

MUTUAL FUND ACT, 1997

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MUTUAL FUND ACT, 1997

(Act No. 13 Of 1997)

I assent

F. A. René
President



29th December, 1997

AN ACT to regulate mutual funds and their administrators carrying on business in or from within Seychelles and for related purposes.

ENACTED by the President and the National Assembly

PART I - PRELIMINARY

1. This Act may be cited as the Mutual Fund Act, 1997 and shall come into operation on such date as the Minister may, by Notice published in the Gazette, appoint.

2. In this Act -

"auditor" means a person licensed to provide services as an auditor under the Licences Act and approved by the Authority to act as an auditor under this Act;

"Authority" means the Authority referred to in Part IV;

"company" means a body corporate incorporated or registered under the Companies Act;

"Companies Act" means the Companies Act 1972 or the written law which replaces that Act;

"equity interest" means a share or trust unit that -

- (a) carries an entitlement to participate in the profits or gains of a company or unit trust, and
- (b) may or may not be redeemable or re-purchasable at the option of the investor before the commencement of winding up or dissolution of the company or unit trust;

"investor", in respect of a mutual fund, means the legal holder of record or legal holder of a bearer instrument representing an equity interest in the mutual fund but does not include a promoter or director;

"licensed mutual fund" means a mutual fund that is licensed under this Act;

"licensed mutual fund administrator" means a mutual fund administrator that is licensed under this Act;

"mutual fund" means a unit trust or an investment company that issues or has equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments but does not include -

- (a) a person licensed under -
 - (i) Financial Institutions Act to carry on banking business,
 - (ii) the Insurance Act;
- (b) a co-operative established under the Co-operatives Act;
- (c) a corporation, international business company established under the International Business Companies Act, a statutory corporation, a trust or partnership which is primarily engaged in industrial, commercial or charitable enterprise;

"mutual fund administration", in respect of a mutual fund, means -

- (a) to manage (including to control all or substantially all the assets of the mutual fund) or to administer the mutual fund;
- (b) to provide the principal office of the mutual fund in Seychelles;
- (c) to provide a director to the mutual fund; or
- (d) to provide the administrative services for a mutual fund including the accounting, valuation or reporting services;

but does not include -

- (e) the provision of a registered office to a mutual fund where the usual corporate secretarial and related services are provided;
- (f) in relation to a mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the Companies Act, the International Business Companies Act, the International Trusts Act or this Act;
- (g) the provision of investment advice or management or trading execution services;

"mutual fund administrator" or "administrator" means a person who conducts mutual fund administration in or from Seychelles and includes -

- (a) a company incorporated under the Companies Act,
- (b) a foreign company registered under the Companies Act,

- (c) an International Business Company incorporated under the International Business Companies Act,

that conducts mutual fund administration outside Seychelles;

"offering document", in respect of a mutual fund, means a document or series of documents on the basis of which-

- (a) equity interests in the mutual fund are offered for sale; or
- (b) persons are invited to subscribe for or purchase equity interests in the mutual fund,

but does not include any other notice, circular, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the mutual fund or the invitation to any person to subscribe for or purchase any equity interest in the mutual fund if before the offer or invitation is taken up or accepted the prospective investor is given the opportunity to consider an offering document containing the information specified by section 3(3);

"operator," in respect of a mutual fund, means -

- (a) where the mutual fund is a unit trust, a trustee of that trust;
- (b) where the mutual fund is a company, a director of that company;

"professional adviser" means -

- (a) a legal practitioner; or
- (b) an accountant;

"promoter", in respect of a mutual fund or proposed mutual fund, means any person whether within or outside Seychelles who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund but does not include a professional adviser acting for or on behalf of such a person;

"record" means any means by which information may be stored.

"registered office" means -

- (a) in respect of a company incorporated under the Companies Act, the registered office in terms of that Act;
- (b) in respect of an overseas company registered under the Companies Act, the principal place of business in Seychelles under that Act;
- (c) in the case of an international business company incorporated under the International Business Companies Act, the registered office of the company under that Act;
- (d) in the case of a unit trust, the registered office of the trustee in Seychelles or the place of business of an individual trustee;

"share" in the case of a company limited by guarantee, includes an interest of a member of the company;

"trust unit" means a unit of participation in a unit trust;

"unit trust" means a trust established by a trustee which for valuable consideration issues trust units in the undertaking of the trust entitling the holder of a trust unit to a share in the profits or gains arising from the acquisition, holding, management or

disposal of investments by the trustee of the trust, the proper law of which is the law of Seychelles or the law of any other jurisdiction.

