

No. of 1997 The Mutual Funds (Amendment) Act, 1997 Virgin Islands  
I Assent  
Governor , 1997

VIRGIN ISLANDS

No. of 1997

AN ACT to amend the Mutual Funds Act, 1996 (No. 6 of 1996).

[ Gazetted , 1997 ]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title and
1. This Act may be cited as the Mutual Funds commencement. (Amendment) Act, 1997 and shall come into force on the No. 6 of 1996 date on which the Mutual Funds Act, 1996 is brought into force.
- Section 2 of Act No. 6 of 1996 amended.
2. (1) The Mutual Funds Act, 1996 (hereinafter referred to as the principal Act) is amended in subsection (1) of section 2
- (a) by deleting from paragraph (a) of the definition of Administrator the words and facilities;
- (b) by inserting immediately after the definition of a company, the following:
- A constitutional document means,
- (a) in the case of a company, the memorandum and articles of association or other instrument of incorporation;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;

- (c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

Acustodian@ means the person who holds the property of the mutual fund in safe keeping;@;

- (c) by inserting in the definition of Aexisting entity@

- (i) between the words Aprivate@ and Afund@ in paragraph (b) thereof and wherever those words occur in the Act, the words Aor professional@; and

- (ii) immediately after the word Abusiness@ in the closing paragraph thereof, the words Aor, in the case of a public, private or professional fund, was managing or administering its affairs;@;

- (d) by repealing the definition of Afinancial year@ and substituting therefor the following:

Afinancial year@ means the period not exceeding twelve months at the end of which the balance of the accounts is struck, and may be up to eighteen months in the case of the first or last period or when the period is changed;@;

- (e) by inserting between the words Aperson@ and Awho@ in the definition of Amanager@, the words Anot being an officer or an employee of a person licensed under this Act or a mutual fund which has delegated management functions to a person licensed under this Act,@;

- (f) in respect of the definition of Amutual fund@ or Afund@€

- (i) by inserting in the opening

paragraph a comma after the word Aformed@ and deleting the word Aor@ immediately following;

- (ii) by deleting from the opening paragraph the comma after the word Aorganised@ and inserting immediately thereafter the words Aor other similar body formed or organised@;
- (iii) by inserting in paragraph (a) immediately after the word Apools@, the word Ainvestor@ and deleting from the same paragraph the words Ain accordance with the principle of risk spreading@;
- (iv) by deleting from paragraph (b) the words Aor the unit trust,@ and substituting therefor the words A, the unit trust or other similar body@; and
- (v) by deleting the closing paragraph and substituting therefor the following:

Aand includes

- (i) an umbrella fund whose shares are split into a number of different class funds or sub-funds, and
- (ii) a fund which has a single investor which is a mutual fund not registered or recognised under this Act,

but excludes any arrangements which are designated by regulations as not being mutual funds;@;

- (g) by deleting from paragraph (a) of the definition of Aofficer@ the words Athe

secretary, the treasurer, @;

- (h) by repealing the definition of Aprivate fund@ and substituting the following:

A Aprivate fund@ means a mutual fund

- (a) the constitutional documents of which specify that it will have no more than fifty investors.
- (b) the constitutional documents of which specify that the making of an invitation to subscribe for or purchase shares issued by the mutual fund is to be made on a private basis; or
- (c) which is designated as a private fund by regulations; @;

- (i) by inserting immediately after the definition of Aprivate fund@ the following:

A Aprofessional fund@ means a mutual  
fund

- (a) the shares of which are made available only to professional investors and the initial investment in which, in respect of the majority of each of such investors, is not less than one hundred thousand dollars in the United States currency or its equivalent in any other currency; or
- (b) which is designated as a professional fund by regulations;

Aprofessional investor@ means a person

- (a) whose ordinary business involves, whether for its own account or the accounts of others, the acquisition or disposal of

property of the same kind as the property, or a substantial part of the property, of the fund; or

(b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of one million dollars in the United States currency or its equivalent in any other currency and that he consents to being treated as a professional investor;@;

(j) by repealing the definition of Aprospectus@ and substituting the following:

A Aprospectus@ means any prospectus

or similar document the purpose of which is to make an invitation to the public or any section thereof to subscribe for or purchase shares issued by a public fund;@

(k) by repealing the definition of Apublic fund@ and substituting therefore the following:

A Apublic fund@ means a mutual fund

which is not a private fund or a professional fund;@;

(l) by deleting from the definition of ARegistrar@ the words Aor Deputy Registrar of Mutual funds@; and

(m) by deleting from the definition of Aunit trust@ the words Aa contractual@ and substituting therefor the word Aan@.

