

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2003  
REVISION) TO MAKE FURTHER PROVISION WITH RESPECT TO  
THE POWERS AND FUNCTIONS OF THE CAYMAN ISLANDS  
MONETARY AUTHORITY AND THE CONDUCT OF BUSINESS IN  
THE ISLANDS BY MUTUAL FUNDS; AND TO MAKE PROVISION FOR  
RELATED MATTERS**



**THE MUTUAL FUNDS (AMENDMENT) BILL, 2006**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill amends the Mutual Funds Law (2003 Revision) to increase the regulatory powers of the Cayman Islands Monetary Authority in relation to mutual funds and mutual fund administrators and to make further provision with respect to the conduct of business by mutual funds.

Clause 1 states the short title of the legislation.

Clause 2 inserts new definitions into the principal Law.

Clause 3 amends section 4 of the principal Law, which determines certain requirements with which mutual funds must comply if they are carrying on or attempting to carry on business in or from the Islands. The amendments -

- (a) raise the prescribed minimum subscription for registered funds from forty thousand to eighty thousand dollars;
- (b) enable foreign funds that are subject to equivalent regulation by virtue of being marketed through a regulated service provider in the Islands and by virtue of certain other conditions, to carry on a mutual fund business with the public in the Islands without having to be licensed under the Law; and
- (c) re-define the class of funds that, for the purposes of the section, are regarded as carrying on business in or from the Islands, by including funds which make an invitation to the public in the Islands to subscribe for their equity interests and excluding certain foreign funds.

Clause 4 amends section 8 of the principal Law to allow the Monetary Authority to specify the manner in which the audited accounts of a regulated mutual fund are to be transmitted to it and to enable the Authority to waive the requirement for an annual audit of a regulated mutual fund.

Clause 5 repeals and replaces section 10 of the principal Law to remove the Monetary Authority's power of exempting a mutual fund administrator from obtaining a Mutual Fund Administrators Licence.

Clause 6 repeals and replaces section 16 of the principal Law, which requires licensed mutual fund administrators to satisfy themselves as to the business credentials of a mutual fund to which they are providing administration services. Currently the section applies only in respect of the provision of a principal office to a regulated mutual fund. The amendment extends its application to all mutual

funds. The amendment also makes compliance with the section a condition of the licence of the mutual fund administrator. This allows intervention by the Monetary Authority under section 30 of the principal Law, under which the licence may be cancelled, and attracts the offence under section 12(7).

Clause 7 amends section 20 of the principal Law to allow the Monetary Authority to specify the manner in which the audited accounts of a licensed mutual fund administrator are to be transmitted to it.

Clause 8 amends section 29 of the principal Law to make it clear that the functions of the Monetary Authority include general responsibility for supervision of the persons and institutions governed by the Law, and to afford it general powers to carry out investigations and gather information in order to secure compliance with its provisions. The new section also provides for punishment of persons who furnish false or misleading information to the Authority in purported compliance with its requirements.

Clause 9 amends section 30 of the principal Law to empower the Monetary Authority to cancel the compliance certificate or the registration of a mutual fund in specified circumstances (for example, if the mutual fund is carrying on business in a manner that is prejudicial to its investors). A further amendment (insertion of subsection (16)) is made in consequence of the amendments made to section 16.

Clause 10 amends section 31 as a consequence of amendments made to section 29.

Clause 11 inserts into the principal Law a new section 31A enabling the Monetary Authority to attend winding-up proceedings where a petition for the winding up of a licensee is presented by a person other than the Authority.

Clause 12 repeals section 34 of the principal Law and substitutes a new section requiring an auditor to notify the Monetary Authority if, in the course of carrying out an audit of the accounts of a regulated mutual fund, the auditor obtains information or suspects that the mutual fund is –

- (a) insolvent or likely to become so;
- (b) carrying on business, or effecting a voluntary winding up, in a manner prejudicial to its investors or creditors;
- (c) not keeping adequate, auditable accounting records; or
- (d) carrying on business in a fraudulent or criminal manner, or without due compliance with pertinent Laws and licence conditions.

Similar provisions apply in respect of the auditor of a licensed mutual fund administrator.

