant to section 9 it shall direct the Registrar accordingly and the Registrar shall

- (a) register the public fund in the register maintained by him under section 6; and
- (b) issue a certificate to the registered public fund as directed by the Authority showing the date of registration.

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

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

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

(4) The Registrar shall refuse to register the proposed public fund if he determines that

- (a) its registration has not received the consent of the Authority pursuant to section 10; or
- (b) it has not complied with any of the requirements of subsection (2).

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may appeal to the Authority whose decision shall be final.

Accounting records and financial statements.

13. (1) Every registered public fund shall -

- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and
- (b) keep such accounting records and financial statements available for examination by the Registrar or any person authorised by the Authority-
 - (i) its place of business or registered office in the State; or
 - (ii) such other place as its officers may see fit, provided that copies of such records and statements or such other documents or information as the registrar may consider adequate are kept at its place of business or registered office in the State.

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

- (a) audited by an auditor acceptable to the Registrar (in this Act called “the approved auditor”) 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 in the registered public fund.

Duty to publish and file a prospectus.

14. (1) No registered public fund shall in or outside the State 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, unit trust or other similar body, the equivalent governing body of the fund which approved the contents of the prospectus or authorised its publishing, and files a copy thereof with the Registrar.

(2) Every prospectus shall

- (a) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;
- (b) contain a summary statement of investors' rights as provided in section 16; and
- (c) be accompanied by or contain reference to the availability of the financial statements for the last financial year of the fund and the auditor's report thereon if the fund has completed a financial year in operation.

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

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

Certificate of Compliance.

15. (1) Every registered public fund, wherever it is constituted, which carries on business outside the Territory under the laws of another country or

jurisdiction, shall every year, within three months of the end of its financial year, file with the Registrar a certificate of compliance from the competent authority that is responsible for the regulations and supervision of the conduct of its business in that other country or jurisdiction.

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

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

Investors' rights

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

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

(a) for the rescission of the purchase, or

(b) for damages,

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

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

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

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

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

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

Limitation of
action and
amount
recoverable.

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

- (a) one hundred and eighty days from the day that the plaintiff first had knowledge of the misrepresentation, or
- (b) one year after the date of the purchase transaction that gave rise to the cause of action,

whichever is earlier.

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

PART III

Private and Accredited Funds

Recognition.

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

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

Application for

19. (1) A private or accredited fund that is constituted under the laws of the State is entitled to be recognised under this Act if it provides

- (a) proof satisfactory to the Authority that it

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

(ii) is lawfully constituted under the laws of the State;

(b) the application prescribed by the regulations; and

(c) the notices required under section 26.

(2) A private or accredited fund that is constituted outside the State may apply for recognition under this Act by sending to the Authority the application in the form prescribed in the regulations setting out the nature and scope of its business which shall be accompanied by

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

(b) the notices required under section 26; and

(c) proof satisfactory to the Authority that the applicant is -

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

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

(3) In the case of an accredited fund, the materials and information required by subsections (1) and (2) shall be provided within fourteen days of the date it commences to carry on business in or from within the State.

Power to grant recognition.

20. (1) The Authority may grant or refuse to grant recognition under section 19(2).

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

(3) The Authority shall not refuse to grant recognition under section 19(1) unless the applicant fails to comply with the requirements of that section.

(4) Where the Authority refuses to grant recognition under section 19(1), it shall give the applicant notice in writing of its decision and the reasons therefor and the applicant may appeal such decision pursuant to section 33.

Recognition
procedure

21. Where the Authority grants recognition to a private or accredited fund, it shall direct the Registrar accordingly and the Registrar shall -

- (a) enter the particulars relating to the private or accredited fund in the register maintained by him for the purpose under section 6; and
- (b) issue a certificate of recognition to the private or accredited fund as directed by the Authority showing the date of recognition.

PART IV Managers and Administrators

Licensing

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

- (2) Subsection (1) does not apply to a person who -
 - (a) is not ordinarily resident or domiciled in the Saint Vincent and The Grenadines;
 - (b) is a manager or administrator of mutual funds (by whatever name called) under the laws of a recognised Country or Jurisdiction; and
 - (c) has received written permission from the Authority to carry on business as manager or administrator of mutual funds in or from within the State.

Application for a
licence.

23. (1) A person who wishes to apply for a licence may make an application to the Authority to carry on business in or from within the State as

- (a) manager;
- (b) administrator; or

(c) both manager and administrator of mutual funds.

(2) An application shall be accompanied by

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

(b) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and

(c) such other documents or information as the Authority may reasonably require for the purpose of considering the application.

Power to grant licences.

24. (1) The Authority may grant or refuse to grant a licence to any applicant.

(2) The Authority 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; and

(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 Authority.