(2) The principal Act is amended in section 2 by inserting immediately after subsection (1) the following:

A(1A) For the purpose of

(a) paragraph (b) of the definition of Aprivate fund@, an invitation to

subscribe for or purchase shares issued by a mutual fund on a

private basis includes an invitation which is made

(i) to specified persons (however described) and is not calculated to result in shares becoming available to other persons or to a large number of investors; or

(ii) by reason of a private or business connection between the person making the invitation and the investor; and

(b) paragraph (a) of the definition of Professional fund, the minimum investment limit referred to in that paragraph shall not apply in respect of an investment made by the manager, administrator,

promoter or underwriter of the professional fund.

(3) Subsection (2) of section 2 of the principal Act is amended

(a) by deleting the word "and" at the end of paragraph (a);

(b) by substituting the full-stop at the end

of paragraph (b) with a semicolon and inserting immediately thereafter the following:

A(c) a mutual fund which is not incorporated, formed or organised or carrying on its business in or from within the Territory shall be deemed to be carrying on business in the Territory if it solicits an individual within the Territory to purchase its shares, except where the purchase is a result of an approach made by the

individual without any solicitation being made.

Section 3 amended. 3.

Section 3 of the principal Act is amended

(a) in subsection (1) by repealing paragraph (a) and substituting therefor the following :

A(a) a Registrar of Mutual Funds who shall be a public officer; and

(b) in subsection (2)

(i) by deleting the word "and" at the end of paragraph (a);

(ii) by substituting the full-stop at the end

of paragraph (b) with a semi-colon; and

(iii) by inserting immediately after paragraph (b) the following:

A(c) the power to prescribe such forms as he considers necessary for the purposes of this Act or the regulations; and

(d) the authority to issue directives

and policy guidelines for the purposes of this Act or the regulations. @; and

(c) in subsection (4) by deleting the words A, the Deputy Registrar@.

Section 4 amended. 4.

Section 4 of the principal Act is amended

(a) in subsection (1) by inserting after the word ARegistrar@

(i) where it first occurs, the words Aor any other person@; and

(ii) where it last occurs, the words Aor that other person.@;

(b) in subsection (2) by deleting the words Athe Deputy Registrar@

(i) where they first occur and substituting therefor the words Aanother public officer@; and

(ii) where they last occur and substituting therefor the words Athat officer.@.

Section 8 amended. 5.

Section 8 of the principal Act is amended by deleting the words Aany@ and Aarrange@ and respectively substituting therefor the words Aits@ and Amanage@.

Section 11 amended. 6.

Section 11 of the principal Act is amended

(a) by repealing subsection (2) and substituting therefor the following:

A(2) Notwithstanding subsection (1), the Governor shall refuse to grant registration or his consent, as

the  
case may be, if

- (a) the public fund has a name which is undesirable or misleading;
- (b) the public fund does not have a custodian who is functionally independent of the manager or administrator; or
- (c) he determines that it is not in the public interest that such registration or consent should be granted;

- (b) in subsection (3) by inserting immediately after
  - (i) the words "subsection (1) (a)", the words "or (b)"; and
  - (ii) the word "registration", the words "or consent".

Section 13 amended.

7. Section 13 of the principal Act is amended

- (a) in subsection (1)
  - (i) by deleting from paragraph (a) the words "Applicable in the Territory or in any other recognised Country or Jurisdiction"; and
  - (ii) by inserting after the word "business" in sub-paragraphs (i) and (ii) of paragraph (b), the words "or registered office";
- (b) in subsection (2)

- (i) by deleting from paragraph (a) the words Aapplicable in the Territory or in any other recognised Country or Jurisdiction@; and
- (ii) by adding after the word Athereon@ in paragraph (b), the words Awhich shall include a statement of the accounting principles under which statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements.@"

Section 14 amended.

