

No. of 1996

VIRGIN ISLANDS

MUTUAL FUNDS ACT, 1996

ARRANGEMENT OF SECTIONS

Section

Preliminary

1. Short title and commencement.
2. Interpretation.

PART I
Administration

3. Appointments.
4. Delegation of power.
5. Annual report.
6. Records of the Registrar.
7. Mutual Funds Advisory Committee.

PART II
Public Funds

8. Registration.
9. Application for registration.
10. Application for consent to be registered.
11. Power to grant registration or consent.
12. Registration procedure.
13. Accounting records and financial statements.
14. Duty to publish and file a prospectus.

15. Certificate of compliance.
16. Investors' rights.
17. Limitation of action and amount recoverable.

PART III
Private Funds

18. Recognition.
19. Application for recognition.
20. Power to grant recognition.
21. Recognition procedure.

PART IV
Managers and Administrators

22. Licensing.
23. Application for a licence.
24. Power to grant licences.
25. Licensing procedure.

PART V
General

26. Notices to accompany applications.
27. Form and conditions of certificates and licences.
28. Annual fees.
29. Cancellation of certificates or licences.
30. Cancellation procedure.
31. Appeal of cancellations.
32. Appeal by existing entities.
33. Appeal procedure.
34. Grant or cancellation to be published.
35. Power to grant exemptions.

36. Access to information and records.
37. Immunity and actions by the Registrar.
38. Confidentiality.
39. Exemption from certain enactments.
40. Offences and penalties.
41. Power of the Minister to vary the Schedule.
42. Regulations.
43. Transitional.

SCHEDULE 1

SCHEDULE 2

I Assent

Governor
, 1996

VIRGIN ISLANDS

NO. OF 1996

An Act to provide for the regulation,
authorisation and Control of mutual funds
and their managers and administrators carrying on
business in or from within the Virgin Islands and for
related matters.

[Gazetted , 1996]

ENACTED by the Legislature of the Virgin
Islands as follows:

Preliminary

Short title 1. This Act may be cited as the Mutual and
Funds Act, 1996 and shall come into force
on
Commencement. such date as the Governor may appoint by
proclamation published in the Gazette.

Interpretation. 2. (1) In this Act, unless the context
otherwise requires,

"**administrator**" means a person who,

(a) for valuable consideration

provides a mutual fund with
administrative services and
facilities alone or together with
accounting services; or

(b) is entitled to provide to
mutual
funds (by whatever name called) such
services and facilities as provided

in paragraph (a) under the laws of a recognised Country or Jurisdiction;

"auditor" means a person who is entitled to practice as public accountant and to perform audits under the laws of the Territory or of a recognised Country or Jurisdiction;

"company" means a body corporate, wherever incorporated or constituted;

"existing entity" means

- (a) a public fund,
- (b) a private fund, or
- (c) a manager or administrator,

which was carrying its business in or from within the Territory immediately before the coming into force of this Act;

"financial year", in relation to a mutual fund, means the period not exceeding fifty-three weeks at the end of which the balance of the fund's accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, then calendar year;

"Governor" means the Governor in Council;

"investor" means a person who owns or holds shares (as herein defined) issued by a mutual fund;

"manager" means a person who,

- (a) for valuable consideration, provides a mutual fund with management services alone or together with investment advice or administrative services; or
- (b) is entitled to provide to mutual funds (by whatever name called), such services or advice as provided in paragraph (a) under the laws of a recognised country or jurisdiction;

"Minister" means the minister responsible for the administration of this Act;

"mutual fund" or "fund" means a company
 incorporated, a partnership formed
 or a unit trust organised, under the laws of the
 Territory or of any other country or
 jurisdiction which

- (a) collects and pools funds for the
 purpose of
 collective investment in accordance with
 the principle of risk spreading, and
- (b) issues shares (as herein defined)
 that entitle the
 holder to receive on demand or within a
 specified period after demand an amount
 computed by reference to the value of a
 proportionate interest in the whole or in
 a part of the net assets of the company,
 the partnership or the unit trust, as the
 case may be,

and includes an umbrella fund whose
 shares are split into a number
 of different class funds or sub-funds;

"officer" includes

- (a) a director, alternate director, the
 president, a
 vice-president, the secretary, the
 treasurer, and any other person designated
 as an

officer of a company by by-law, by
 resolution of the directors or by any
 other instrument;

- (b) a general partner of a partnership;
 and
- (c) a trustee of a unit trust;

"partnership" means a contractual relation
 which subsists between persons
 carrying on a business in common with a view of
 profit and includes a partnership formed under
 the laws of the Territory or of any other
 country or jurisdiction notwithstanding any
 statutory definition thereof to the contrary;

"person" includes an individual natural person, a mutual fund, any company, partnership, unit trust or trustee;

"private fund" means a mutual fund that

(a) the shares issued by it are not offered to the general public and are owned or held by

(i) not more than fifty investors

where the first time investment of each of such investors is not less than twenty-five thousand dollars in the United States currency or the equivalent in any other currency; or

(ii) any number of investors where

the first time investment of each of such investors is not less than two hundred and fifty thousand dollars in the United States currency or the equivalent in any other currency; or

