



TURKS AND CAICOS ISLANDS

CHAPTER 16.07
MUTUAL FUNDS ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

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Published in 2014
On the authority and on behalf of the Government of the Turks and Caicos Islands
By
The Regional Law Revision Centre Inc.

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Airport Road
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Turks and Caicos Islands
British West Indies

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Printed on the authority and on behalf of the Government of the Turks and Caicos Islands
by
The Regional Law Revision Centre Inc.
P.O. Box 1626, Hannah-Waver House, The Valley, AI-2640, Anguilla
Authorised Printers for this Revised Edition

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MUTUAL FUNDS ORDINANCE
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CHAPTER 16.07

MUTUAL FUNDS ORDINANCE

*(Ordinances 13 of 1998, 13 of 2000, 6 of 2001,
24 of 2004 and 16 of 2007)*

AN ORDINANCE TO MAKE PROVISION FOR THE LICENSING AND REGULATION OF MUTUAL FUND ADMINISTRATORS AND MANAGERS; AND FOR MATTERS INCIDENTAL OR RELATED THERETO.

Commencement

[16 March, 2001]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Mutual Funds Ordinance.

Interpretation

2. In this Ordinance, unless the context otherwise requires—

“accountant” means a person who—

(a) is qualified as an accountant by examination of one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a current member in good standing of one of those institutes; or

(b) possesses such other qualifications in accounting recognised by the Commission for the purposes of this Ordinance; *(Amended by Ords.6 of 2001 and 16 of 2007)*

“auditor” means an accountant or a firm of accountants holding a current certificate issued by the Commission certifying that in its opinion such person is of good standing and qualified to undertake the audit of mutual funds; *(Amended by Ords.6 of 2001 and 16 of 2007)*

“Commission” means the Turks and Caicos Financial Service Commission established under the Financial Services Commission Order 2001 and preserved and continued under the Financial Services Commission Ordinance; *(Inserted by Ord. 16 of 2007)*

“company” means a body corporate incorporated under the laws of the Islands or of any other jurisdiction;

“equity interest” means a share, a trust unit, or a partnership interest that carries an entitlement to participate in the profits or gains of the company, unit trust or partnership, and is redeemable or repurchasable at the option of the investor;

“exempt mutual fund” means a fund to which section 11 applies;

“general partner” means a general partner as defined in the Limited Partnerships Ordinance, or in case of a foreign limited partnership, the person who would be a general partner if the partnership were constituted under that Ordinance;

“Governor” means the Governor in Cabinet;

“Islands” means the Turks and Caicos Islands ;

“investor”, in respect of a mutual fund, means the legal holder of record representing an equity interest in the mutual fund but does not include a promoter or operator;

“licensed mutual fund” means a mutual fund licensed under section 8;

“mutual fund” means a company, a unit trust or a partnership that issues equity interests, the purpose or effect of which is the pooling of investors 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 person licensed under the Banking Ordinance the Insurance Ordinance or the Trustees (Licensing) Ordinance;

“mutual fund administration”, in respect of a mutual fund, means—

- (a) to manage the mutual fund;
- (b) to control all or substantially all of the assets of the mutual fund;
- (c) to administer the mutual fund;
- (d) to provide the principal office of the mutual fund in the Islands; or
- (e) to provide an operator to the mutual fund,

but does not include—

- (i) the provision of a registered office to the mutual fund where the usual corporate, secretarial and related services are provided, or the filing of returns and payment of fees under any of the Companies Ordinance; the Limited Partnerships Ordinances or the Trustees (Licensing) Ordinance ; or
- (ii) the activities of a general partner of a partnership which is a mutual fund;

“mutual funds administrator” means a company or partnership which conducts mutual fund administration in or from within the Islands and shall be—

- (a) a company incorporated in the Islands;
- (b) a foreign company incorporated outside the Islands registered under Part X of the Companies Ordinance;

(c) a limited partnership registered under the Limited Partnerships Ordinance; or

(d) a partnership constituted for the sole purpose of undertaking the administration of mutual funds.