An auditor who fails to comply with the requirements of section 34 may be disqualified by the Monetary Authority from being an auditor of the regulated mutual fund or licensed mutual fund administrator.

The new provisions also enable the Monetary Authority to revoke its approval of an auditor.

Clause 13 contains appropriate savings and other provisions for the orderly adjustment of obligations that will result from the enactment of the legislation.

**THE MUTUAL FUNDS (AMENDMENT) BILL, 2006**

**ARRANGEMENT OF CLAUSES**

1. Short title.
2. Amendment of section 2 of the Mutual Funds Law (2003 Revision) - definitions.
3. Amendment of section 4 - regulated mutual funds.
4. Amendment of section 8 - annual audit of regulated mutual fund.
5. Repeal and substitution of section 10 – person to be authorised to administer mutual funds.
6. Repeal and substitution of section 16 - licensed mutual fund administrators to be satisfied in respect of mutual funds.
7. Amendment of section 20 - licensed mutual fund administrators to have annual audit.
8. Amendment of section 29 – Authority to administer Law.
9. Amendment of section 30 – powers of Authority in respect of regulated mutual funds.
10. Amendment of section 31 - powers of Authority in respect of licensed mutual fund administrators.
11. Insertion of section 31A - Authority may attend winding-up proceedings.
12. Repeal and substitution of section 34 – obligation of auditors.
13. Savings and transitional provisions.

CAYMAN ISLANDS

**A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2003 REVISION) TO MAKE FURTHER PROVISION WITH RESPECT TO THE POWERS AND FUNCTIONS OF THE CAYMAN ISLANDS MONETARY AUTHORITY AND THE CONDUCT OF BUSINESS IN THE ISLANDS BY MUTUAL FUNDS; AND TO MAKE PROVISION FOR RELATED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Mutual Funds (Amendment) Law, 2006. Short title
2. The Mutual Funds Law (2003 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting, in their appropriate alphabetical places, the following definitions - Amendment of section 2 of the Mutual Funds Law (2003 Revision) - definitions
  - ““high net worth person” and “sophisticated person”, respectively, have the meanings assigned to those expressions in the Securities Investment Business Law (2004 Revision);
  - “overseas regulatory authority” has the meaning assigned to that expression in the Monetary Authority Law (2004 Revision);
  - “public in the Islands” does not include –
    - (a) a sophisticated person;
    - (b) a high net worth person;

- (c) a person specified in paragraph 3 or 4 of the Fourth Schedule to the Securities Investment Business Law (2004 Revision);
- (d) an exempted or ordinary non-resident company registered under the Companies Law (2004 Revision), or a foreign company registered pursuant to Part IX of that Law, or any such company acting as general partner of a partnership registered under section 9(1) of the Exempted Limited Partnership Law (2003 Revision), or any director or officer of the same acting in such capacity; or
- (e) the trustee of any trust registered or capable of registration under section 74 of the Trusts Law (2001 Revision) acting in such capacity;”.

Amendment of section  
4 -regulated mutual  
funds

3. The principal Law is amended in section 4 as follows -

- (a) by deleting from subsection (3)(a)(i) the word “forty” and substituting the word “eighty”;
- (b) by repealing subsection (4) and substituting the following subsection—

“ (4) A mutual fund may carry on or attempt to carry on business in or from the Islands without complying with subsection (1) if –

- (a) the equity interests are held by not more than fifteen investors, a majority of whom are capable of appointing or removing the operator of the fund; or
- (b) it is a fund, not incorporated or established in the Islands, which makes an invitation to the public in the Islands to subscribe for its equity interests by or through a person who is the holder of a licence under the Securities Investment Business Law (2004 Revision), for a regulated activity specified by the Authority for the purposes of this subsection and –
  - (i) those interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette; or
  - (ii) the fund is regulated in a category, and by an overseas regulatory authority, approved by the Authority for the purposes of this subsection.”; and



- (c) by deleting subsection (5)(b) and substituting the following paragraph –

“(b) regardless of where it is incorporated or established, it makes an invitation to the public in the Islands to subscribe for its equity interests.”.