(b) is designated as private fund by regulations;

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

"prospectus" means any prospectus or amended prospectus, notice, circular, advertisement, information memorandum or other invitation offering to the public for subscription or purchase any shares issued by a mutual fund;

"public fund" means a mutual fund which, by means of publishing or distributing a prospectus or by any other means, offers any shares it issues for subscription or purchase to any interested member of the general public;

"recognised Country or Jurisdiction" means any Country or Jurisdiction recognised by the Minister under subsection (3);

"Registrar" means the Registrar of Mutual Funds or Deputy Registrar of Mutual Funds appointed under this Act or such other person as may be performing the duties of the Registrar under this Act;

"regulations or the regulations" means regulations made under this Act;

"security" means any document or instrument constituting evidence of title to or interest in the capital assets, property, profits, earnings or royalties of any person, as herein defined, and includes

- (a) bonds, debentures, notes, mortgages and other evidence of indebtedness;
- (b) any share, stock, document or instrument commonly known as a security; and
- (c) any document or instrument constituting evidence of an option, subscription or other interest in a security or constituting evidence of an interest in an association of legatees or heirs;

"share" means 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;

"underwriter" means a person who,

- (a) as principal, agrees to purchase shares issued by mutual funds with a view to offering them

to the public; or

- (b) as agent for a mutual fund, offers
for sale or sells
to the public shares issued by the mutual
fund;

"unit trust" means a contractual arrangement
creating a trust under the
laws of the Territory or of any other country or
jurisdiction in which unit holders participating
in the arrangement are the beneficiaries of the
trust.

- (2) In this Act,

- (a) every company incorporated and

every partnership formed or
unit trust organised under the laws
of the Territory for the purpose of
carrying on business as a mutual
fund, a manager or administrator
shall, if carrying on business
anywhere outside the Territory, be
deemed to be carrying on business
from within the Territory; and

- (b) the expression "carrying on

business from within the
Territory" includes carrying on
business outside the Territory from
a place of business or a registered
office within the Territory.

- (3) The Minister may recognise any
Country or Jurisdiction for the purposes
of this Act and shall cause a notice of such
recognition to be published in the Gazette.

PART I

Administration

Appointments.

3. (1) There shall be appointed

- (a) a Registrar of Mutual Funds
and
Deputy Registrar of Mutual Funds
both of whom shall be public
officers; and

(b) any other public officers as
may be
necessary to administer this Act.

(2) The Registrar has

(a) the duty to supervise mutual
funds
and managers and administrators in
accordance with this Act; and

(b) in and for the discharge of
that
duty, the powers conferred upon him
by this Act.

(3) The Registrar may, upon request by
any person to whom this Act applies and
the payment of the fee set out in Part I of Schedule 2
or such other amount as may be prescribed by
regulations, issue to such person a certificate of
compliance in such form as the Registrar thinks fit.

(4) The Registrar, the Deputy Registrar
or any employee of the office of the
Registrar shall not, knowingly, have any financial
interest in any person registered, recognised or
licensed under this Act.

Delegation of

4. (1) The Governor and the Minister may power.
in writing delegate any of their
respective powers conferred upon
them by this Act to the Registrar and thereupon this
Act shall be
read as if those powers were originally conferred upon
the Registrar.

(2) The Registrar may delegate any of
his powers or duties under this Act to the
Deputy Registrar and thereupon this Act shall be read
as if those powers or duties were originally conferred
or imposed upon the Deputy Registrar.

Annual report.

5. (1) The Registrar shall, on or before
the 30th day of April in each year,
prepare and deliver to the Minister a report
consisting of

(a) a summary of the nature and
number of

- (i) filings made under this Act;
- (ii) registrations, recognitions and licences granted under this Act;
- (iii) enforcement proceedings
 - or disciplinary measures taken under this Act;
 - and
- (b) a general commentary on the law relating to the mutual funds industry and on the practice and development of that law.

(2) On receiving the report delivered to him pursuant to subsection (1), the Minister shall lay the report before the Legislative Council.

Records of the Registrar.

6. (1) The Registrar shall keep separate registers for all
- (a) registered public funds;
 - (b) recognised private funds; and
 - (c) licensed managers and administrators.
- (2) The registers required under subsection (1) shall show
- (a) the information required under section 26 (a), (b) and (c) with respect to each registered public fund, recognised private fund and licensed manager or administrator;
 - (b) the date of registration, recognition or licence, as the case may be; and
 - (c) the status of such registration, recognition or licence if cancelled and the date thereof.

(3) Registers kept by the Registrar shall be in such form as he may determine and, subject to section 38, shall be open to public inspection during ordinary office hours on payment of an inspection fee of five dollars or such other amount as may be prescribed by regulations.

Mutual Funds

7. (1) There shall be a Committee called Advisory Committee. the Mutual Funds Advisory Committee which shall consist of not more than five persons appointed by the Minister from among members of the private sector who are known to him to have adequate knowledge of and experience in the mutual funds industry.