PART II - MUTUAL FUND

3.(1) A mutual fund shall not carry on business in or from within Seychelles unless -

(a) it has lodged with the Authority the particulars of -

- (i) the address of the registered office or principal place of business of the mutual fund in Seychelles;
- (ii) the names, address and any other prescribed particulars of the operators and in addition, in the case of an overseas company, the managing agent in Seychelles, of the mutual fund, and

it informs the Authority of any change in the particulars each time it occurs thereafter within 7 days of its occurrence;

(b) in the case of a mutual fund which is a unit trust, it has as resident trustee which is -

- (i) a financial institution; or
- (ii) a corporate body which is incorporated under the Companies Act and which has a paid up share capital of not less than the amount prescribed;

(c) it holds a mutual fund licence;

(d) the administration of the mutual fund is being undertaken by a licensed mutual fund administrator;

(e) there is filed with the Authority in respect of the mutual fund a current offering document and a written synopsis of the offering document;

(f) there has been paid the current prescribed annual fee for the mutual fund.

(2) A mutual fund is carrying on business in or from within Seychelles if -

(a) the mutual fund is incorporated, registered or established in Seychelles;

(b) whether it is incorporated, registered or established in Seychelles or not -

- (i) its management or administration is carried on in Seychelles; or
- (ii) in the case of a unit trust -

A. the trust instrument is governed by the laws of Seychelles; or

B. its administrator, investment adviser, investment manager or one of its trustees -

AA is a company or companies incorporated or registered or established in Seychelles; or

AB is one or more companies or individuals any one of whom has a place of business in Seychelles or uses an address in Seychelles; or

(iii) in the case of a company -

A its profit, income or benefits arises from the operation of a company which is incorporated or registered or has a place of business or uses an address in Seychelles, or

B its administrator, investment adviser, investment manager -

AA is a company or companies incorporated or registered or established in Seychelles; or

AB is one or more companies or individuals any one of whom has a place of business in Seychelles or uses an address in Seychelles.

(3) An offering document for the purposes of subsection (1)(e) shall -

- (a) describe the equity interests in all material respects;
- (b) contain the prescribed details; and
- (c) contain such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase any of the equity interests.

(4) A mutual fund shall not have filed a current offering document under subsection (1)(e) if there is a continuing offer of equity interests in the mutual fund and a promoter or operator of the fund -

- (a) is aware of any material change that affects a material information in the offering document filed with the Authority; and
- (b) has not, within 21 days of becoming aware of the material change, filed with the Authority an amended offering document incorporating the change.

(5) The obligation under subsection (1)(e) shall be without prejudice to any duty under another written law.

(6) Each operator of a mutual fund shall ensure that the mutual fund does not carry on or attempt to carry on business in or from within Seychelles contrary to subsection (1).

4.(1) An application for a mutual fund licence -

- (a) shall be made to the Authority in the form provided by the Authority;
- (b) shall be accompanied by -
 - (i) information necessary to satisfy the Authority as provided in subsection (2);
 - (ii) the current offering document or, where one has not been settled, the latest draft offering document together with a synopsis of the document,
 - (iii) the prescribed fees.

(2) The Authority shall not grant a mutual fund licence to a mutual fund unless the Authority is satisfied that it is a company or a unit trust and -

- (a) the fund has its registered office or a principal place of business in Seychelles;
- (b) in the case of a unit trust, that it has a resident trustee as provided in section 3(1)(b);
- (c) the fund is a private or public mutual fund;
- (d) each promoter of the fund is of sound reputation;
- (e) the administration of the fund will be undertaken by a licensed mutual fund administrator;
- (f) the business of the fund and any offer of equity interest in it will be carried out in a proper manner;