“mutual fund manager” means a person or partnership appointed in accordance with section 10. (*Inserted by Ord.13 of 2000*)

“operator”, in respect of a mutual fund, means—

(a) where the mutual fund is a unit trust, a trustee of that trust; or

(b) where the mutual fund is a partnership, a general partner in that partnership; or

(c) where the mutual fund is a company, a director of that company;

“partnership” means a partnership constituted under the laws of the Islands or under the laws of a country or territory other than the Islands;

“professional adviser” means an attorney, an accountant or other qualified professional adviser;

“promoter”, in respect of a mutual fund, means any person whether within or without the Islands who causes the preparation or distribution of a prospectus 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;

“prospectus”, 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 a prospectus containing such information as is necessary to enable a prospective investor in a mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interest;

“recognised mutual fund” means a fund to which section 5 applies;

“record” means any means by which information may be stored;

“registered mutual fund” means a fund to which section 4 applies;

“share” means a share in the share capital of a mutual fund company and includes an interest in a mutual fund partnership and a unit in a mutual fund unit trust;

“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 profits or gains arising from the acquisition, holding, management or disposal of investments by the trustee of the trust.

(Amended by Ord. 16 of 2007)

PART II

MUTUAL FUNDS

Mutual funds to be registered, recognised or licensed

3. (1) Except as otherwise provided by this Part, it shall be an offence for the operator of a mutual fund to cause a mutual fund to carry on or attempt to carry on business in or from within the Islands unless such fund is registered or recognised under section 7 or licensed under section 8 or agreed to be an exempt mutual fund under section 11. *(Amended by Ord. 13 of 2000)*

(2) For the purpose of this section, a mutual fund carries on or attempts to carry on business in or from the Islands if—

- (a) it is incorporated or established in the Islands; or
- (b) regardless of its place of incorporation its administration is carried on in the Islands.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$100,000.

Registered mutual fund

4. (1) This section applies to a mutual fund constituted under the laws of the Islands —

- (a) that is only authorised to issue equity interests to investors who meet the prescribed qualifications; or
- (b) in which the equity interests are listed on a stock exchange (including over the counter market) recognised by the Commission for the purposes of this section; and the Commission shall cause a notice to that effect to be published in the *Gazette*.

(Amended by Ords.6 of 2001 and 16 of 2007)

(2) An application for the registration of a mutual fund to which this section applies shall be made in accordance with section 7.

Recognised mutual fund

5. (1) This section applies to a mutual fund—

- (a) that is constituted under the laws of a foreign country or territory; and

(b) the equity interests of which are listed on a stock exchange (including over the counter market) specified by the Commission by notice published in the *Gazette*. (Amended by Ords. 6 of 2001 and 16 of 2007)

(2) An application for the recognition of a mutual fund to which this section applies shall be made in accordance with section 7.

Licensed mutual fund

6. (1) This section applies to a mutual fund that does not qualify under section 4 or section 5.

(2) An application for the licensing of a mutual fund to which this section applies shall be made in accordance with section 8.

Applications for registration and recognition of mutual funds

7. (1) An application for the registration of a mutual fund to which section 4 applies or the recognition of a mutual fund to which section 5 applies, shall be made to the Commission in the prescribed form by a mutual funds administrator by or on behalf of the mutual fund, and shall be accompanied with—

- (a) evidence of the matters referred to in section 4(1) or 5(1), as the case may be;
- (b) particulars of the qualifications and experience of each promoter of the fund;
- (c) the current prospectus or, if one has not been finally settled, the latest draft of the prospectus together with a synopsis of the prospectus;
- (d) the prescribed application fee; and
- (e) such further particulars as may be prescribed.

(Amended by Ord. 13 of 2000 and 16 of 2007)

(2) The Commission upon being satisfied that each promoter is of sound reputation, and that a mutual funds administrator will be providing an office in the Islands for the fund shall register or, as the case may be, recognise the mutual fund for the purposes of this Ordinance, and shall cause a notice to that effect to be published in the *Gazette*. (Amended by Ords. 6 of 2001 and 16 of 2007)

(3) A decision of the Commission refusing to register or recognise a mutual fund under this section is final and is not subject to any appeal. (Amended by Ords. 6 of 2001 and 16 of 2007)

Applications for licensing of mutual funds

8. (1) An application for the licensing of a mutual fund to which section 6 applies, shall be made to the Commission in the prescribed form, and shall be accompanied with the prescribed particulars and fee.

(2) The Commission may require the applicant to supply such information and provide such documents for examination as in its opinion are

necessary or expedient to enable it to determine whether a licence should be granted and the terms and conditions which any licence ought to contain.

(3) The Commission upon being satisfied that each promoter is of sound reputation and that the arrangements for the administration of the fund are satisfactory, may license the mutual fund and may include in the licence such terms and conditions as it thinks fit to impose.