(2) The Minister shall appoint a senior public officer who shall be the Chairman of the Mutual Funds Advisory Committee and the Registrar of Mutual Funds shall be an ex-officio member thereof.

(3) The Mutual Funds Advisory Committee shall

- (a) advise the Minister on any matter referred to it by him relating to the mutual funds industry;
- (b) on its own motion report and make recommendations to the Minister on any matter relating to mutual funds as it sees fit; and
- (c) have power to establish
 - (i) its own working rules and procedures; and
 - (ii) as many sub-committees as it thinks necessary.

PART II

Public Funds

Registration.

8. No public fund shall carry on any business or arrange or administer its affairs in or from within the Territory unless it is registered under this Act.

Application for 9. (1) A public fund may apply to the registration.
Governor for registration to carry on business
in or from within the Territory.

(2) An application shall be

(a) made in the form and contain the
information as set out in
Schedule 1; and

Schedule 1

(b) accompanied by

(i) a statement setting out

the nature and
scope of the business to be
carried on by the applicant in
or from within the Territory,
including the name of any
other country or jurisdiction
where the applicant is
carrying on or intends to
carry on business;

(ii) the application fee set

out in Part II of

Schedule 2

Schedule 2 or such other

amount as may be
prescribed by regulations;

(iii) the instrument by which

the applicant is
constituted or such other
proof as may be satisfactory
to the Governor that the
applicant is lawfully
constituted under the laws of
the Territory or of any other
country or jurisdiction;

(iv) the notices required
under section 26; and

(v) such other documents or

information as the

Governor may reasonably require for the purpose of determining the application.

Application for 10. (1) The promoters of a public fund that consent to be registered. is proposed to be formed, may apply to the Governor for his consent to register such proposed public fund upon being lawfully constituted under the laws of the Territory or of any other country or jurisdiction and upon complying with the requirements of this Act.

(2) An application for consent under subsection (1) shall be

(a) in the form of a letter setting out the particulars of the proposed public fund; and

Schedule 2

(b) accompanied by the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations.

be

(3) The consent of the Governor shall

(a) in such form as the Governor may direct; and

(b) valid for a period of three months from the date it is granted subject to there being no change, that the Governor considers material, in any of the particulars contained in the application for consent.

(4) The promoters of a proposed public fund may, upon the expiry of the three months period referred to in subsection (3) (b), apply for the renewal of the Governor's consent subject to

(a) supplying such documents or

information as the Governor may require; and

(b) the payment of the application

fee required under subsection
(2) (b).

Power to grant consent. 11. (1) The Governor may, in his discretion, grant or refuse to grant

(a) registration under section 9;
or

(b) his consent under section 10.

(2) Notwithstanding subsection (1), the Governor shall refuse to grant registration or his consent, as the case may be, if he determines that it is not in the public interest that such registration or consent should be granted.

(3) Except as provided in section 32, where the Governor, in the exercise of his powers under subsection (1) (a), makes a decision refusing to grant registration, he shall not be bound to assign any reasons for his decision which shall not be subject to appeal or review in any court.

Registration

12. (1) Where the Governor grants procedure. registration pursuant to section 9 he shall direct the Registrar accordingly and the Registrar shall

(a) register the public fund in the register maintained by him for the purpose under section 6; and

(b) issue a certificate to the registered public fund as directed by the Governor showing the date of registration.

(2) Where the Governor grants his consent under section 10, the promoters of the proposed public fund shall, within the three months period referred to in section 10 (3) (b) from the date of granting such consent or the renewal thereof, deliver to the Registrar

(a) the consent of the Governor;

(b) satisfactory proof that the

proposed public fund is lawfully constituted in the Territory or elsewhere;

(c) the application fee required under section 9 (2) (b) (ii); and

(d) the notices referred to in section 9 (2) (b) (iv).

(3) If the Registrar is satisfied that the proposed public fund has complied with the requirements of subsection (2), he shall register the public fund and issue to it a certificate of registration in accordance with the procedure set out in subsection (1).

(4) The Registrar shall refuse to register the proposed public fund if he determines that

(a) its registration has not

received the consent of the Governor pursuant to section 10; or

(b) it has not complied with any of the requirements of subsection (2).

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may appeal to the Governor whose decision shall be final.

Accounting records
financial statements shall

13. (1) Every registered public fund and

(a) maintain adequate accounting

records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles applicable in the Territory or in any other recognised Country or Jurisdiction; and

(b) keep such accounting records and

financial statements available for examination by the Registrar or any person authorised under his hand at

(i) its place of business in the Territory; or

(ii) such other place as its

officers may see fit, provided that copies of such records and statements or such other documents or information as the Registrar may consider adequate are kept at its place of business in the Territory.

(2) The financial statements required under subsection (1) shall be

(a) audited by an auditor acceptable to the Registrar (in this Act called "the approved auditor") in accordance with generally accepted auditing standards applicable in the Territory or in any other recognised Country or Jurisdiction;

(b) accompanied by the report of the approved auditor thereon; and

(c) provided to or made available

for examination by all investors of the registered public fund.