- (g) the name of the fund is not identical to or does not so nearly resemble, as to be likely to deceive, the name of a company, corporation, firm, business or other entity, whether or not within Seychelles;
 - (h) the name of the fund is not likely to suggest, falsely, the patronage of or connection with some person or authority, whether within Seychelles or elsewhere;
 - (i) the name of the fund is not likely to suggest, falsely, that the fund has a special status in relation to or derived from the Government or the Republic;
 - (j) the name of the fund does not contain any word or expression the use of which is prohibited under any written law.
- (3) The Authority may grant a mutual fund licence subject to such conditions as the Authority considers appropriate.
- (4) The Authority may, on the written application of a licensed mutual fund, waive, vary or revoke any condition of its licence.
- (5) Each operator of a mutual fund shall ensure that the mutual fund complies with this Act and all the conditions of its licence.
- (6) For the purposes of subsection 2(c) -
- "private mutual fund" means a mutual fund which -
- (a) in the case of a company, has a fully paid-up share capital of not less than United States Dollar 500,000 (or the equivalent in another currency acceptable to the Authority) which is held by not more than 50 investors the majority of whom are capable of appointing or removing the directors of the fund;
 - (b) in the case of a unit trust, has equity interest of not less than United States Dollar 500,000 (or the equivalent in another currency acceptable to the Authority) purchasable by not more than 50 prospective investors;
- "public mutual fund" means a mutual fund -
- (a) which, in the case of a company, has an authorised share capital of not less than United States Dollar 2,000,000 (or the equivalent in another currency acceptable to the Authority) purchasable by prospective investors but of which at least United States Dollar 1,000,000 (or the equivalent in another currency acceptable to the Authority) has been fully paid-up at all time;
 - (b) which, in the case of a unit trust, has, equity interest of not less than United States Dollar 2,000,000 (or the equivalent in another currency acceptable to the Authority) purchasable by more than 50 prospective investors but of which equity interest at least United States Dollars 1,000,000 (or the equivalent in another currency acceptable by the authority) has been issued and fully paid for at all time;
 - (c) whose shares are listed on a stock exchange specified by the Authority by Notice in the Gazette.

5.(1) A licensed mutual fund shall have its accounts audited at the end of each of its financial years by an auditor.

(2) A licensed mutual fund shall send its audited accounts for a financial year to the Authority within 4 months of the end of the financial year or within such extension of that period as the Authority may allow.

6. A licensed mutual fund shall pay the prescribed annual fee.

PART III - MUTUAL FUND ADMINISTRATOR

7. A person shall not carry on business as a mutual fund administrator in or from within Seychelles except under and in accordance with a licence under this Act.

8.(1) An application for a licence to carry on business as a mutual fund administrator -

- (a) shall be made to the Authority in the form provided by the Authority;
- (b) shall be accompanied by -
 - (i) information necessary to satisfy the Authority as provided under subsection (2);
 - (ii) the prescribed fees;

(2) The Authority shall not grant a licence to a mutual fund administrator unless the Authority is satisfied that it is a company and -

- (a) it has its registered office or a principal place of business in Seychelles;
- (b) it has a fully paid up share capital of -
 - (i) not less than such amount as may be prescribed; or
 - (ii) not less than such other amount as may be prescribed and liability insurance cover of not less than such amount as may be prescribed with a reputable insurer acceptable to the Authority;
- (c) it has at least 2 directors approved by the Authority;
- (d) in the case of a company which is not incorporated in Seychelles, it has 2 individuals resident in Seychelles to be its agents in Seychelles;
- (e) it has the necessary expertise to administer mutual funds;
- (f) it is of sound reputation;
- (g) it will administer mutual funds in a proper manner;
- (h) its name is not identical to or does not nearly resemble, as to be likely to deceive, the name of a company, corporation, firm, business or other entity, whether or not within Seychelles;
- (i) its name is not likely to suggest, falsely, that it has a special status in relation to or derived from the Government or the Republic;
- (j) its name is not likely to suggest, falsely, the patronage of or connection with some person or authority, whether or not within Seychelles;
- (j) its name does not contain a word or expression the use of which is prohibited under any written law.

(3) The Authority may grant a licence to a mutual fund administrator subject to such condition as the Authority considers appropriate.

(4) The Authority may, on the application of a licensed mutual fund administrator, waive, vary or revoke any condition of its licence.

(5) Each operator and senior officer of a licence mutual fund administrator shall ensure that the mutual fund administrator complies with the conditions of the licence.

(6) An agent of a mutual fund administrator referred to in subsection (2)(d) shall be deemed, for the purposes of this Act, to have all the functions of a director of the mutual fund administrator under this Act and to have the power to accept service of any notice or process under the laws of Seychelles on behalf of the mutual fund administrator.

9.(1) A licensed mutual fund administrator shall not -

- (a) issue shares,
- (b) appoint a director, general manager or other senior officer of the mutual fund administrator,
- (c) change the address of its registered office or principal place of business in Seychelles, or
- (d) where it is an overseas company, change any individual acting as its agent in Seychelles,

unless it has obtained the prior written approval of the Authority.

(2) A person owning shares or having an interest in shares in a licensed mutual fund administrator shall not transfer or otherwise dispose of or deal in the shares or interest without the prior written approval of the Authority.

(3) Sub-sections (1) and (2) shall not apply to a licensed mutual fund administrator which is licensed to carry on business as a financial institution under the Financial Institutions Act or to carry on insurance business under the Insurance Act.