(4) The Commission may vary a licence which it has issued under this section on the application of the licensee.

(5) The decision of the Commission refusing to licence a mutual fund under this section or including terms and conditions in a licence is final and not subject to any appeal.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Fees

9. (1) A mutual fund which is either registered or recognised under section 7 or licensed under section 8 or agreed to be an exempt mutual fund under section 11, shall pay the prescribed fee for the year in which it is first registered, recognised, licensed or agreed, as the case may be.

(2) A mutual fund registered or recognised under section 7 or licensed under section 8 or agreed to be an exempt mutual fund under section 11 shall, on or before the thirty-first day of March every year following the year of registration, recognition licensing, or agreed, as the case may be, pay the prescribed annual fee.

(3) If the annual fee is not paid on or before the thirty-first day of March, there shall be payable by the mutual fund in addition to the annual fee, a penalty fee equal to the annual fee for each month or part of a month during which the annual fee imposed by virtue of this section remains unpaid; and the Crown may sue for such amount as a civil debt.

(Amended by Ord 13 of 2000)

Mutual fund manager

10. (1) It shall be an offence for the operator of a mutual fund to cause a mutual fund to issue equity interests without the mutual fund having a mutual fund manager that—

(a) shall be granted discretionary authority by the fund to acquire, hold, manage or dispose of the fund's investments on behalf of the fund; or

(b) shall advise the fund on a continuing basis on its investments.

(2) A mutual fund manager shall not be appointed under this section unless he or it is licensed by a regulatory authority in the countries in which he or it carries on the activities specified in subsection (1). *(Inserted by Ord. 13 of 2000)*

Exempt mutual funds

11. (1) A mutual fund in which the equity interests are held by not more than fifteen investors, the majority of whom are capable of appointing or removing the operator of the fund is exempt from the requirements of this Part relating to registration, recognition and licensing. (*Amended by Ord.13 of 2000*)

(2) A mutual fund that is only authorised to issue equity interests to professional investors is exempt from the requirements of this Part relating to registration, recognition and licensing, if at all times a mutual funds administrator provides an office in the Islands for the fund. (*Amended by Ord.13 of 2000*)

(3) For the purposes of subsection (2), a person is a professional investor if he satisfies the prescribed qualifications.

(4) An application for agreement in respect of a mutual fund to which this section applies, shall be made to the Commission in the prescribed form and shall be accompanied with the prescribed particulars and fee. (*Inserted by Ord.13 of 2000 and Amended by Ord. 16 of 2007*)

(5) The Commission may require the applicant to supply such information and provide such documents for examination as in its opinion are necessary or expedient to enable it to agree that the mutual fund is an exempt mutual fund. (*Inserted by Ord.13 of 2000 and Amended by Ord. 16 of 2007*)

PART III

MUTUAL FUNDS ADMINISTRATION

Mutual Funds Administrator

Mutual funds administrator to be licensed

12. (1) Except as otherwise provided in this Ordinance, it shall be an offence for a person to conduct mutual fund administration in or from within the Islands—

(a) without being in possession of a licence issued under this Part authorising him to do so; or

(b) in breach of any condition of his licence.

(2) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine of \$100,000.

(3) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine of \$50,000.

Application for licence

13. (1) A company or a partnership may apply to the Commission in the prescribed form for the grant of a mutual funds administrator's licence or a restricted mutual funds administrator's licence.

(2) An application for a licence under this section shall be accompanied with—

- (a) particulars of the qualifications and experience of the applicant;
- (b) such further particulars and documents as the Commission may require to be furnished to him for the purpose of determining the application;
- (c) the prescribed fee.
(Amended by Ords. 6 of 2001 and 16 of 2007)

Mutual funds administrator's licence

14. (1) The Commission upon being satisfied that the applicant is qualified to administer mutual funds by virtue of his knowledge and experience and is in all respects a fit and proper person to administer such funds, may grant the applicant—

- (a) a mutual funds administrator's licence in the prescribed form that authorises the licensee to conduct mutual fund administration in respect of an unlimited number of mutual funds; or
- (b) a restricted mutual funds administrator's licence in the prescribed form that authorises the licensee to conduct mutual fund administration only in respect of the mutual funds specified from time to time in the licence,

and shall cause a notice to that effect to be published in the *Gazette*.

(2) Without prejudice to section 15, the Commission may include in a licence in any particular case such conditions as appear to it to be necessary or expedient.