Duty to publish 14. (1) No registered public fund shall in and file a or outside the Territory offer its shares to prospectus. the public unless prior to such offer it publishes in writing a prospectus signed by or on behalf of its officers who approved the contents of the prospectus or authorised its publishing, and files a copy thereof with the Registrar.

(2) Every prospectus shall

(a) provide, full, true and plain

disclosure of

(i) the market price or value
of any shares
being offered thereby;

(ii) particulars of the
business and finances of the
fund offering such shares; and

(iii) all facts that
significantly affect or would
reasonably be expected to have
a significant effect on the
disclosures required in sub-
paragraphs (i) and (ii);

(b) contain a summary statement of
investors' rights as provided
in section 16; and

(c) be accompanied by or contain
reference to the availability
of the financial statements for the
last financial year of the fund and
the auditor's report thereon if the
fund has completed a financial year
in operation.

(3) The Registrar shall not accept for
filing a copy of a prospectus unless it is
accompanied by a certificate from an attorney
certifying that it complies with the requirements of
subsection (2).

(4) If all or any part of the
prospectus is not in the English language, the
Registrar may require that an English translation of
the prospectus or that part of the prospectus,
verified in a manner satisfactory to him, be filed
along with the prospectus.

(5) Where in a prospectus any of the
disclosures required under subsection (2)
(a) ceases to be accurate, the registered public fund
shall publish an amendment thereto giving accurate
disclosures and provide a copy thereof to each of its
investors and to the Registrar.

Certificate of

15. Every registered public fund, compliance. wherever it is constituted, which carries on business outside the Territory under the laws of another country or jurisdiction, shall every year, within three months of the end of its financial year, file with the Registrar a certificate of compliance from the competent authority that is responsible for the regulation and supervision of the conduct of its business in that other country or jurisdiction.

Investors' rights.

16. (1) If a registered public fund publishes a prospectus or any amendment thereto that contains misrepresentation relating to any of the disclosures required under section 14 (2) (a), a person who purchased any shares pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person referred to in subsection (1) may elect to exercise a right of action

(a) for the rescission of the purchase, or

(b) for damages,

jointly and severally against the fund and every person who, while aware of the misrepresentation, signed the prospectus or amendment thereto and consented to its publishing and filing or caused it to be signed or published and filed.

(3) For the purposes of this section, "misrepresentation" means

(a) an untrue or misleading statement of any of the disclosures required under section 14 (2) (a); or

(b) an omission to disclose any of such disclosures.

(4) No person is liable under this section if he proves that the purchaser purchased the shares offered by the prospectus or amendment thereto with knowledge of the misrepresentation.

(5) The right of action for rescission or for damages conferred by subsection (2) is in addition to and without derogation from any other right the plaintiff may have at law.

Limitation of and law to the contrary, any action pursuant to amount section 16 (2) may not be commenced after recoverable.

17. (1) Notwithstanding any provision of action

(a) one hundred and eighty days from the day that the plaintiff first had knowledge of the misrepresentation, or

(b) one year from the date of the purchase transaction that gave rise to the cause of action,

whichever is earlier.

(2) In any action under section 16 (2), the amount recoverable shall not exceed the price at which the shares were purchased or subscribed, including any fees or other charges paid by the plaintiff.

PART III

Private Funds

Recognition. 18. No private fund shall, in or from within the Territory, carry on business or manage or administer its affairs unless it is recognised under this Act.

Application for 19. (1) A private fund that is constituted recognition. under the laws of the Territory is entitled to be recognised under this Act if, upon the coming into force of this Act, it provides proof satisfactory to the Minister that it is

(a) a private fund within the meaning of this Act; and

(b) lawfully constituted under the laws of the Territory.

(2) A private fund that is constituted outside the Territory may apply for

recognition under this Act by sending to the Minister a letter setting out the nature and scope of its business which shall be accompanied by

Schedule 2

(a) the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations;

(b) the notices required under section 26; and

(c) proof satisfactory to the

Minister that the applicant is

(i) a private fund within the meaning of this Act; and

(ii) lawfully constituted

under the laws of another country or jurisdiction.

Power to grant 20. (1) The Minister may, in his discretion, grant or refuse to grant recognition under section 19 (2).

(2) Where the Minister refuses to grant recognition under section 19 (2), the provisions of section 11 (3) shall apply mutatis mutandis.

(3) The Minister shall not refuse to grant recognition under section 19 (1) unless the applicant fails to comply with the requirements of that section.

(4) Where the Minister refuses to grant recognition under section 19 (1), he shall give the applicant notice in writing of his decision and the reasons therefor and the applicant may appeal such decision pursuant to section 33.

Recognition

21.

Where the Minister grants recognition to a private fund, he shall direct the Registrar accordingly and the Registrar shall

(a) enter the particulars relating

- (b) accompanied by
 - (i) the application fee set out in Part II of Schedule 2 or such other amount as may be prescribed by regulations;
 - (ii) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and
 - (iii) such other documents or information as the Minister may reasonably require for the purpose of considering the application.

Power to grant discretion, grant or refuse to grant a licence to any applicant. 24. (1) The Minister may, in his licences.