10. Where the Authority is satisfied that -

- (a) there is reasonable cause to require a licensed mutual fund administrator to do so, or
- (b) the fully paid-up share capital of a licensed mutual fund administrator is less than the relevant prescribed amount,

the Authority may direct the mutual fund administrator -

- (c) to provide such guarantees or insurance cover or other financial support as the Authority may think fit, or
- (d) to increase its fully paid-up share capital to such amount as the Authority considers appropriate,

and the mutual fund administrator shall comply with the direction.

11.(1) A licensed mutual fund administrator shall immediately upon starting to provide the principal office to a mutual fund give the Authority the prescribed details in respect of the mutual fund.

(2) A licensed mutual fund administrator shall not provide a principal office to a mutual fund unless -

- (a) the mutual fund is licensed under this Act;
- (b) the mutual fund administrator is satisfied that -
 - (i) each promoter of the mutual fund is of sound reputation;
 - (ii) the administration of the mutual fund will be undertaken by persons who -
 - A. have sufficient expertise to administer the mutual fund; and
 - B. are of sound reputation; and

(iii) the business of the mutual fund and any offer of equity interest in it will be carried out in a proper manner.

(3) A licensed mutual fund administrator which knows or has reason to believe that a licensed mutual fund of which it is the administrator or for which it provides a principal office, or a promoter or operator of the mutual fund -

- (i) is or is likely to become unable to meet its obligations as they fall due,
- (ii) is carrying on business otherwise than in accordance with this Act or any other written law,
- (iii) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the mutual fund,
- (iv) is carrying on business in a manner that is or is likely to be prejudicial to the good repute of Seychelles,

the mutual fund administrator shall immediately give the Authority notice of that knowledge or belief and of the reasons for the knowledge or belief.

(4) A licensed mutual fund administrator shall pay -

- (a) the prescribed annual fee for each mutual fund for which it is providing a principal office, and
- (b) the prescribed annual fee in respect of its own licence.

12.(1) A licensed mutual fund administrator shall have its accounts audited at the end of its financial year by an auditor.

(2) A licensed mutual fund administrator shall send its audited accounts for a financial year to the Authority within 4 months of the end of the financial year or within such extension of that period as the Authority may allow.

PART IV - AUTHORITY

13.(1) There shall be an Authority which shall be responsible for carrying out the functions specified under and for the administration of this Act.

(2) The Authority shall be -

- (a) a person designated by the Minister by notice published in the Gazette; or
- (b) a body corporate constituted under subsection (3).

(3) The Minister may by order published in the Gazette constitute an Authority which shall be a body corporate consisting of such number of persons as may be specified in the order.

(4) An order made under subsection (3) may provide for the name, registered address, meetings, finance, staff, administration and management and any other matter necessary for carrying out the functions of the Authority under this Act.

(5) Where the person designated by the Minister under subsection (2)(a) does not have the necessary staff, office accommodation and other matter necessary for carrying out the functions of the Authority, the Minister shall so provide the person.

(6) A function of the Authority under or for the purposes of this Act may be carried out by an authorised officer of the Authority.

PART V - SUPERVISORY POWER OF THE AUTHORITY

14. The Authority may at any time direct a licensed mutual fund or licensed mutual fund administrator to change its name to a name approved by the Authority if it is of the opinion that the name of the mutual fund or mutual fund administrator is a name which if it were the name of an applicant for a licence for a mutual fund or mutual fund administrator the Authority would have been prevented from granting a licence to the applicant under section 4(2) or section 8(2).

15. The Authority may at any time require a licensed mutual fund or licensed mutual fund administrator to have its accounts audited and to submit the audited accounts to the Authority within such time as the Authority may specify.

16. The Authority may at any time request such information or explanation which it reasonably requires to enable it to carry out its functions under this Act from -

- (a) the promoter or operators of a licensed mutual fund in respect of the fund, or
- (b) a licensed mutual fund administrator or an operator of a mutual fund administrator in respect of the mutual fund administrator or in respect of its mutual fund administration.

17.(1) The Authority may at any time -

- (a) request the promoters, operators or other senior officers of a licensed mutual fund to give to an authorised officer of the Authority access to the records relating to the mutual fund,
- (b) request a licensed mutual fund administrator or the promoters or other senior officers of the licensed mutual fund administrator to give to an authorised officer of the Authority access to -
 - (i) the records of the administrator, and
 - (ii) any records under the control of the mutual fund administrator,

relating to mutual fund administration carried out by the mutual fund administrator.

(2) An authorised officer of the Authority may take copy of or extract from any records to which the authorised officer has been given access under subsection (1).

18. (1) Where the Authority has reasonable grounds for believing that -

- (a) a person is carrying on business as a mutual fund in breach of section 3, or
- (b) a person is carrying on business as a mutual fund administrator in breach of section 7,

the Authority may direct the person to provide the Authority with such information or explanation as the Authority reasonably requires or to provide the Authority with access to the records under the control of the person to enable the Authority to carry out its functions under the Act.

