

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2013
REVISION) TO MAKE PROVISION FOR THE REGULATION OF FUNDS
UNDER THE ALTERNATIVE INVESTMENT FUND MANAGER
DIRECTIVE IN EUROPEAN UNION MEMBER STATES; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE MUTUAL FUNDS (AMENDMENT) BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

This Bill would amend the Mutual Funds Law (2013 Revision) (the principal Law) to make provision for the management and marketing of EU Connected Funds under the Alternative Investment Fund Managers Directive (AIFMD) in Member States of the European Union; and provide for incidental and connected purposes.

Clause 1 of the Bill sets out the short title and commencement.

Clause 2 of the Bill amends section 2 of the principal Law so that relevant terms necessary for the implementation of the AIFMD are included in the principal Law.

Clause 3 of the Bill inserts an application clause so that the principal Law applies not only to regulated mutual funds but also to EU Connected Funds.

Clause 4 inserts Part III A which is to be headed “EU Connected Funds” and which sets out the process by which such funds may elect to be licensed or registered under the Law. This clause also defines the words “attestation” and “confirmation of status” and empowers the Authority to issue letters of attestation for an EU Connected Fund which is not regulated but sets out the conditions which must be satisfied prior to the provision of these letters by the Authority.

Clauses 5, 6, 7, 8, 9, 10 and 11 all make provision for consequential amendments necessary so that the powers of supervision and enforcement of the Authority and the ability to appeal against a decision of the Authority in relation to licensing or registration extend to an EU Connected Fund.

THE MUTUAL FUNDS (AMENDMENT) BILL, 2015

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Mutual Funds Law (2013 Revision) - definitions
3. Insertion of section 2A - application of Law
4. Insertion of Part III A - EU Connected Funds
5. Amendment of section 23 - special audits of regulated mutual funds
6. Amendment of section 29 - Authority to administer Law
7. Amendment of section 30 - powers of Authority in respect of regulated mutual funds
8. Amendment of section 32 - Authority may attend winding-up proceedings
9. Amendment of section 35 - obligation of auditors
10. Amendment of section 36 - appeals
11. Amendment of section 40 - exemption from compliance with Trade and Business Licensing Law (2007 Revision)

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**A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2013
REVISION) TO MAKE PROVISION FOR THE REGULATION OF
FUNDS UNDER THE ALTERNATIVE INVESTMENT FUND MANAGER
DIRECTIVE IN EUROPEAN UNION MEMBER STATES; AND FOR
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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Mutual Funds (Amendment) Law, 2015. Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by
Order made by Cabinet.
2. The Mutual Funds Law (2013 Revision), in this Law referred to as the
“principal Law”, is amended in section 2 as follows - Amendment of section 2
of the Mutual Funds
Law (2013 Revision) -
definitions
 - (a) by inserting in the appropriate alphabetical sequence the
following definitions -

“ “AIF” has the meaning assigned to it in the AIFMD;

“AIFMD” means the Directive 2011/61/EU of the European
Parliament and of the Council of 8th June 2011 on
Alternative Investment Fund Managers and amending
Directives 2003/41/EC and 2009/65/EC and Regulations
(EC) No 1060/2009 and (EU) No 1095/2010;

“EEA” means the European Economic Area established by the Agreement on the European Economic Area which entered into force on 1st January, 1994 and the relevant amending annexes and protocols;

“EU” means the European Union established by the Treaty on European Union signed in Maastricht on 7th February 1992;

“EU Connected Fund” means a company, unit trust or partnership carrying on business in or from within the Islands which issues -

- (a) equity interests; or
- (b) shares, trust units or partnership interests that carry an entitlement to participate in the profits or gains of the company, unit trust or partnership that are not redeemable or purchasable at the option of the investor,

the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the company, unit trust or partnership to receive profits or gains from the acquisition, holding, management or disposal of investments and is -

- (i) managed by a person whose registered office is in a Member State and whose regular business is managing one or more AIFs as notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State; or
- (ii) marketed to investors or potential investors in a Member State, as notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State;

“Member State” means a state which is -

- (a) a member of the EU; or

(b) a part of the EEA in which the AIFMD has been implemented;” and

“regulated EU Connected Fund” means an EU Connected Fund that elects to be licensed or registered pursuant to section 22B; and

(b) in the definition of the word “operator” by inserting after the words “in respect of a mutual fund” the words “or an EU Connected Fund;”.

3. This Law applies to licensed or registered mutual funds or EU Connected Funds. Insertion of section 2A - application of Law

4. The principal Law is amended by inserting after Part III the following Part - Insertion of Part III A - EU Connected Funds

“ **PART III A - EU CONNECTED FUNDS**

Meaning of “attestation” and “confirmation of status”

22A. For the purposes of this Part “attestation” or “confirmation of status” means the method, whether by letter or any other manner which the Authority considers appropriate, by which the Authority may be required to confirm the details of an EU Connected Fund to an overseas regulatory authority or a Member State.

Option to elect to be licensed or registered

22B. An EU Connected Fund may elect to apply for a licence or to apply to be registered under this Law as an EU Connected Fund and shall apply to the Authority for licensing or registration in the manner prescribed.

Power to grant licence or to register

22C. Where an application is made under section 22B, the Authority, after considering the application, may grant a licence to or register an EU Connected Fund in the manner that the Authority considers appropriate.