(2) The Minister shall not grant a licence unless he is satisfied that the applicant

(a) is a fit and proper person to

be engaged in the business of managing or administering the affairs of mutual funds; and

(b) has or has available to him

adequate knowledge, expertise, resources and facilities necessary for the proper management or administration of mutual funds.

(3) Notwithstanding subsections (1) and (2), the Minister shall refuse to grant a licence if he determines that it is not in the public interest that a licence should be granted.

(4) Where the Minister refuses to grant

a licence to an applicant, the provisions of section 11 (3) shall apply mutatis mutandis.

Licensing 25. Where the Minister grants a licence procedure. to an applicant, he shall direct the Registrar accordingly and the Registrar shall

- (a) enter the particulars of the applicant in the register maintained by him for the purpose under section 6; and
- (b) issue a licence to the applicant as directed by the Minister showing the date on which the licence is granted.

PART V

General

Notices to 26. (1) In addition to any other accompany requirement under this Act, every application applications. for registration, recognition or a licence made under this Act shall be accompanied by a notice of

- (a) the address of the applicant's place of business and its address for service in the Territory;
- (b) the name and address of a person resident in the Territory who is authorised to represent the applicant and to accept service on its behalf; and
- (c) the address of any place or places of business that the applicant may have outside the Territory.

(2) If any information contained in any of the notices required to accompany the application pursuant to subsection (1) is altered at any time thereafter, the applicant, upon being a registered public fund, a recognised private fund or a licensed manager or administrator, as the case may be, shall give in writing to the Registrar particulars of

the alteration within twenty-one days after the alteration is made.

Form and conditions of restrictions or limitations as the Minister, as the case may be, sees fit therein.

27. (1) A certificate or a licence may be granted subject to terms, conditions, certificates or licences. or the Minister, as the case may be, sees fit to specify therein.

(2) A certificate or a licence shall

(a) be in such form as may be

directed by the Governor or the Minister, as the case may be;

(b) be admitted in all courts as

prima facie evidence of the facts stated therein; and

(c) remain in force until it is cancelled.

Annual fees.

28. (1) Where

(a) a public fund is granted registration,

(b) a private fund is granted recognition, or

(c) a person is granted a licence,

there shall be payable for the year in which such registration, recognition or licence is granted the fee set out in paragraph (A) of Part III of Schedule 2, or such other amounts as may prescribed by regulations.

Schedule 2

(2) On or before the 31st day of March every year following the year in which registration, recognition or licence is granted there shall be payable the annual fee set out in paragraph (B) of Part III of

Schedule 2 or such other amounts as may prescribed by regulations.

(3) An unpaid annual fee may be sued for by the Government by action as a civil debt and the Government may require, and the court may

order, the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

- Cancellation of 29. The Governor, in the case of a certificates or registered public fund, and the Minister, in licences. the case of a recognised private fund or a licensed manager or administrator, may, subject to sections 30 and 31, cancel a certificate or a licence, as the case may be,
- (a) at the request of the holder thereof; or
 - (b) where the holder thereof
 - (i) has ceased to carry on
 - business in or from within the Territory;
 - (ii) has contravened any
 - provision of this Act, the regulations or any term, condition, restriction or limitation attached to the holder's certificate or licence, as the case may be;
 - (iii) has been convicted of an
 - offence under this Act or of a criminal offence in any country or jurisdiction;
 - (iv) has knowingly and wilfully supplied false, misleading or inaccurate information or failed to disclose information required for the purposes of any provision of this Act or the regulations;
 - (v) is carrying on business
 - in a manner detrimental to the interests of mutual funds investors or to the public interest; or

(vi) is declared bankrupt or
 is being wound-up
 or otherwise dissolved.

Cancellation

30. (1) Before cancelling a certificate or
 procedure. a licence under paragraph (b) of
 section 29, the Governor or
 the Minister, as the case may be, shall

- (a) give the holder thereof notice
 in writing of the grounds on
 which he intends to do so;
- (b) afford the holder an
 opportunity to make written
 representations to him within a
 period of thirty days after receipt
 of the notice; and
- (c) take any such representations
 into consideration.

(2) Where in the exercise of his powers
 under section 29 (b)

- (a) the Governor decides to cancel
 a certificate, or
- (b) the Minister decides to cancel

a certificate or a licence, as
 the case may be,

he shall give notice in writing to the holder
 thereof of such cancellation and the
 reasons therefor.

Appeal of
 cancellations.

31. The holder of a certificate or a
 licence aggrieved by the decision cancelling
 such certificate or licence may appeal such decision
 in accordance with section 33.

Appeal by
 entities. this Act, where

32. Notwithstanding any provision in existing

- (a) the Governor, in the exercise
 of his powers under section 11
 (1) (a), refuses to grant

registration, or

(b) the Minister, in the exercise of his powers

(i) under section 20 (1) refuses to grant recognition, or

(ii) under section 24 (1) refuses to grant a licence,

to an existing entity, he shall give such existing entity a notice in writing of his decision and the reasons therefor and the existing entity may appeal such decision in accordance with section 33.