(2) An authorised officer of the Authority may take copy of or extract from any records to which access has been given under subsection (1).

19. Where the Authority has reasonable grounds for believing that -

- (a) a person is carrying on business as a mutual fund in breach of section 3, or
- (b) a person is carrying on business as a mutual fund administrator in breach of section 7,

the Authority may apply to the court for such orders as it thinks fit to preserve the assets or interests of persons who have invested in or with or are creditors of the person referred to in paragraph (a) or of a mutual fund administered by a person referred to in paragraph (b).

20.(1) The Authority may take all or any of the actions specified in subsection (3) if it is satisfied that a licensed mutual fund -

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors; or
- (c) is carrying on business without complying with a condition of its licence.

(2) For the purposes of ascertaining whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Authority may at any time inquire into the reason for any failure of -

- (a) a licensed mutual fund -
 - (i) to change its name in accordance with a direction given to it under section 14;
 - (ii) to have its accounts audited in accordance with section 5(1) or to send its audited accounts to the Authority in accordance with section 5(2);
 - (iii) to pay its prescribed annual licence in accordance with section 6;
 - (iv) to have its accounts audited or to submit the audited accounts to the Authority when required to do so under section 15; or
- (b) a promoter or operator of a licensed mutual fund -
 - (i) to give the Authority information or an explanation when requested to do so under section 16, or
 - (ii) to give the Authority access to records when requested to do so under section 17.

(3) For the purpose of subsection (1) the Authority may -

- (a) revoke the licence of a mutual fund,
- (b) impose conditions or further conditions on the licence of a mutual fund or amend or revoke any conditions,
- (c) require the substitution of any promoter or operator of a mutual fund,
- (d) appoint a person to advise a mutual fund on the proper conduct of its affairs,
- (e) appoint a person to assume control of the affairs of a mutual fund,
- (f) apply to the court for an order to take such other action as it considers necessary to protect the interest of investors in and creditors of a licensed mutual fund,

and, for avoidance of doubt, the taking of one or more actions under this subsection in respect of a mutual fund shall not prevent the Authority at any time thereafter from taking any further action under this subsection in respect of the mutual fund.

(4) Where it is practical to do so, the Authority shall inform the investors and operators of a licensed mutual fund of any action the Authority is taking or intends to take in respect of the mutual fund.

(5) A person appointed under subsection (3) (d) or (e) in respect of a licensed mutual fund is appointed at the expense of the mutual fund and any expenses incurred by the Authority by virtue of the appointment is an amount due to the Authority payable by the mutual fund.

(6) A person appointed under subsection (3) (e) in respect of a licensed mutual fund has all the powers necessary, to the exclusion of the operators of the mutual fund, to administer the affairs of the mutual fund in the best interests of the investors and creditors of the mutual fund.

(7) The powers referred to in subsection (6) include the power to terminate the business of the mutual fund if it is adjudged insolvent.

(8) A person appointed in respect of a mutual fund under subsection (3) (d) or (e) shall -

(a) when requested to do so by the Authority, supply the Authority with such information or explanation in respect of the mutual fund as is specified by the Authority;

(b) within three months of being appointed, or within such other period as the Authority may specify, prepare and supply to the Authority a report on the affairs of the mutual fund making, where appropriate, recommendations in respect of the mutual fund; and

(c) if the appointment of the person is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Authority such other explanation, information, reports and recommendations as the Authority shall specify.

(9) If a person appointed in respect of a licensed mutual fund under subsection (3) (d) or (e) -

(a) fails to comply with an obligation under subsection (8), or

(b) in the opinion of the Authority, is not carrying out the obligations imposed on the person in respect of the mutual fund satisfactorily,

the Authority may revoke the appointment and appoint some other person.

(10) On receipt of any explanation, information or a report under subsection (8) in respect of a licensed mutual fund, the Authority may-

(a) require the mutual fund to reorganise its affairs in a manner specified by the Authority, or

(b) apply to the court for the mutual fund to be wound up under the Companies Act,

and may take such action in respect of the appointment or continued appointment of the person appointed under subsection (3) (d) or (e) as the Authority considers appropriate.

(11) If the Authority takes action under subsection (10) it may -

(a) apply to the court for an order to take such other action as it consider necessary to protect the interests of investors and creditors of the mutual fund; and

(b) take any other action provided for in that subsection or subsection (3).