(3) A decision of the Commission refusing to license an administrator under this section or including a condition in a licence is final and is not subject to any appeal or review.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Conditions of mutual funds administrator's licence

15. It shall be a condition of every licence granted under section 14 that the licensee shall at all times act in good faith and in the interests of the investors in the mutual funds and—

- (a) in respect of every mutual fund which it is administering—
 - (i) shall cause annual accounts to be prepared in accordance with generally accepted accounting principles acceptable to the Commission and audited by an independent auditor, and shall submit such accounts to the investors in the fund within four

months of the end of the financial year; (*Amended by Ords. 6 of 2001 and 16 of 2007*)

- (ii) shall, within thirty days of its occurrence, notify the Commission of any change, or proposed change, in the information (including any business plan or prospectus) contained in, or supplied in connection with, the application for the registration, recognition or licensing of the mutual fund, as the case may be;
 - (iii) shall ensure that the current prospectus in respect of equity interests in the mutual fund shall at all times describe the equity interests in all material respects; and shall 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 the equity interests; and shall ensure that each such current prospectus be filed with the Commission;
 - (iv) shall file within twenty-one days of its occurrence, an amended prospectus with the Commission if at any time there is any change that materially affects any information in a prospectus filed with the Commission or in the prescribed details of such prospectus;
 - (v) shall maintain such records, prepare such reports and provide such information as may be required by this Ordinance;
 - (vi) shall ensure that the prescribed annual fees are paid in a timely manner;
- (b) in respect of the business of mutual funds administrator—
- (i) shall cause annual accounts to be prepared in accordance with generally accepted accounting principles acceptable to the Commission and audited by an independent auditor, and shall submit such accounts to the Commission within such reasonable time as the Commission specifies; (*Amended by Ords. 6 of 2001 and 16 of 2007*)
 - (ii) shall carry on such business only in accordance with the information referred to in its application for a licence;
 - (iii) shall ensure that the prescribed annual fees are paid in a timely manner.

Duty to report

16. It shall be the duty of a mutual funds administrator to report to the Commission—

- (a) any concerns it may have regarding the honesty, good character or conduct of any operator or manager of a mutual fund under its administration, or the solvency of that operator or manager or of the mutual fund;

- (b) forthwith upon its occurrence, any amendment or termination of an agreement between it and a mutual fund which it administers.

Additional requirements

Mutual funds administrator to disclose beneficial interest

17. Every mutual funds administrator shall disclose ownership, beneficial interest and shareholdings in that company or partnership, and the following specific requirements shall apply—

- (a) in the case of a company the articles of association shall prohibit the issue of bearer shares in any form;
- (b) in the case of a limited partnership, the register of members shall be disclosed and ultimate beneficial owners of partnership units identified.

Restriction on transfer of interest

18. (1) Notwithstanding any law to the contrary—

- (a) no transfer or other disposition of any interest in a mutual funds administrator, or of any dealing in such an interest; and
- (b) no appointment of any new or additional director or manager of a mutual funds administrator,

shall have effect unless such transfer, disposition or dealing or appointment has been approved by the Commission.

(2) Where any interest in the mutual funds administrator is to be transferred or disposed of from one person to another or dealt in or where a new or additional director or manager of the mutual funds administrator is to be appointed, the mutual funds administrator shall apply to the Commission for approval of such transfer, disposition or dealing or appointment; and the Commission may give its approval unconditionally or subject to conditions.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Mutual funds administrator to have two directors

19. Every mutual funds administrator which is a company shall provide in its Articles of Association that there be not less than two directors at any time and further shall ensure that there are two directors at all times.

Mutual funds administrator's returns

20. (1) Every mutual funds administrator shall furnish to the Commission, no later than the first day of March in each year, the following returns in respect of each fund that it has administered during the preceding calendar year—

- (a) a list of all mutual funds for which it acts indicating any additions or deletions which have occurred since the previous annual return;

- (b) a list of all exempt mutual funds for which it acts indicating any additions or deletions which have occurred since the previous annual return;
- (c) a certificate signed by a director or partner of the administrator stating that to the best of his knowledge and belief the administrator of such fund has conducted its business properly and in compliance with the Ordinance and any conditions attached to its licence.

(2) The Commission may prescribe additions, deletions or modifications to the returns required to be made under this section. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

PART IV

SUPPLEMENTARY

Licence to be displayed

21. A licence issued under this Ordinance shall be prominently displayed on the premises where the business of the licensee is being carried on.