4. The principal Law is amended in section 8 –

Amendment of section 8 -annual audit of regulated mutual fund

- (a) by inserting after the word “shall” in subsection (2) the words “in such manner as the Authority may from time to time direct”; and  
(b) by inserting after subsection (3) the following subsection –

“(4) The Authority may, in relation to the whole or part of any financial year of the fund, exempt a regulated mutual fund from the requirements of this section either absolutely or subject to such conditions as the Authority may think fit to impose.”.

5. The principal Law is amended by repealing section 10 and substituting the following section –

Repeal and substitution of section 10 – person to be authorised to administer mutual funds

“Person to be authorised to administer mutual funds

10. Unless acting with, and in accordance with, the authorisation of the Authority, a person shall not act or carry on business as a mutual fund administrator unless authorised to do so by a Mutual Fund Administrators Licence, and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars.”.

6. The principal Law is amended by repealing section 16 and substituting the following section –

Repeal and substitution of section 16 - licensed mutual fund administrators to be satisfied in respect of mutual funds

“Licensed mutual fund administrators to be satisfied in respect of mutual funds

16. (1) A licensed mutual fund administrator shall not provide mutual fund administration to a mutual fund unless it has satisfied itself that –

- (a) each promoter of the mutual fund is of sound reputation;  
(b) the administration of the mutual fund will be undertaken by persons who have sufficient expertise to administer the mutual fund and are of sound reputation;  
(c) the business of the mutual fund and any offer of equity interest in it will be carried out in a proper way; and  
(d) the mutual fund, if it is not incorporated or established in the Islands, is incorporated or

established in a country or territory approved by the Authority for the purposes of this subsection.

(2) Subsection (1) shall be deemed to be a condition of every Mutual Fund Administrators Licence for the purposes of this Law.”.

Amendment of section 20 - licensed mutual fund administrators to have annual audit

7. The principal Law is amended in section 20(2) by inserting after the word “shall” the words “, in such manner as the Authority may from time to time direct,”.

Amendment of section 29 – Authority to administer Law

8. The principal Law is amended in section 29 as follows -

- (a) by renumbering the section as subsection (1) of section 29;
- (b) by repealing paragraph (b) of subsection (1) as re-numbered and substituting the following paragraph -

“(b) applications for mutual funds licences under section 5;” and

- (c) by inserting after subsection (1) the following subsections –

“(2) The Authority shall –

- (a) maintain a general review of mutual fund business in the Islands and submit an annual report thereon to the Governor;
- (b) be responsible for supervision and enforcement in respect of persons to whom this Law applies, and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of section 4(2), 7, 10 or 19; and
- (c) whenever the Authority considers it necessary, examine, by way of scrutiny of prescribed regular returns, on-site inspections or auditors’ reports, or in such other manner as the Authority may determine, the affairs or business of any regulated mutual fund or licensee for the purpose of a general review under paragraph (a) or for the purpose of satisfying itself that the provisions of this Law and of any regulations made under this Law or the Proceeds of Criminal Conduct Law (2005 Revision) are being complied with.

(3) The Authority may in writing authorise any other person to assist it in the exercise and performance of its powers and functions under this Law.”.

9. The principal Law is amended in section 30 –

Amendment of section  
30 – powers of  
Authority in respect of  
regulated mutual funds

- (a) in subsection (3), by deleting paragraph (a) and substituting the following paragraph –

“(a) cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of the mutual fund;”;

- (b) by inserting after subsection (13) the following subsection -

“(13a) Without prejudice to any other powers of the Authority, the Authority may at any time cancel a Mutual Fund Administrators Licence, if the Authority is satisfied that the mutual fund administrator has ceased to carry on or to attempt to carry on business or has been placed in voluntary winding up or is dissolved.”;

- (c) by repealing subsection (15) and substituting the following subsection –

“(15) Without prejudice to any other power of the Authority, the Authority may, at any time, cancel any Mutual Fund Licence, or any registration under section 4(1)(b) or 4(3), in force in respect of a mutual fund if the Authority is satisfied that the fund has ceased to carry on or to attempt to carry on business as a mutual fund or has been placed in winding up or is dissolved.”; and

- (d) by inserting after subsection (15) the following subsection –

“(16) Nothing in this section shall be construed as limiting any power conferred on the Authority by section 29 or by any other provision of this Law or the regulations made under this Law.”.