(12) Without prejudice to any other power of the Authority, the Authority may at any time revoke the licence of a mutual fund if-

(a) the Authority is satisfied that it has ceased to carry on or to attempt to carry on business as a mutual fund; or

(b) it is placed in liquidation or is dissolved.

(13) For the purposes of subsection (10)(b), the Authority shall be deemed to be empowered under the Companies Act to present a winding up petition in respect of the licensed mutual fund on the ground that it is just and equitable that the mutual fund be wound up.

21.(1) The Authority may take all or any of the actions specified in subsection (3) if it is satisfied that a licensed mutual fund administrator -

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business or is winding up its mutual fund administration business in a manner that is prejudicial to investors in a mutual fund it is administering or to its creditors or to the creditors of a mutual fund it is administering; or
- (c) is carrying on the business of mutual fund administration without complying with a condition of its licence.

(2) For the purpose of ascertaining whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Authority may at any time inquire into the reason for -

- (a) the issue by the mutual fund administrator of shares without the approval of the Authority contrary to section 9(1);
- (b) the appointment of an operator or similar senior officer or the changing of an agent resident in Seychelles of the administrator without the written approval of the Authority contrary to section 9(1);
- (c) any shares in the mutual fund administrator being disposed of or dealt in without the approval of the Authority contrary to section 9(2), or
- (d) any failure of a licensed mutual fund administrator -
 - (i) to provide a guarantee or insurance cover or other financial support or to increase its fully paid-up capital in accordance with a direction given under section 10;
 - (ii) to give the Authority notice that it has started to provide the principal office of a licensed mutual fund in accordance with section 11(1);
 - (iii) to pay the prescribed annual fee in respect of a licensed mutual fund in accordance with section 11(4) (a) or to pay its prescribed fee in accordance with section 11(4)(b);
 - (iv) to satisfy itself with respect to a licensed mutual fund or a promoter or operator of a fund as required by section 11(2)(b);
 - (v) to give the Authority written notice in respect of the affairs of a licensed mutual fund as required by section 11(3);
 - (vi) to have its accounts audited in accordance with section 12(1) or to send its audited accounts to the Authority in accordance with section 12(2);
 - (vii) to change its name in accordance with a direction given to it under section 14;
 - (viii) to have its accounts audited and to submit the audited accounts to the Authority when instructed to do so under section 15;
 - (ix) to give the Authority information or explanation when requested to do so under section 16, or
 - (x) to comply with a request of the Authority under section 17(1)(b) to give access to the records specified under section 17(1)(b).

(3) For the purpose of subsection (1) the Authority may-

- (a) revoke the licence of a mutual fund administrator,

- (b) impose conditions or further conditions on the licence of a mutual fund administrator or amend or revoke any condition,
- (c) require the substitution of an operator or similar senior officer of the administrator,
- (d) appoint a person to advise the administrator on the proper conduct of its mutual fund administration,
- (e) appoint a person to assume control of the affairs of the administrator relating to mutual fund administration,
- (f) apply to the court for an order to take such other action as it considers necessary to protect the interests of investors in the funds administered by the administrator, the creditors of the funds and the creditors of the administrator,

and, for avoidance of doubt, the taking of one or more actions under this subsection in respect of an administrator shall not prevent the Authority at any time after from taking any further action under this subsection in respect of the administrator.

(4) A person appointed under subsection (3) (c) or (d) in respect of a licensed mutual fund administrator is appointed at the expense of the administrator and any expenses incurred by the Authority by virtue of the appointment is an amount due to the Authority payable by the administrator.

(5) A person appointed under subsection (3) (d) in respect of a licensed mutual fund administrator has all the powers necessary, to the exclusion of any other person (other than a liquidator, receiver or judicial administrator), to administer the affairs of the administrator relating to mutual fund administration in the best interest of investors in the funds administered by the administrator and its creditors and the creditors of the administrator.

(6) The powers referred to in subsection (5) include the power to terminate the business of the administrator if it is adjudged insolvent so far as it relates to mutual fund administration.

(7) A person appointed in respect of a licensed mutual fund administrator under subsection (3) (c) or (d) shall -

- (a) when requested to do so by the Authority, supply the Authority with such information in respect of the administration of mutual funds by the mutual fund administrator as is specified by the Authority;
- (b) within three months of being appointed, or within such other period as the Authority may specify, prepare and supply to the Authority a report on the administration of mutual funds by the mutual fund administrator making, where appropriate, recommendations in respect of the administrator; and
- (c) if the appointment of the person is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Authority such other information, reports and recommendations as the Authority in respect of a licensed mutual fund administrator shall specify.