Restriction on use of certain words and titles without approval of Commission

22. (1) No person shall, without the approval in writing of the Commission, in any description or title under which he carries on business in or from within the Islands use (whether in English or in any other language) any word which implies the carrying on of business as a mutual fund or a mutual fund administrator including but not limited to “Mutual Fund”, “Fund Manager”, “Growth Fund”, and “Income Fund”. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

(2) The Commission may refuse to grant a mutual fund licence under this Ordinance in respect of an applicant fund in a name that—

- (a) is identical with that of any company, firm, business or other entity, whether or not within the Islands, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive; or
- (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within the Islands or elsewhere; or
- (c) is likely to suggest, falsely, that the fund has a special status in relation to or derived from Government or the Crown. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

(3) If, in the opinion of the Commission, a mutual fund is carrying on business in or from within the Islands in a name that the Commission would

have refused by virtue of subsection (2), the Commission may direct the mutual fund to change its name to a name approved by it. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

(4) The operator of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (3).

Offences

23. (1) Any person who, without reasonable cause, contravenes any prohibition, or fails to comply with any direction made by the Commission under this Ordinance commits an offence and is liable on summary conviction to a fine of \$50,000. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

(2) Any person who in compliance or purported compliance with this Ordinance makes any representation that he knows to be false or does not believe to be true (the onus of proof of his belief being upon him) commits an offence and is liable on summary conviction to a fine of \$50,000.

Regulations

24. The Governor may make regulations for carrying out the purposes of this Ordinance and, without derogating from the generality of the foregoing, may make regulations—

- (a) prescribing anything by this Ordinance required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provision of this Ordinance;
- (c) prescribing the forms to be used;
- (d) prescribing the format of any returns to be made under this Ordinance;
- (e) prescribing the capital and liquidity margins and ratios to be maintained by mutual funds administrators under this Ordinance;
- (f) amending the fees payable under this Ordinance;
- (g) prescribing such other things as are required to be prescribed under this Ordinance or may be incidental to, or conducive of, its purpose.

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MUTUAL FUNDS REGULATIONS
ARRANGEMENT OF REGULATIONS

General

REGULATION

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SCHEDULE 3: Prospectus
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MUTUAL FUNDS REGULATIONS – SECTION 24

(Legal Notice 11/2001)

Commencement

[16 March 2001]

General

Short title

1. These Regulations may be cited as the Mutual Funds Regulations.

Exempt mutual funds

Qualifications of professional investors

2. For the purpose of section 11 of the Mutual Funds Ordinance, the qualifications of a professional investor shall be that—

- (a) he is a qualified licensed securities broker; or
- (b) he is acting either on his own account or on behalf of an investor with investments of \$5,000,000 or more in securities quoted on the stock exchanges specified in Schedule 1; and

under either paragraph (a) or (b) from his application form he satisfies the Commission that he has sufficient knowledge and experience to understand the funds stated in the prospectus. *(Amended by Ords. 6 of 2001 and 16 of 2007)*

Applications and forms

Reference to numbered forms

3. In regulations 5 to 10 the references to numbered forms shall be to the forms in Schedule 2.

Qualifications for investors in registered mutual fund

4. For the purposes of a registered mutual fund the qualifications for an investor shall be that—

- (a) he has investments of \$100,000 or more in securities quoted on the stock exchanges specified in Schedule 1; and
- (b) from his application form he satisfies the Commission that he has sufficient knowledge and experience to understand the funds stated in the prospectus.

Application form for registration of a mutual fund

5. The form of application for registration of a mutual fund shall be form 1.

Application form for recognition of a mutual fund

6. The form of application for recognition of a mutual fund shall be form 2.

Application for licensing a mutual fund

7. (1) For the purpose of this Regulation a “controller” is a person who holds more than 10% of the equity interests in a mutual fund.