10. The principal Law is amended in section 31 –

Amendment of section  
31 - powers of Authority  
in respect of licensed  
mutual fund  
administrators

- (a) by deleting from subsection (1) (c) the words “contrary to section 12(6)” and the comma that precedes them;  
(b) by deleting from subsection (2)(a)(iii) the word “regulated”.

11. The principal Law is amended by inserting after section 31 the following section –

Insertion of section  
31A - Authority may  
attend winding-up  
proceedings

“Authority may attend  
winding-up proceedings

31A.(1) Where a petition for the winding up of –

- (a) a regulated mutual fund;  
(b) a licensed mutual fund administrator;  
(c) a person who has at any time been a

- regulated mutual fund; or
- (d) a person who has at any time been a licensed mutual fund administrator,

is presented by a person other than the Authority, the Authority shall be served by the petitioner with a copy of the petition and may appear at the hearing of the petition and the provisions of subsections (2) and (3) shall apply.

(2) A document which relates to a petition for winding up and which is required to be sent to any person specified in subsection (1)(a), (b), (c) or (d), or to any of their respective creditors, shall also be sent to the Authority.

(3) A person appointed for the purpose by the Authority may –

- (a) attend a meeting of creditors of a person specified in subsection (1)(a), (b), (c) or (d);
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.”.

Repeal and substitution  
of section 34 –  
obligation of auditors

12. The principal Law is amended by repealing section 34 and substituting the following section –

“Obligation of auditors

34. (1) If an auditor, in the course of carrying out an audit of the accounts of a regulated mutual fund, obtains information or suspects that the mutual fund is –

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business otherwise than in compliance with –

- (i) this Law or any regulations made hereunder;
- (ii) the Monetary Authority Law (2004 Revision);
- (iii) the Money Laundering Regulations (2006 Revision); or
- (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

(2) If an auditor, in the course of carrying out an audit of the accounts of a licensed mutual fund administrator, obtains information or suspects that the mutual fund administrator is –

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or winding up its mutual fund administration business voluntarily in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or the creditors of any such mutual fund;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business otherwise than in compliance with –
  - (i) this Law or any regulations made hereunder;
  - (ii) the Monetary Authority Law (2004 Revision); or
  - (iii) the Money Laundering Regulations (2006 Revision); or
  - (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of

suspicion, his reason for that suspicion.

(3) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1) or (2), the Authority may disqualify him from being an auditor of a regulated mutual fund or a licensed mutual fund administrator; but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with subsection (1) or (2), as the case may be.

(4) A regulated mutual fund or a licensed mutual fund administrator shall not appoint as an auditor a person disqualified under subsection (3).

(5) Where the Authority has granted approval of an auditor under any provision of this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(6) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act concerned was in bad faith.

(7) A reference in this section to an auditor carrying out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.

(8) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars.

(9) Nothing in subsection (1) or (2) shall impose on an auditor carrying out an audit of the accounts of a regulated mutual fund or a licensed mutual fund administrator an obligation to do anything that he would not otherwise be required to do in accordance with generally accepted

auditing standards, other than the obligation to provide notice and reasons to the Authority.”.

13. (1) Section 4(3)(a)(i) of the new Law does not apply to a mutual fund which, immediately before the appointed date, was carrying on business in or from the Islands; and section 4(3)(a)(i) of the former Law shall continue to apply to such mutual fund as if the new Law had not come into force.

Savings and transitional provisions

(2) The amendments effected by this Law in relation to section 10 of the former Law do not apply to a mutual fund administrator who, immediately before the appointed date, was exempted in accordance with section 10(2) of the former Law; and section 10(2), (3), (4) and (5) of the former Law continue to apply to such mutual fund administrator as if those amendments had not come into force.

(3) A power conferred on the Authority by section 30(3) of the principal Law, as amended by this Law, may be exercised in respect of a matter arising before, on or after the appointed date.

(4) Section 31A of the principal Law does not apply in respect of a winding-up petition presented before the appointed date.

(5) Section 34 of the principal Law, as amended by this Law, does not apply to an audit that was concluded before the appointed date.

(6) In this section -

“the appointed date” means the date of commencement of this Law;

“the former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“the new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the                      day of                      ,  
2006.

Speaker.

Clerk of the Legislative Assembly.