

Mutual Funds Act 2004

Information guide

1. What is a mutual fund?

A mutual fund as defined by the Act means a company incorporated, a partnership formed, a unit trust organized or other similar body formed under the laws of Anguilla of any other jurisdiction that collects and pools investor monies for the purpose of investing collectively. The fund must also issue shares that entitle the holder of those shares to receive on demand or within a specified period after demand an amount calculated by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, the unit trust or similar body.

The definition of a mutual fund includes an umbrella fund whose shares are split into a number of different class funds or sub-funds. The definition also includes a fund that has single investor which is a mutual fund not registered or recognized under this Act.

2. What is a unit trust?

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

3. Which type of mutual funds are provided for under the Act?

a) Public fund.

The Act defines a public fund as a fund that is not a private or professional fund. In practical terms a public fund is one that offers shares in the entity used to form it to the general public through the issuance of a prospectus. A prospectus is a document which purpose is to make an invitation to the public or any section to subscribe for or purchase shares issued by a public fund. A public fund must issue a prospectus.

b) Private fund.

The private fund is constituted of no more than 99 investors. The constitutional documents must state this. The fund must not make any invitations to the public to subscribe for or purchase shares issued by the fund.

c) Professional fund

A professional fund is a 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 US\$100,000 or its equivalent in another currency. This minimum initial investment shall not apply in respect of an

investment made by the manager, administrator, promoter or underwriter of the professional fund. A professional investor means a person whose ordinary business involves dealing in investments or who has signed a declaration that he, whether individually or jointly with his spouse, has a net worth in excess of US\$1 million or its equivalent in any other currency and that he consents to being treated as a professional investor.

4. What rights do investors have for misrepresentations made in a prospectus?

If a registered public fund publishes a prospectus or any amendment to it that contains misrepresentations relating to any disclosures required under the ACT, a person who purchased any shares pursuant to the prospectus or amendment to it, is deemed to have relied on the misrepresentation and shall have specific rights. These include rescission for the purchase or damages against the fund. However, no person is liable if he/she proves that the purchaser bought the shares offered by the prospectus or amendment to it with knowledge of the misrepresentation.

5. Who is a promoter?

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

6. What is an administrator?

An administrator is a person who for valuable consideration provides a mutual fund with administrative services alone or together with accounting services and is entitled to provide mutual funds such services and facilities under the laws of a recognized country or jurisdiction. Administrators must apply to be licensed under the Act. It is an offence to conduct the business of administrator from in or within Anguilla without a licence.

7. What is a manager?

A manager refers to person, who is not an employee or officer of a person licensed under this Act who for valuable consideration provides a mutual fund with management services alone or together with investment advice or administrative services or is entitled to provide mutual funds with such services and facilities as provided in the laws of a recognized country or jurisdiction. Managers, like administrators, must apply to be licensed under the Act. It is an offence to conduct the business of manager from in or within Anguilla without licence.

8. Can anyone be an administrator or manager?

No; in order to be granted a licence as an administrator or manager, the Commission must be satisfied that the applicant is a fit and proper person to be engaged in the business

proposed. The applicant must also have available to him or her adequate knowledge, expertise, resources, and facilities necessary for the nature and scope of the business proposed and has appointed an auditor satisfying conditions as may be prescribed by the Commission.

9. Are all managers and administrators required to appoint an auditor?

No; a manager or administrator who 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.

10. Can someone be both an administrator and manager?

Yes; an applicant can hold licences at the same time.

11. What is meant by registration?

Registration refers to the process whereby a public fund is authorized to conduct business in or from within Anguilla. Only public funds are registered. No public fund can conduct business in or from within Anguilla without being registered under the Act.

12. What are the grounds for refusing to grant registration?

The Commission will refuse to grant registration if the public fund has a name which is undesirable or misleading; where the public fund or proposed public fund does not have a custodian who is independent of the manager or administrator or it determines that it is not in the public interest that registration should be granted.

13. What is meant by recognition?

Recognition refers to the process whereby a private or professional fund is authorized to conduct business in or from within Anguilla. Only private and professional funds are recognized. No private or professional fund can conduct business in or from within Anguilla without being recognized under the Act.

14. What are the grounds for refusing to grant recognition?

The Commission will refuse to grant recognition if the private or professional fund has failed to provide evidence that it is a private or professional fund and is lawfully constituted under the laws of Anguilla; and where it determines that it is not in the interests of the investors or in the public interest that recognition should be granted.

15. Do all funds need to submit annual audited financial statements?

No; only registered public funds have to provide these statements.

16. What are the grounds for canceling the registration or recognized of a fund or the licence of a manager or an administrator?

A licence may be cancelled where the holder

- a. has ceased to carry on business in or from within Anguilla.
- b. has contravened any provision of the Act, regulations or the Code of Practice.
- c. Has been convicted of an offence under section 35 (1) of the Act or of a serious criminal offence in any country or jurisdiction.
- d. Has knowingly and willfully supplied false, misleading or inaccurate information or failed to disclose information required for the purposes of any provision of the Act or regulations.
- e. Is carrying on business in a manner detrimental to the interests of mutual fund investors or to the public interest; or
- f. Is declared bankrupt or is being wound-up or otherwise dissolved.

17. What is the procedure for cancellation?

The Commission has to give the holder of the licence a notice in writing of the grounds on which it intends to do so; afford the holder an opportunity to make written representations to it within a period of 30 days after the receipt of the notice and take any such representations into consideration.

18. Does the Commission have the power to exempt any provision of the Act or of the regulations issued under the Act?

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 the Act or the regulations shall not apply or apply subject to such modifications as it may specify in the direction to any person or class of persons.

19. What are the restricted “words” under the Act?

The Commission has to give its consent for persons to use the words “fund”, “mutual fund” or “unit trust” either in English or another language, in the name, description, or title under which that person is carrying on business in or from within Anguilla. Further, such consent is required also where the person makes or continues 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.

20. What are the basic offences and penalties under the Act?

The basic offences include oral and written misrepresentation or false statements; knowingly refusing or failing to disclose any information or fact required to be disclosed under the Act and regulations and being in charge of or having possession of or control

over any information, records, books or other documents required to be maintained by a licensee or registered or recognized mutual fund and willfully neglecting to comply with any lawful directions given under the Act.

The penalties include a fine on conviction of not less than US\$10,000 or more than US\$25,000 or to imprisonment of a period not exceeding twelve months.

Further, any person who, without reasonable cause, contravenes a provision of the Act or the regulations for which no penalty is provided commits an offence against the Act or the regulations, as the case may be, is liable on summary conviction to a fine of no more than US\$50,000 in the case of a body corporate or unincorporated, or trust; and a fine not exceeding US\$5000 or imprisonment for a period not exceeding one month or to both.

21. What regulations will be issued under the Act?

The regulations will cover the application forms for the registration of public funds, recognition of private and professional funds, and the licensing of managers and administrators. It will also cover fees, arrangements which are not mutual funds, financial reporting requirements.

22. What are the transitional provisions for the Act?

Any manager or administrator who on the date of coming into force of the Act is carrying on business or engaged in any activity in relation to which he is required to be licensed under the Act, shall within 3 months of the coming into force of this Act, comply with the provisions of the Act. Any mutual fund, which on the date of the coming into force of this Act, 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 the Act.