(8) If a person appointed under subsection (3) (c) or (d) -

- (a) fails to comply with an obligation under subsection (7), or
- (b) in the opinion of the Authority, is not carrying out the obligations imposed on the person in respect of the mutual fund administrator satisfactorily,

the Authority may revoke the appointment and appoint some other person.

(9) On receipt of any information or a report under subsection (7) in respect of a licensed mutual fund administrator, the Authority may -

(a) require the administrator to reorganise its affairs in a manner specified by the Authority,
or
(b) apply to the court for the administrator to be wound up under the Companies Act,
and may take such action in respect of the appointment of the person appointed under subsection
(3) (c) or (d) as the Authority shall consider appropriate.

(10) If the Authority takes action under subsection (9) it may-

(a) apply to the court for an order to take such other action as it considers necessary to
protect the interests of investors in the funds administered by the administrator and its
creditors and the creditors of the administrator; and

(b) take any other action provided for in that subsection or subsection (3).

(11) Without prejudice to any other power of the Authority, the Authority may at any time
revoke the licence of a mutual fund administrator if -

(a) the Authority is satisfied that it has ceased to carry on business as a mutual fund
administrator;

(b) it is placed in liquidation or is dissolved; or

(c) it is in breach of any other duty or obligation prescribed by this Act.

(12) For the purposes of subsection (9)(b), the Authority shall be deemed to be empowered
under the Companies Act to present a winding up petition in respect of the mutual fund
administrator on the ground that it is just and equitable that the mutual fund administrator be wound
up.

PART VI - MISCELLANEOUS PROVISIONS

22.(1) Subject to subsections (2) and (3), the Authority, an authorised officer or staff of the
Authority and a licensed mutual fund administrator and its staff shall not disclose any information
relating to -

(a) an application made for a licence under this Act,

(b) the affairs of a mutual fund,

(c) the affairs of a mutual fund administrator, or

(d) the affairs of an investor in a mutual fund,

which they have acquired in the course of their duties or the exercise of their functions under this
Act and shall not use any such information for their own benefit.

(2) Subsection (1) shall not apply to a disclosure -

(a) necessary for the effective regulation of a mutual fund,

(b) when lawfully required or permitted to do so by a court on the application of the
Attorney-General in connection with an investigation, inquiry, proceeding or trial of a
criminal offence under the laws of Seychelles or in relation to an application under the
Mutual Assistance in Criminal Matters Act;

(c) ordered by a court where the court is satisfied that the disclosure is bona fide required
for the purpose of a civil proceeding; or

(d) in the case of a unit trust established under the International Trusts Act, permitted under
that Act.

(3) The Authority may disclose to a mutual fund regulating authority outside Seychelles general information of a statistical nature about a mutual fund or a mutual fund administrator that does not disclose the identity of investors, unless such disclosure is otherwise permitted.

23. If an auditor in the course of carrying out an audit of the accounts of a licensed mutual fund or of a licensed mutual fund administrator becomes aware or has reason to believe that the mutual fund or the mutual fund administrator -

(a) is carrying on business without keeping sufficient accounting records to allow its accounts to be properly audited, or

(b) is carrying on or attempting to carry on business or is winding up its business in a manner that is prejudicial to its investors or creditors,

the auditor shall immediately give the Authority written notice of the fact of becoming so aware or of having reason for so believing and of the reasons therefor.

24.(1) Where the Authority revokes a licence or imposes conditions or further conditions or amends or revokes a condition under section 20(3) of a mutual fund or section 21(3) of a mutual fund administrator -

(a) it shall, by notice in writing, inform the person who was or is the holder of the licence accordingly; and

(b) the person shall, forthwith upon being informed under paragraph (a), cease to carry on the business in respect of which the licence was issued or comply with the conditions, further conditions, amended conditions or the fact of the revocation of a condition as the case may be.

(2) The person whose licence has been revoked may, within 10 days after the date of the service of the notice under subsection (a), make written representation to the Authority.

(3) The Authority shall, as soon as practicable but in any event not later than 28 days after receiving the representation under subsection (1), consider any representation made under that subsection and decide whether to confirm or rescind its decision to revoke the licence, impose a condition or further conditions in respect of the licence or amend or revoke a condition of the licence.

(4) The Authority may, under subsection (3), rescind the revocation of a licence subject to conditions.

25. A person aggrieved by a decision taken by the Authority under this Act may appeal to the Supreme Court against the decision but the a decision of the Authority on any matter of a purely administrative nature is final.

26. Where under this Act an obligation is imposed on a licensed mutual fund or a licensed mutual fund administrator the operator and senior officers and, in the case of a mutual fund, the promoters of the mutual fund shall be responsible to ensure that the mutual fund or the mutual fund administrator complies with the obligation.