(3) Notwithstanding subsections (1) and (2), the Authority shall refuse to grant a licence if it determines that the applicant has not met the requirements of this Act.

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

Licensing procedure.

25. (1) Where the Authority grants a licence to an applicant, he shall direct the Registrar accordingly and the Registrar shall -

(a) enter the particulars of the applicant in the register

maintained by him for the purpose under section 6; and

- (b) issue a licence to the applicant as directed by the Authority showing the date on which the licence is granted.

(2) The Authority may by regulation prescribe a Code of Practice directing the holder of a licence under section 24 to comply with the requirements of the Code which may include matters relating to

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

(3) A Code of Practice prescribed under subsection (2) may provide for such enforcement mechanisms as the Authority may consider necessary to ensure compliance with the provisions of that Code.

PART V

General

Notices to accompany applications.

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

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

(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 accredited fund or licensed manager or administrator, as the case may be, shall give in writing to the Registrar particulars of the alteration within twenty-one days after the alteration is made.

Form and conditions of certificates and licences.

27. (1) A certificate or a licence may be granted subject to terms, conditions, restrictions, or limitations as the Authority with the approval of the Minister may specify therein.

(2) A certificate or a licence shall

- (a) be in such form as may be directed by the Authority;
- (b) be admitted in all courts as **prima facie** evidence of the facts stated therein; and
- (c) remain in force until it is cancelled.

Annual Fees.

28. (1) Where

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

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

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

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

Cancellation,
etc. of
certificates or
licences.

29. The Authority in the case of a registered public fund, and in the case of a recognised private or accredited fund or a licensed manager or administrator, may, subject to sections 30 and 31, cancel a certificate or a licence, as the case may be, or impose new or additional conditions, restrictions or limitations in respect of such certificate or licence

- (a) at the request of the holder thereof; or
- (b) where the holder thereof
 - (i) has ceased to carry on business in or from within the State;
 - (ii) has been convicted of an offence under this Act or of a criminal offence in any country or jurisdiction;
 - (iii) has knowingly and wilfully supplied false, misleading or inaccurate information or failed to disclose material information required for the purposes of any provision of this Act or the regulations or the Code of Practice prescribed under section 25(2);
 - (iv) is carrying on business in a manner detrimental to the interests of mutual funds investors or to the public interest; or
 - (v) is declared bankrupt or is being wound-up or otherwise dissolved.

Cancellation
procedure.

30. (1) Before cancelling a certificate or a licence under paragraph (b) of section 29, the Authority, as the case may be, shall -

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

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

Appeal of
cancellation

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

Appeal by
existing entities.

32. Notwithstanding any provision in this Act, where the Authority

- (a) refuses to grant registration, or
- (b) refuses to grant recognition, or
- (c) refuses to grant licence,

to an existing entity, it shall give such existing entity a notice in writing of its decision and the reasons therefor and the existing entity may appeal such decision in accordance with section 33.

Appeal
procedure.

33. (1) An appeal under sections 20(4), 31 or 32 shall be by

- (a) way of summons or on motion to a Judge in Chambers;
and
- (b) serving the Authority with a notice of appeal within twenty-one days or such longer periods as the judge may allow, after receipt of the notice required under sections 20(4), 30(2) or 32, as the case may be.

(2) The bringing of an appeal under section 31 suspends the decision appealed against pending the final determination or abandonment of the appeal.

Grant or
cancellation to
be published.

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

Power to grant
exemptions.

35. (1) Upon the recommendation of the Authority, the Minister may, if he is satisfied that to do so would not be prejudicial to the public interest, direct that all or any of the provisions of this Act or the regulations shall

- (a) not apply, or

- (b) apply subject to such modifications as he may specify in the direction,

to any person or any class of persons.

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

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

35A. (1) Except where a person is a mutual fund within the meaning of this Act, or with the written consent of the Registrar, no person shall

- (a) use or continue to use the words “fund” or “mutual fund”, either in English or in any other language, in the name, description or title under which that person is carrying on business in or from within the State; or
- (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.

(2) The Registrar may refuse to grant a certificate in respect of a mutual fund with a name that -

- (a) is identical with that of any company, firm, business or other entity, whether or not registered or doing business in the State, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to confuse or deceive;
- (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within the State or elsewhere; or
- (c) is likely to suggest, falsely, that the fund has a special status in relation to or derived from the government of the State.

(3) If, in the Registrar’s opinion, a mutual fund is carrying on, or

attempting to carry on business in or from the State, in a name that the Registrar would have refused by virtue of subsection (1), the Registrar may direct the mutual fund to change its name to a name approved by the Registrar.

(4) The licensed manager of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (2), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the mutual fund failed to comply with the direction.

Access to information and records.