- 2) The form of application for licensing of a mutual fund shall be form 3.
- (3) An application for licensing of a mutual fund shall be accompanied by—
- (a) evidence of each operator’s—
 - (i) experience and qualifications to undertake the duties and responsibilities of a licensed mutual fund; and
 - (ii) sound reputation;
 - (b) a curriculum vitae for each operator or controller together with biographical details including proof of identity;
 - (c) particulars of the mutual fund’s management structure;
 - (d) a copy of the management agreement;
 - (e) an assurance that there will be at least two directors where the mutual fund is a company;
 - (f) a copy of the fund manager’s authorisation;
 - (g) a copy of the proposed prospectus in the form and with the content set out in Schedule 3;
 - (h) a copy of the business plan giving for the next three years details of anticipated assets and liabilities and a forecast of income;
 - (i) a note of the procedures within the mutual fund for ensuring that the fund’s investment policies are adhered to;
 - (j) evidence that the mutual fund’s investment policies include—
 - (i) adequate diversification of investments;
 - (ii) restrictions on speculative investments;
 - (iii) restrictions on the amount of capital which can be borrowed; and
 - (iv) requirements about the capacity of liquid assets to meet general liabilities;
 - (k) an assurance of an annual certificate that the mutual fund is in compliance with the conditions of its licence;
 - (l) a copy of the audited accounts for the past two years if the applicant has been in existence for two years;
 - (m) where the mutual fund is a company, a copy of the memorandum and articles of association and certificate of incorporation;

- (n) where the mutual fund is a partnership, a copy of the partnership agreement; and
- (o) where the mutual fund is a unit trust, a copy of the trust deed.

Application for mutual funds administrator's licence and restricted licence

8. The form of application for a mutual funds administrator's licence or for a restricted mutual funds administrator's licence shall be form 4.

Administrator's licence and return

Return form of mutual funds administrators

9. The form of a mutual funds administrator's licence or a restricted mutual funds administrator's licence shall be form 5 or form 6 respectively.

Mutual funds administrator's return

10. The form of the return by a mutual funds administrator of the mutual funds for which it acts shall be form 7.

Fees

Fees

11. (1) The fees which shall accompany an application for registration, recognition or licensing of a mutual fund or for a mutual funds administrator's licence or for a restricted mutual funds administrator's licence for the first year shall be as set out in Part 1 of Schedule 4.

(2) The fee paid for each year of registration, recognition, licensing or administration after the first year shall be as set out in Part 2 of Schedule 4.

Mutual funds administrator's obligations

Mutual funds administrator's obligations

12. A mutual funds administrator shall—

- (a) ensure that the promoter and operator of a client mutual fund can fulfil their respective obligations in respect of the mutual fund;
- (b) communicate with investors and the public with regard to the financial affairs of the fund;
- (c) promote sales and accept subscriptions from new investors where the contract between the mutual fund and him allows him to do so;
- (d) maintain the mutual fund's principal books and records of accounts in the Islands;

- (e) publish or furnish the offer and redemption price of equity interests in the mutual fund;
 - (f) conduct meetings with investors and managers;
 - (g) make distributions of investor interests;
 - (h) provide an annual certificate of solvency stating that the assets of the mutual fund exceed the fund's liabilities by 15%; and
 - (i) provide evidence that the mutual funds administrator continues to hold an insurance policy with an insurance company acceptable to the Commission to cover any claims arising from negligence or breach of duty by its employees.
-

SCHEDULE 1

(Regulation 2)

STOCK EXCHANGES

The stock exchanges to which reference is made in regulation 2 (b)(ii) are stock exchanges authorised to do business in—

- (a) Australia
 - (b) Bermuda
 - (c) Canada
 - (d) Cayman Islands
 - (e) Hong Kong
 - (f) Japan
 - (g) A Member State of the European Union
 - (h) New Zealand
 - (i) Singapore
 - (j) Taiwan, and
 - (k) the United States of America.
-

SCHEDULE 2

(Regulations 3 and 5 to 10)

FORMS

FORM NO. 1

APPLICATION FOR REGISTRATION OF A MUTUAL FUND

1. Name of company, unit trust or partnership which is the mutual fund applying for registration
.....
2. Where a company—
 - (a) registered office of company
.....
.....
.....
 - (b) date of incorporation
 - (c) place of incorporation
 - (d) names and addresses of directors
.....
.....
.....
 - (e) name and address of parent company
.....
.....
.....
 - (f) name and address of regulator of parent company
.....
.....
.....
3. Where a unit trust, names and addresses of trustees
.....
.....
.....
4. Where a partnership, name and address of partnership and of each partner

.....
.....
.....

5. Local management company

.....

6. Name and address of auditor

.....

.....

7. Name and address of proposed custodian of documents and records

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.....

.....