Appeal procedure. 33. (1) An appeal under sections 20 (4), 31 or 32 shall be by

(a) way of summons to a Judge in Chambers; and

(b) serving the Governor or the

Minister, as the case may be, with a notice of appeal within twenty-one days or such longer period as the judge may allow, after receipt of the notice required under sections 20 (4), 30 (2) or 32, as the case may be.

(2) The bringing of an appeal under section 31 suspends the decision appealed against pending the determination or abandonment of the appeal.

Grant or 34. The Registrar shall publish in the cancellation to Gazette, in such form as he thinks fit, be published. notice of every grant or cancellation of a certificate or a licence under this Act.

Power to grant 35. (1) Upon the recommendation of the exemptions. Registrar, the Governor may, if he is satisfied that to do so would not be prejudicial to the public interest, direct that all or any of the provisions of this Act or the regulations shall

(a) not apply, or

- (b) apply subject to such modifications as he may specify in the direction,

to any person or any class of persons.

be (2) A direction under this section may

- (a) subject to any conditions as the Governor may see fit to specify therein; and

- (b) revoked at any time at the discretion of the Governor.

(3) Notwithstanding any provision or rule of law, a direction under this section is not a statutory instrument having legislative effect.

Access to

36. For the purpose of discharging his information duties under this Act and the regulations and records. subject to section 38, the Registrar or any person acting under his authority, may, at all reasonable times, in writing, direct any person to whom this Act applies to

- (a) furnish information, or
- (b) provide access to any records, books, or other documents,

relating to the business of that person being carried on under this Act which, in the opinion of the Registrar, are necessary to enable him to ascertain compliance with the provisions of this Act or the regulations.

Immunity and

37. (1) No liability shall be incurred by actions by the and no suit, action or proceeding shall be Registrar. brought against the Crown, any agent thereof, the Registrar or any person acting under his authority for any act done or omitted to be done in good faith

- (a) in the performance or intended performance of any function or duty, or

- (b) in the exercise or intended
exercise of any power,

under this Act or the regulations.

(2) The Registrar may bring actions and institute proceedings in his name of office for the enforcement of any provision of this Act or the regulations, or for the recovery of fees or other sums of money payable under this Act or the regulations.

Confidentiality. 38. Notwithstanding section 6,

- (a) any information, material or

document furnished to or filed with the Registrar by any recognised private fund is

privileged and shall not be disclosed to any person except

- (1) the Governor, the Minister, the Attorney General or a public officer authorised by the Governor or the Minister; or

- (ii) on the order of a court

of competent jurisdiction for the purpose of criminal proceedings;

- (b) the Governor may direct that

any specified information, material or document furnished to or filed with the Registrar by any registered public fund shall be held in confidence and shall not be disclosed to any person so long as the Governor is of the opinion that to do so is in the public interest.

Exemption from 39. (1) Notwithstanding any statutory certain provision or rule of law to the contrary enactments.

- (a) a public fund that is

registered or a private fund that is recognised under this Act, and

- (b) an investor in any such registered public fund or recognised private fund who is not ordinarily resident or domiciled in the Territory,

Cap. 206 are in all respects exempt from any and all Cap. 212 of the provisions of the Income Tax Act, the Cap. 67 Stamps Act, and the Registration and Records Act.

(2) Notwithstanding the provisions of Cap. 285 Part IX (section 235A) of the Companies Act, a company that is incorporated outside the Territory which establishes a place of business within the Territory to carry on business in accordance with the provisions of this Act as

- (a) a registered public fund,
- (b) a recognised private fund, or
- (c) a licensed manager or administrator,

is exempt from the provisions of that Part IX (section 235A) of the Companies Act.

Offences and penalties

40. (1) A person who,
- (a) wilfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Act or the regulations,
 - (b) wilfully makes any statement or gives any information required for the purposes of this Act or the regulations that he knows to be false or misleading,
 - (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or the regulations, or

(d) being in charge of or having

possession of or control over any information, records, books or other documents referred to in section 36, refuses or wilfully neglects to comply with any lawful direction given under that section,

commits an offence under this Act and is

liable on summary conviction to a fine of not less than five thousand dollars and not more than fifty thousand dollars or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

(2) Any person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided commits an offence against this Act and is liable on summary conviction,

(a) in the case of a body corporate or unincorporated, a fine of not more than fifty thousand dollars; and

(b) in the case of an individual,

to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one month or to both such fine and imprisonment.

(3) A prosecution for an offence under this Act may be commenced within five years from the date of the commission of the offence but not thereafter.

Power to the
published in the Gazette,
vary the
Schedule.

41.

The Minister may by Notice Minister to

(a) vary the form of
Schedule 1 provided such variation
does not, in any material respect,
change the substance of the
Schedule; or

(b) subject to the affirmative

resolution procedure of the

Legislative Council modify, delete, repeal or replace any Schedule to this Act in whole or in part.

Regulations.