8. Section 14 of the principal Act is amended

(a) in subsection (1)

- (i) by deleting the words Aoffer its shares to the public@ and substituting therefor the words Amake an invitation to the public or any section thereof to purchase its shares,@;
- (ii) by deleting the word Aoffer@ where it last occurs and substituting therefor the word Ainvitation@; and
- (iii) by deleting the words Aits officers who@ and substituting therefor the words Athe board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, the equivalent governing body of the fund which@;

(b) in subsection (2) by repealing paragraph (a) and substituting therefor the following:

A(a) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the

purpose of making an informed investment decision;@;

- (c) by repealing subsection (3); and
- (d) in subsection (5) by inserting immediately after
  - (i) the word Aaccurate@ where it first occurs, the words Ain a material particular@; and
  - (ii) the word Ashall@, the words A, within fourteen days of the change occurring,@.

Section 15 amended. 9. Section 15 of the principal Act is amended by inserting a subsection A(1)@ immediately after the figure A15.@ and adding after that subsection the following:

A(2) A registered public fund to which subsection (1) applies is deemed to have complied with that subsection if it is proven to the satisfaction of the Registrar that the required certificate could not be obtained for reasons beyond the control of the fund.

(3) Where a registered public fund which carries on business outside the Territory carries on business in more than one country or jurisdiction other than the Territory, the certificate required to be filed under subsection (1) shall be from the competent authority in the country or jurisdiction in or from which it carries on its principal business.@

Section 16 amended. 10. Section 16 of the principal Act is amended in subsection (2) by deleting the closing paragraph and substituting therefor the following:

Ajointly and severally against the fund,

and every member of the board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, every member of the equivalent governing

body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had he made reasonable investigations consistent with his duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.@"

- Section 17 amended. 11. Section 17 of the principal Act is amended in subsection (2) by deleting the word Aprice@" and substituting therefor the word Aamount@."
- Heading of Part 12. The heading in Part III of the principal Act is III amended. amended by inserting between the words APrivate@" and AFunds@, the words Aand Professional@."
- Section 18 amended. 13. The principal Act is amended by repealing section 18 and substituting therefor the following:
- ARecognition. 18. (1) Subject to subsection (2), no private or professional fund shall carry on its business or manage or administer its affairs in or from within the Territory unless it is recognised under this Act.
- (2) A professional fund may carry on its business or manage or administer its affairs in or from within the Territory for a period of up to fourteen days without being recognised under this Act.
- Section 19 amended. 14. Section 19 of the principal Act is amended
- (a) by repealing subsection (1) and substituting therefor the following:
- A(1) A private or professional fund that is constituted under the laws of the Territory is entitled to be recognised under this Act if it provides
- (a) proof satisfactory to the Minister that it

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

(ii) is lawfully constituted under the laws of the Territory; and

(b) the notices required under section 26.;

(b) by inserting immediately after subsection (2), the following:

A(3) In the case of a professional fund,

the matters required by subsections (1) and (2) shall be provided within fourteen days of the commencement of its business.;

Section 22 amended. 15.

Section 22 of the principal Act is amended

(a) in subsection (1) by inserting between the words Aon and Abusiness, the words Aor hold himself out as carrying on; and

(b) in subsection (2) by deleting from paragraph (b) the words Aqualified and authorised.

Section 23 amended. 16.

Section 23 of the principal Act is amended in subsection (2)

(a) by adding immediately after the words Ashall be in the opening paragraph, the words Aaccompanied by;

(b) by repealing paragraph (a);

(c) by deleting the words A(b) accompanied by; and

(d) by substituting

(i) paragraph A(a) for sub-paragraph

A(i)@;

(ii) paragraph A(b)@ for sub-paragraph A(ii)@; and

(iii) paragraph A(c)@ for sub-paragraph

A(iii)@.

