

ANGUILLA – MUTUAL FUNDS ACT

Policy Guidance No. 3 of 2005

Guidance to fund incorporators/service providers

Introduction

The Financial Services Commission (“Commission”) has revoked Policy Guidance No. 1 of 2005 which had created the status of qualified fund administrator/intermediary under the Mutual Funds Act 2004. This document has been consequentially amended to remove all references to qualified fund administrator/intermediary and to revise references to the AML/CFT regulation. All references in this document to “the Act” refer to the Mutual Funds Act, R.S.A. c. M107.

Policy

The Commission issues this paper to give guidance to fund incorporators/service providers in respect of due diligence to be carried out.

Specific guidance points

1. All application forms required under the Act must be completed fully and correctly, including being signed by the appropriate persons, and accompanied by all supporting documentation. Where there is doubt as to any area of the application, the fund incorporator/service provider should contact the Commission for further guidance.
2. All due diligence checks and verification as required under Anguilla’s AML/CFT Code and Regulations 2009 and the Act must be completed and evidenced for each fund. Details of these documents are available on the Commission’s website: *www.fsc.org.ai*.
3. All directors, trustees or general partners, as applicable, officers, and entities undertaking the following activities (i.e. fund administration, fund management, investment advisor, and custodial) involved in the fund must be fit and proper persons as required under the Act. Evidence of this must be ascertained and verified as indicated above.
4. In applying the fit and proper test, the fund incorporator/service provider must be satisfied as to the professional experience, track record in the relevant area of mutual fund business, industry comment, criminal background, and the regulatory regime to which these individuals/entities are or have been subjected.

5. Where the fund is an IBC, the use of bearer shares is prohibited and details of the directors must be known and documented. The fund must have at least one director who is an individual or natural person. Where the fund is a unit trust, due diligence must be conducted on the trustee and this evidence documented. A copy of the trust deed must also be ascertained and examined by the fund incorporator/service provider. Where the fund is a partnership, due diligence must be conducted on the general partner or partners; similarly where the fund is a cell account, due diligence must be conducted on the beneficial owners of the cell.
6. For all funds formed the entities conducting the activities mentioned above should be located in a recognized country or jurisdiction. Details of recognized jurisdictions are given in Policy Guidance No. 2 of 2005. Where any one of these activities is not located in such a jurisdiction, the fund incorporator/service provider must ascertain evidence in writing of the regulatory regime in effect in said jurisdiction, to which the entity undertaking the activity is subject, and evidence that the entity is resourced and skilled to provide said service. The fund incorporator/service provider must provide this information to the Commission which will provide advice as to whether or not the fund should be formed.
7. Ideally, each activity of each fund formed should be conducted independently. The fund manager should not also be the custodian. There should be no overlap between the fund administrator and fund manager, or fund investment advisor and fund manager. However, where for extenuating circumstances this is practical and there is overlap, the fund incorporator/service provider must confirm that this does not pose a regulatory risk and an argument as to why the fund should be recognized with this type of arrangement.
8. The fund incorporator/service provider must review and analyse any offering document to assess the document for its business/strategic and financial soundness as well as its conformity with best industry practice.
9. The fund incorporator/service provider must detail all issues or information that would materially affect the application, in writing, regarding any fund or person involved in the fund that it has at the time the fund is formed or of which it later becomes aware of. This information should be brought to the attention of the Commission within 3 business days of the fund incorporator/service provider becoming aware of such concerns.
10. The fund incorporator/service provider is under a continuing obligation to ensure that funds formed adhere to all its statutory obligations and to inform the Commission of all pertinent information mentioned and all material changes made in the internal operations of the fund.

Amended as approved by the Board of Directors: 20 September 2011