42. The Governor may make regulations
- (a) prescribing fees payable under this Act;
 - (b) prescribing forms for use under this Act;
 - (c) prescribing criteria with respect to exemptions authorised by this Act;
 - (d) prohibiting the use of any names or any words or expressions in a name with respect to mutual funds;
 - (e) designating mutual funds or a class or classes thereof as private mutual funds;
 - (f) authorising the Registrar to require that any document, statement, report, certificate, release, agreement, or other information be filed with, furnished or delivered to him;
 - (g) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act;
 - (h) prescribing any matter required to be or which may be prescribed under this Act;
 - (i) authorising the Registrar to issue directives and policy guidelines for the purposes of this Act or regulations; and
 - (j) generally for the better

administration of this Act and
for carrying the intent and purpose
of its provisions into effect.

Transitional.

43. Any person who, at the date of the
coming into force of this Act, is carrying
on any business or engaged in any activity relating in
any respect, directly or indirectly to mutual funds in
or from within the Territory, shall within three
months or such longer period as may be granted by the
Governor from such date of coming into force comply
with the provisions of this Act.

SCHEDULE 1

(Section 9 (2) (a))

APPLICATION FOR REGISTRATION OF A PUBLIC FUND

1. Applicant: state name and address of the fund
2. Constitution:
 - (a) state the legal form of the fund
 - (i) company
 - (ii) partnership
 - (iii) unit trust
 - (b) state the name of the country or Jurisdiction where the fund is constituted
 - (c) state the title of the law under which the fund is constituted
3. Officers:
 - (a) state name, address, place of birth and citizenship of each officer of the fund:
 - (i) directors;
 - (ii) general partners; or
 - (iii) trustees
 - (b) state educational and professional qualifications of each officer
 - (c) give details of business, occupation or employment of each officer
4. References: give two personal references, a bank reference and a police clearance certificate for each officer
5. Functionaries: state names, addresses and business activities of each of the fund's
 - (a) managers;
 - (b) administrators;
 - (c) investment advisers; and

(d) custodians.

6. Prior Registration:

state if the fund is now or has been registered, licensed, recognised or authorised under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction.

7. Refusal or Disciplinary Measure:

Has the fund, any of its officers, managers, administrators, investment advisers or custodians been the subject of

(a) refusal of an application for registration, licence, recognition or authorisation, or

(b) suspension, cancellation or revocation of registration, licence, recognition or authorisation

by any authority in any country or jurisdiction?

give details and reasons

8. Civil Proceedings:

Has a judgment been rendered or any suit, action or proceedings pending against any officer of the fund or of any of its functionaries listed in question 5 above, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct?

give details

9. Offences:

Has any officer of the fund or of any of its functionaries listed in question 5 above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities?

10. Bankruptcy:

Has an officer of the fund or of any of its functionaries listed in question 5 above been

(a) declared bankrupt or been party to bankruptcy or insolvency proceedings,

(b) subject to proceedings relating to winding-up, dissolution or creditors' arrangement, or

(c) subject to proceedings relating to receivership or Creditors' compromise,

in any country or jurisdiction?

AFFIDAVIT

I,, in my capacity as
(Director, general partner or trustee) acting for and on behalf
of the applicant public mutual fund,

Do depose and say that I have read and understood the

questions in this application form and hereby certify under Oath that the foregoing answers and statements are true, correct and complete to the best of my knowledge, information and belief.

Sworn before me
Commissioner of Oaths

at the city of

this..... day 19....

Name and
Signature
of Deponent

SCHEDULE 2

FEES

PART I

(Section 3 (3) (b))

Fee for issuing a Certificate of Compliance

The fee for issuing a Certificate of Compliance pursuant to section 3 (3) (b) is \$25.00

PART II

Application Fees

(Sections -

9 (2) (b) (ii)

10 (2) (b)

19 (2) (a)

23 (2) (b) (i))

The fee for

- (a) an application for registration under section 9 (2) (b) (ii) is \$500.00
- (b) an application for consent to be registered under section 10 (2) (b) is \$100.00
- (c) an application for recognition under section 19 (2) (a) is \$350.00
- (d) an application for a licence under section 23 (2) (b) (i) is \$250.00

PART III

Annual Fees

(Section 28 (1) and (2))

- (A) Fee payable for the year in which registration, recognition or licence is granted pursuant to section 28 (1):
 - (1) where registration, recognition or licence is granted on or before the 30th day of June in any year, the fee payable for that year is
 - (a) \$500.00 by a registered public fund;
 - (b) \$350.00 by a recognised private fund;
 - (c) \$500.00 by a person licensed as manager or

administrator; and

(d) \$1000.00 by a person licensed as both manager and administrator.

(2) Where registration, recognition or licence is granted on or after the 1st day of July in any year, the fee payable for that year is

(a) \$250.00 by a registered public fund;

(b) \$175.00 by a recognised private fund;

(c) \$250.00 by a person licensed as manager or administrator; and

(d) \$500.00 by a person licensed as both manager and administrator.

(B) The annual fee payable pursuant to section 28 (2) is

(a) \$500.00 by a registered public fund;

(b) \$350.00 by a recognised private fund;

(c) \$500.00 by a person licensed as manager or administrator; and

(d) \$1000.00 by a person licensed as both manager and administrator.

Passed by the Legislative Council this 6th day of June, 1996.