27. The written law specified in column 1 of the Schedule shall to the extent specified in column 2 of the Schedule not apply to a licensed mutual fund or licensed mutual fund administrator.

28. (1) A person who -

(a) being an operator of a mutual fund, contravenes section 3(6) or section 4(5);

(b) contravenes to comply with section 7,

(c) being an operator of a mutual fund administrator, contravenes section 8(5);

is guilty of an offence and liable on conviction to a fine of R500,000 and to imprisonment for 5 years.

(2) A licensed mutual fund administrator which fails to comply with a direction under section 10 or contravenes section 11 is guilty of an offence and liable on conviction to a fine of R500,000.

(3) A licensed mutual fund which contravenes section 5, or a licensed mutual fund administrator which contravenes section 9 or 12 or a licensed mutual fund or licensed mutual fund administrator which fails to comply with a direction, requirement or request under section 14, 15, 16, 17 or 18 or a condition of its licence is guilty of an offence and liable on conviction to a fine of R20,000.

(4) An operator or senior officer of a mutual fund or a mutual fund administrator or a promoter of a mutual fund who contrary to section 26 fails to ensure that the mutual fund or mutual fund administrator complies with an obligation under this Act is guilty of an offence and liable on conviction, where a penalty is not otherwise provided, to a fine of R100,000 and imprisonment for 5 years.

(5) A person who supplies false or misleading information to the Authority is guilty of an offence and liable on conviction -

(a) in the case of an individual, to a fine of R50,000 and imprisonment for 3 years;

(b) in the case of a body corporate, to a fine of R100,000.

(6) A person who refuses to supply information when required to do so under this Act is guilty of an offence and liable on conviction, where a penalty has not otherwise been provided, to a fine of R20,000.

(7) A person -

(a) who is not a licensed mutual fund or mutual fund administrator and who holds out or makes any representation that the person is so licensed;

(b) who uses as part of its name the words "mutual fund" or "mutual fund administrator" or any contraction or imitation of those words or any expression, word or abbreviation which tends to convey the impression that the person is a mutual fund or mutual fund administrator when the person is not a licensed mutual fund or mutual fund administrator,

is guilty of an offence and liable on conviction to a fine of R100,000 and to imprisonment for 5 years.

29. Where a person is convicted of an offence under section 28, the person shall, in addition to the penalty provided under the section for the offence, liable to a further fine of R1000 for each day during which the contravention which constitutes the offence has continued.

30. (1) The Minister, after consultation with the Authority, may make regulations for carrying out the purposes of this Act and without prejudice to the generality of the foregoing, may by regulations -

(a) provide for the role of mutual fund administrators in relation to mutual funds,

(b) provide for the operation of mutual funds,

(c) amend the Schedule,

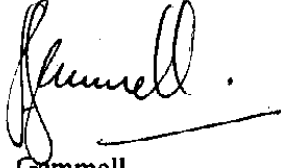
(d) provide for any other matter or things which may be or is required to be prescribed under this Act.

(2) Regulations made under this section may provide, as penalty for the contravention of a regulation, a fine of up to R50,000 and imprisonment for up to 5 years.

SCHEDULE

Column 1 Law	EXEMPTION (section 27) Column 2 Extent of non-applicability
1. Business Tax Act	1. Whole Act
2. Exchange Control Act	The whole Act except that a mutual fund or mutual fund administrator is not authorised by this exemption to engage in the business of buying or selling foreign currencies or gold.
3. Foreign Exchange Earnings (Regulations) Act, 1996	The whole Act
4. Immovable Property (Transfer Restriction) Act	4.1 Section 4, in so far it prohibits a non-Seychellois from leasing immovable property in Seychelles or entering into an agreement to lease immovable property. 4.2 Section 13, in so far as it prohibits the purchase or acquisition by a non-Seychellois of shares in a company which owns immovable property or rights therein in Seychelles.
5. Social Security Act	3. Section 3(1)(b) in so far it subjects a licensed mutual fund or licensed mutual fund administrator as an employer to pay contributions to the Social Security Fund in respect of its employees.
6. Stamp Duty Act	4. Section 10 in so far as it imposes ad valorem stamp duty on an instrument evidencing a transfer of an equity interest as defined in this Act.
7. Trade Tax Act	5. In respect of goods imported by a licensed mutual fund or licensed mutual fund administrator for use exclusively by the licensed mutual fund or licensed mutual fund administrator

I certify that this is a correct copy of the Bill which was passed
by the National Assembly on 16th December, 1997.

A handwritten signature in black ink, appearing to read 'Gemmell', with a horizontal line extending from the end of the signature.

Sheila Gemmell
Clerk to the National Assembly