Information to Accompany Form

(a) Evidence that the mutual fund is constituted under the laws of the Islands and—

- (i) is authorised to issue equity interests only to investors who meet the qualifications in regulation 4; or
- (ii) its equity interests are listed on a stock exchange including over the counter market, recognised by the Commission for the purposes of section 4(1) of the Ordinance and with a notice of recognition published in the *Gazette*;

(b) Three references one of financial character from a bank with which the applicant has had a long standing relationship;

(c) Curriculum vitae for the promoter and operator of the mutual fund together with biographical details including proof of identity, past experience and qualifications;

(d) A copy of the audited accounts for the past two years if available;

(e) Where a company, a copy of the memorandum and articles of association and the certificate of incorporation;

(f) Where a unit trust, a copy of the trust deed;

(g) Where a partnership, a copy of the partnership agreement;

(h) A copy of the proposed management agreement;

(i) A copy of the proposed prospectus; and

(j) The address of the applicant's office in the Islands.

.....

FORM NO. 2

APPLICATION FOR RECOGNITION OF A MUTUAL FUND

1. Name of company, unit trust or partnership applying for recognition

.....

2. Where a company—

(a) registered office of company

.....

.....

.....

(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

.....

.....

.....

.....

(e) name and address of parent company

.....

.....

.....

(f) name and address of regulator of parent company

.....

.....

.....

3. Where a unit trust, names and addresses of trustees

.....

4. Where a partnership, name and address of partnership and of each partner

.....

.....

.....

- 5. Local management company
.....
- 6. Name and address of auditor
.....
.....
.....
- 7. Name and address of proposed custodian of documents and records
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.....

Information to Accompany Form

- (a) Evidence that the mutual fund—
 - (i) is constituted under the laws of a foreign country or territory; and
 - (ii) its equity interests are listed on a stock exchange including over the counter market and specified by the Commission by notice published in the *Gazette*.
- (b) A copy of the prospectus; and
- (c) The address of the applicant's office in the Islands.
.....

FORM NO. 3

APPLICATION FOR LICENSING A MUTUAL FUND

1. Name of company, unit trust or partnership which is the mutual fund applying to be licensed

.....

2. Where a company—

(a) registered office of company

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(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

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(e) name and address of parent company

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(f) name and address of the regulator of parent company

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3. Where a unit trust, names and addresses of trustees

.....
.....
.....

4. Where a partnership, name and address of partnership and of each partner

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5. Local management company
.....
6. Name and address of auditor
.....
.....
.....
7. Name and address of proposed custodian of documents and records
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FORM NO. 4

APPLICATION FOR MUTUAL FUNDS ADMINISTRATOR'S LICENCE

1. Name of company or partnership applying for mutual funds administrator's licence

.....

2. Whether the application is for a licence—

(a) to conduct mutual fund administration in respect of an unlimited number of mutual funds; or

(b) to conduct mutual fund administration only in respect of the mutual funds specified from time to time in the licence.

3. Where a company—

(a) registered office of company

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.....
.....

(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

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.....
.....

(e) name and address of parent company

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.....

(f) name and address of regulator of parent company

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.....

4. Where a partnership name and address of partnership and of each partner

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5. Name and address of auditor

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.....

6. Name and address of proposed custodian of documents and records

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.....
.....

PARTICULARS TO ACCOMPANY APPLICATION

(a) Particulars of the applicant's—

- (i) knowledge, qualifications and experience; and
- (ii) fitness and propriety to administer mutual funds;

(b) An assurance that the promoter and operator of the client mutual fund can fulfil their respective obligations in respect of the mutual fund;

(c) An assurance that the client mutual fund will retain its principal books and records of accounts in the Islands;

(d) Evidence that the applicant holds an insurance policy with an insurance company acceptable to the Commission to cover any claim arising from negligence or breach of duty by its employees;

(e) A code of ethics and work which will include a prohibition on—

- (i) misuse of insider information; and
- (ii) lending or making transactions in any investment in which a related person is involved; for the purpose of this paragraph a related person in relation to a mutual funds administrator has the same meaning as a “related person” has in relation to a licensed financial institution in section 15(3) of the Banking Ordinance; and

(f) The address of the applicant's office in the Islands.
.....

FORM NO. 5

MUTUAL FUNDS ADMINISTRATOR'S LICENCE

1. operating
from in the Turks and Caicos Islands are
granted an unrestricted licence to conduct mutual funds administration in the Islands.

2. This licence is issued under and subject to the Mutual Funds Ordinance and is
subject to any conditions and restrictions stated on this licence.