EU Connected Fund that is already licensed or registered under Law

22D. For the purposes of section 22B, an EU Connected Fund includes a company, unit trust or partnership that is already registered or licensed as a mutual fund under this Law.

Compliance with this Law

22E. An EU Connected Fund that elects to apply to be licensed or registered pursuant to section 22B

and is granted a licence or is registered under this Law shall comply with the applicable provisions of this Law.

Obligation to provide information

22F. The Authority may provide attestation or confirmation of the status of an EU Connected Fund but before the attestation or confirmation of status is provided by the Authority, the EU Connected Fund shall submit to the Authority the prescribed information.”.

Amendment of section 23 - special audits of regulated mutual funds

5. The principal Law is amended in section 23 as follows -
 - (a) in the marginal note by inserting after the words “regulated mutual funds” the words “or regulated EU Connected Funds”;
 - (b) in subsection (1) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”; and
 - (c) in subsection (2) as follows -
 - (i) by inserting after the words “a regulated mutual fund” wherever they appear the words “or a regulated EU Connected Fund”; and
 - (ii) by inserting after the words “the mutual fund” wherever they appear the words “or the EU Connected Fund”.

Amendment of section 29 - Authority to administer Law

6. The principal Law is amended in section 29 as follows -
 - (a) in subsection (1) by inserting after paragraph (a) the following paragraph -

“(aa)an application for licensing or registration of an EU Connected Fund under section 22B;”;
 - (b) in subsection (2) as follows -
 - (i) in paragraph (a) by inserting after the words “mutual funds business” the words “and any EU Connected Fund business”; and
 - (ii) in paragraph (c) by inserting after the words “any regulated mutual fund” the words “or any regulated EU Connected Fund”.

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

7. The principal Law is amended in section 30 as follows -
 - (a) in the marginal note by inserting after the words “regulated mutual funds” the words “or regulated EU Connected Funds”;
 - (b) in subsection (1) -

- (i) in paragraph (a) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (ii) in paragraph (b) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (iii) by inserting after paragraph (c) the following paragraph -
“(cc) a regulated EU Connected Fund is carrying on business without complying with any condition of its licence;”;
- (iv) in paragraph (d) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”; and
- (v) in paragraph (e) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (c) in subsection (2) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (d) in subsection (3) by inserting after the words “a regulated mutual fund” the words “or a regulated “EU Connected Fund” and -
 - (i) by inserting after paragraph (a) the following paragraph -
“(aa) cancel the licence or registration of a regulated EU Connected Fund;”;
 - (ii) by inserting after paragraph (b) the following paragraph -
“(bb) impose conditions or further conditions on a licence granted to a regulated EU Connected Fund pursuant to section 22C or amend or revoke conditions attached to that licence;”;
 - (iii) in paragraph (c) by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
 - (iv) in paragraph (d) by inserting after the words “the fund” the words “or the regulated EU Connected Fund”;
 - (v) in paragraph (e) by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (e) in subsection (4) by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (f) in subsection (5) as follows -
 - (i) by inserting after the words “ a mutual fund” the words “or a regulated EU Connected Fund”; and
 - (ii) by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (g) in subsection 6 by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;

- (h) in subsection 7 by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (i) in subsection 8 by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (j) in subsection 9 by inserting after the words “a mutual fund” the words “or the regulated EU Connected Fund” and in paragraphs (a) and (b) by inserting after the words “the mutual fund” wherever they appear, the words “or the EU Connected Fund”;
- (k) in subsection (10) by inserting after the words “relevant mutual fund” the words “or EU Connected Fund”;
- (l) in subsection 11 by inserting after the words “the mutual fund” wherever they appear, the words “or the regulated EU Connected Fund”;
- (m) in subsection 12 by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”;
- (n) in subsection 13 by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (o) in subsection 15 by inserting after the words “the mutual fund” the words “or the regulated EU Connected Fund”; and
- (p) by inserting after subsection 16 the following subsection -

“(16A) The Authority may, at any time, cancel a licence granted or registration, under section 22C if the Authority is satisfied that the regulated EU Connected Fund has ceased to carry on business as an EU Connected Fund or has been placed in winding-up or is dissolved.”.

Amendment of section 32 - Authority may attend winding-up proceedings

8. The principal Law is amended in section 32(1)(a) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”.

Amendment of section 35 - obligation of auditors

9. The principal Law is amended in section 35 as follows -

- (a) in subsection (1) as follows -
 - (i) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”; and
 - (ii) by inserting after the words “the mutual fund” the words “or the EU Connected Fund”;
- (b) in subsection (3) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (c) in subsection (4) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (d) in subsection (5) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”;
- (e) in subsection (7) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”; and

- (f) in subsection (9) by inserting after the words “a regulated mutual fund” the words “or a regulated EU Connected Fund”.

Amendment of section
36 - appeals

10. The principal Law is amended in section 36(1) by deleting the words “under section” and substituting the words “under sections 22C,”.

Amendment of section
40 - exemption from
compliance with Trade
and Business Licensing
Law (2007 Revision)

11. The principal Law is amended in section 40(2) by inserting after the words “a mutual fund” the words “or an EU Connected Fund”.

Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.