36. For the purpose of discharging his duties under this Act and the regulations and subject to section 38, the Registrar or any other person authorised by the authority, may, at all reasonable times, in writing, direct any person to whom this Act applies to

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

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

Immunity and actions by the Registrar.

37. (1) No liability shall be incurred by and no suit, action or proceeding shall be brought against the State, any agent thereof, the Registrar or any person acting under the authority of the Authority for any act done or omitted to be done in good faith

- (a) in the performance or intended performance of any function or duty; or
- (b) in the exercise or intended exercise of any power,

under this Act or the regulations.

(2) The Authority may bring actions and institute proceedings in its name or office for the enforcement of any provision of this Act or the regulations, or for the recovery of fees or other sums of money payable under this Act or the regulations.

Confidentiality

38. Notwithstanding section 6,

- (a) any information, material or document furnished to or

filed with the Registrar by any recognised private or accredited fund is privileged and shall not be disclosed to any person except -

- (i) the Minister, the Attorney General or the Authority or a public officer authorised by the Minister; or
 - (ii) as provided under procedures set forth in the Confidential Relationships Preservation (International Finance) Act, 1996;
- (b) the Minister may direct that any specified information, material or document furnished to or filed with the Registrar by any registered public fund shall be held in confidence and shall not be disclosed to any person so long as the Minister is of the opinion that to do so is in the public interest.

Exemption from certain enactments.

39. (1) Notwithstanding any provision or rule of law in the State to the contrary

- (a) A mutual fund which holds a valid and subsisting certificate under this Act shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside the State or in connection with matters of administration or management which may occur in whole or in part in or from within the State.
- (b) For purposes of this section but without limiting the provisions of Section 2(2), no mutual fund which holds a valid and subsisting certificate under this Act shall be considered to be doing business in the State solely because it engages in one or more of the following activities -
 - (i) maintaining one or more bank, trust or securities accounts in the State;
 - (ii) holding meetings of directors or investors in the State;
 - (iii) maintaining corporate or financial records in the

State;

- (iv) maintaining an administrative or managerial office in the State with respect to assets or activities outside the State;
- (v) maintaining a registered agent or registered office in the State; or
- (vi) investing in stocks or entities doing business in the State or being a partner in a partnership existing under the laws of the State or a beneficiary of a trust or estate which has the State as its situs.

(2) No estate, inheritance, succession or gift tax, rate, duty, levy or other similar charge is payable by persons who are not persons ordinarily resident or domiciled in the State with respect to any shares of a mutual fund to which this Act applies and which holds a valid and subsisting certificate under this Act.

(3) Notwithstanding any provision of the Stamp Act to the contrary -

- (a) all instruments relating to transfers of any property to or by a mutual fund;
- (b) all instruments relating in any way to the assets or activities of a mutual fund; and
- (c) all instruments relating in any way to the assets or activities of a mutual fund,

are exempt from the payment of stamp duty.

(4) Any dividend or distribution by a mutual fund to individuals, trusts or other entities which are not ordinarily resident in the State shall be exempt from any tax or withholding provisions of State law which would otherwise be applicable to the recipient or the payer of the dividend or distribution.

(5) A mutual fund to which this Act applies shall not be subject to the provisions of the Exchange Control Act Cap 322 or any order or regulation made thereunder, or to any other exchange or currency control legislation or regulations of the state from time to time.

(6) Notwithstanding the provision of Part III (Division B) of the Companies Act, a company that is incorporated outside Saint Vincent which

establishes a place of business within the State to carry on business in accordance with the provisions of this Act as

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

is exempt from the provisions of that Part III (Division B) of the Companies Act.

Offences and penalties

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

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

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

- (a) in the case of a body corporate or unincorporated, a fine of not more than fifty thousand dollars; and

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

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

41. The Minister may by Notice or regulations published in the Gazette vary information contained in the regulations.

Regulations

42. The Minister may 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 accredited funds;
- (ca) designating a class or sub-classes of public fund;
- (d) authorising the Authority to require that any document, statement, report, certificate, release, agreement, or other information be filed with, furnished or delivered to him;
- (e) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act;
- (f) prescribing any matter required to be or which may be prescribed under this Act;
- (g) 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 of regulation of investment and borrowing powers;
- (v) the preparation of periodic reports;
- (vi) the rights of investors; and
- (vii) the contents of constitutional documents, in respect of a public fund or a sub-class of such fund;
- (ga) relating to the matters which should be contained in a prospectus of a public fund or a sub-class of such fund; and
- (h) generally for the better administration of this Act and for carrying the intent and purpose of its provisions into effect.

Transitional

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

(2) Any person who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity as a mutual fund shall, on or before 30 June 1999, comply with the provisions of this Act.

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

(4) If after the period of twelve months prescribed under subsection (2), he commits an offence and may be proceeded against under section 40(2).

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