.....
COMMISSION

Date

Licence No.
.....

FORM NO. 6

RESTRICTED MUTUAL FUND ADMINISTRATOR'S LICENCE

1. operating
from in the Turks and Caicos Islands are
granted licence in the Islands.

2. The licence is issued under and subject to the Mutual Funds Ordinance, restricts
the licensee to conduct mutual funds administration only in respect of the mutual funds
specified on this licence and is subject to any further conditions and restrictions stated
on this licence.

.....
COMMISSION

Date

Licence No.
.....

FORM NO. 7

RETURN BY MUTUAL FUNDS ADMINISTRATOR OF MUTUAL FUNDS

The following are the funds for which [] [*name of mutual funds administration*]
acts—

.....
.....
.....
.....
.....
.....

Signed

Date

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SCHEDULE 3

(Regulation 7)

**PROSPECTUS
FOR THE OFFERING OF SHARES
IN
XZY COMPANY**

1. The prospectus shall contain the following in a prominent place in the prospectus before the information listed in paragraph 2—

- (a) a warning—
 - (i) of the risks involved in investment;
 - (ii) that there is no guarantee against loss; and
 - (iii) that income may increase or decrease;
- (b) restrictions which may apply to the distribution to investors in the mutual fund of their profits, gains or equity interests; and
- (c) the names of—
 - (i) members of the board of directors of the mutual fund;
 - (ii) the investment adviser;
 - (iii) the fund manager;
 - (iv) the custodian of fund assets, documents, and records;
 - (v) the auditors; and
 - (vi) the legal advisers.

2. The prospectus shall contain the following matters in numbered paragraphs.

- (1) Definition—

Definition of terms and interpretation of words and phrases.
- (2) The company—
 - (a) background information on the company as a legal entity, i.e. its incorporation;
 - (b) directors and company secretary;
 - (c) the share capital.
- (3) The mutual fund—
 - (a) investment objectives;
 - (b) investment policy;
 - (c) dividend policy;
 - (d) investment and borrowing restrictions;

- (e) investment techniques;
 - (f) risk factors.
- (4) Administration of the mutual fund—
- (a) classes of shares;
 - (b) determination of net asset value of the mutual fund; the basis for valuation of securities shall be—
 - (i) calculation of the net asset value;
 - (ii) allocation of assets and liabilities;
 - (iii) frequency of valuation; and
 - (iv) treatment of unquoted securities;
 - (c) subscription price per share;
 - (d) procedure for application of shares;
 - (e) method of payment and currency of subscription to the mutual fund;
 - (f) purchase restrictions—
 - (i) repurchase of shares;
 - (ii) mandatory repurchase of shares and forfeiture of distribution;
 - (g) issue of certificates to purchaser of shares;
 - (h) availability and publication of share prices;
 - (i) temporary suspension of valuation and issue and repurchase of shares;
 - (j) settlement terms and procedures.
- (5) Management and administration—
- (a) state the identity of the manager and the operators and give the date and a summary of the terms, of their agreement with the mutual fund;
 - (b) state the identity of the investment adviser and give the date and a summary of his terms of agreement with the mutual fund;
 - (c) state the identity of the custodian of fund assets, documents and records and give the date and a summary of his terms of agreement with the mutual fund;
 - (d) procedures for dealing with income and expenditure, e.g., calculation of expenses on accrual basis;
 - (e) procedure for dealing with tax issues;
 - (f) general issues—
 - (i) procedure for dealing with conflict of interest;
 - (ii) meetings and voting rights of shareholders;
 - (iii) reports;
 - (iv) termination of the mutual fund;

- (v) registered office or address to which communications can be sent;
 - (vi) address where documents can be inspected and copied; (g) disclosure of how fees and other charges are calculated.
-

SCHEDULE 4

(Regulation 11)

FEEs FOR REGISTRATION, RECOGNITION AND LICENSING

PART 1

APPLICATION FEES

Registration of mutual fund	\$500
Recognition of mutual fund	\$1, 200
Licensing of mutual fund	\$500
Mutual fund administrator's licence	\$2,000
Restricted mutual fund administrator's licence	\$1,000
Exempt mutual fund	\$200

PART 2

ANNUAL FEES

Registered mutual funds	\$500
Recognised mutual fund	\$200
Licensed mutual fund	\$500
Mutual fund administrator's licence	\$2,000
Restricted mutual fund administrator's licence	\$1,000
Exempt mutual fund	\$200

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