Reeial George
Deputy Speaker

Hugh A. Hodge
Clerk of the Legislative Council

OBJECTS AND REASONS

This Bill is designed to establish credibility to the British Virgin Islands based mutual funds and reassure investors of the legitimacy and security of their investments. To this end, it provides funds promoters and operators with a suitable location to manage their existing funds (wherever they may be constituted) or to establish new funds under available convenient legal structures as international business companies, limited partnerships or unit trusts.

The Bill is divided into five Parts, with Part I dealing with matters relating to administration generally. This embraces such matters as the appointment of the Registrar and Deputy Registrar of mutual funds, the delegating powers of the Governor in Council and the Minister, the requirement for the submission of annual reports by the Registrar of mutual funds, the keeping of records and the creation of a Mutual Funds Advisory Committee to advise the Minister on issues relating to mutual funds.

Parts II, III and IV represent the main thrust of the Bill. The Bill addresses matters relating to public funds (Part II) which offer their shares or units to the general public and private funds (Part III) which offer their shares or units to a restricted number of wealthy and sophisticated investors.

Both types of fund, wherever they may be incorporated, formed or constituted, are allowed under the Bill to operate in or out of the Territory. In the case of private funds, however, these are only required to be recognised by the Minister upon proof that they are lawfully constituted under the laws of any country or jurisdiction and that they are not offering their shares or units to the general public. Private funds which are constituted under the laws of the Territory could not be denied recognition unless they fail to prove that they are private funds within the meaning of the Bill and are lawfully constituted.

In order to operate in or from within the Territory public funds are required to be registered. The Bill outlines the mode of application for registration and the information to be supplied by the applicant with a view to striking a balance between the principle of freedom of international enterprise and the need for a measure of regulatory accountability to assure investors of the safety of their investments.

Part IV of the Bill essentially provides the regulatory requirements of mutual funds managers and administrators. A person wishing to carry on business in or from within the Territory as manager or administrator of mutual funds is required to apply for a licence to the Minister. A statement of the financial and human resources available to the applicant is to accompany the application to satisfy the Minister that the applicant is a fit and proper person to be granted a licence. Provisions are also made to allow managers and administrators who are qualified and authorised to act as such pursuant to the laws of a recognised Country or Jurisdiction to operate in or from within the Territory without the need to be licensed.

The fifth Part of the Bill addresses general provisions concerning

notices, forms and conditions of certificates and licences, annual fees, cancellation procedures, appeals, exemptions, offences and penalties, powers of amendment, regulations and transitional provisions.

Ralph T. O'Neal
Minister of Finance

VIRGIN ISLANDS

LEGAL REPORT

The purpose of this Bill is to establish credibility to the British Virgin Islands based mutual funds and reassure investors of the legitimacy and security of their existing funds (wherever they may be constituted) or to establish new funds under available convenient legal structures as international business companies, limited partnerships or unit trusts.

The Bill is divided into five Parts, with Part I dealing with matters relating to administration generally. This embraces such matters as the appointment of the Registrar and Deputy Registrar of mutual funds, the delegating powers of the Governor in Council and the Minister, the requirement for the submission of annual reports by the Registrar of mutual funds, the keeping of records and the creation of a Mutual Funds Advisory Committee to advise the Minister on issues relating to mutual funds.

Parts II, III and IV represent the main thrust of the Bill. The Bill addresses matters relating to public funds (Part II) which offer their shares or units to the general public and private funds (Part III) which offer their shares or units to a restricted number of wealthy and sophisticated investors. Both types of fund, wherever they may be incorporated, formed or constituted, are allowed under the Bill to operate in or out of the Territory. In the case of private funds, however, these are only required to be recognised by the Minister upon proof that they are lawfully constituted under the laws of any country or jurisdiction and that they are not offering their shares or units to the general public. Private funds which are constituted under the laws of the Territory could not be denied recognition unless they fail to prove that they are private funds within the meaning of the Bill and are lawfully constituted.

In order to operate in or from within the Territory public funds are required to be registered. The Bill outlines the mode of application for registration and the information to be supplied by the applicant with a view to striking a balance between the principle of freedom of international enterprise and the need for a measure of regulatory accountability to assure investors of the safety of their investments.

Part IV of the Bill essentially provides the regulatory requirements of mutual funds managers and administrators. A person wishing to carry on business in or from within the Territory as manager or administrator of mutual funds is required to apply for a licence to the Minister. A statement of the financial and human resources available to the applicant is to accompany the application to satisfy the Minister that the applicant is a fit and proper person to be granted a licence. Provisions are also made to allow managers and administrators who are qualified and authorised to act as such pursuant to the laws of a recognised Country or Jurisdiction to operate in or from within the Territory without the need to be licensed.

The fifth Part of the Bill addresses general provisions concerning notices, forms and conditions of certificates and licences, annual fees, cancellation procedures, appeals, exemptions, offences and penalties, powers of amendment, regulations and transitional provisions.

The Bill was introduced in the Legislative Council on 23rd day of May, 1996 and passed through its remaining stages on the 6th day of June, 1996.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of Her Majesty.

Attorney General

Attorney General's Chambers
Central Administration Complex
Road Town, Tortola