Section 24 amended.

17. Section 24 of the principal Act is amended in subsection (2)

(a) by deleting from paragraph (a) the words Aof managing or administering the affairs of mutual funds; and@ and substituting therefor the word Aproposed;@;

(b) by deleting from paragraph (b) the words Aproper management or administration of mutual funds@ and substituting therefor the words Anature and scope of the business proposed; and@; and

(c) by adding immediately after paragraph (b), the following:

A(c) has appointed an auditor satisfying such conditions as may be prescribed by the Minister.@.

Insertion of new

18. The principal Act is amended by inserting section 25A. immediately after section 25, the following:

ACode of 25A. (1) The Minister may by Order Practice. prescribe a Code of Practice directing the holder of a licence under section 24 to comply with the requirements of the Code which may include matters relating to

(a) conduct of business;

(b) financial resources;

(c) the giving of notice of specified events;

- (d) advertising;
- (e) clients' money and custody of investments; and
- (f) accounting records and audit requirements.

(2) A Code of Practice prescribed under subsection (1) may provide for such enforcement mechanisms as the Minister may consider necessary to ensure compliance with the provisions of the Code.®

Section 29 amended. 19.

Section 29 of the principal Act is amended

- (a) by inserting after the word ACancellation® in the marginal note, the words A, etc.®;
- (b) by adding immediately after the words Aas the case may be,® in the opening paragraph, the words Aor impose new or additional conditions, restrictions or limitations in respect of such certificate or licence®; and
- (c) by inserting after the word Aregulations® in subparagraph (ii) of paragraph (b), the words Aor the Code of Practice prescribed under section 25A®.

Section 35 amended. 20.

Section 35 of the principal Act is amended by repealing subsection (3).

Insertion of new section 35A. 21.

The principal Act is amended by inserting after section 35 the following:

ARestriction on 35A. Except where a person is the use of the a mutual fund within the meaning of words Afund® this Act, or with the written consent of or Amutual fund®. the Registrar, no person shall

- (a) use or continue to use the words Afund® or Amutual fund®, either in English or in any other language, in the name,

description or title under which that person is carrying on business in or from within the Territory; and

- (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on business as a fund or mutual fund.@"

Section 40 amended. 22. Section 40 of the principal Act is amended in subsection (2) by inserting immediately after the word AAct@" where it last occurs in the opening paragraph, the words Aor the regulations, as the case may be,@".

Section 42 amended. 23. Section 42 of the principal Act is amended

- (a) by repealing paragraphs (b) and (c);
- (b) by repealing paragraph (d) and substituting therefor the following:

A(d) designating arrangements which are not mutual funds;@";

- (c) in paragraph (e),

- (i) by deleting the word Amutual@" where it last occurs; and

- (ii) by inserting immediately after paragraph (e) the following:

A(ea) designating a class or sub-classes of a public fund;@";

- (d) by repealing paragraph (i) and substituting therefor the following:

A(i) relating to

- (i) the constitution, powers and duties of the manager, administrator and custodian;

- (ii) the issue and redemption of shares;

- (iii) the appointment, removal, and powers and duties of auditors;
- (iv) the restriction or regulation of investment and borrowing powers;
- (v) the preparation of periodical reports;
- (vi) the rights of investors; and
- (vii) the contents of constitutional documents, in respect of a public fund or a sub-class of such fund;

- (e) by inserting immediately after paragraph (i) the following:

A(ia) relating to the matters which should be contained in a prospectus of a public fund or a sub-class of such fund; and@

Sections 43 amended.

24.

The principal Act is amended by repealing section 43 and substituting therefor the following@

ATransitional.

43. (1) Any person performing the

functions of a manager or an administrator who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity in relation to which he is required to be licensed under this Act shall, within three months of the coming into force of this Act, comply with the requirements of this Act.

(2) Any person who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity as a mutual fund shall, within nine months from that date, comply with the provisions of this Act.

(3) Where a person fails to

comply with subsection (2), it shall pay a non-compliance penalty of five thousand dollars for each month or part thereof during which it fails to comply with that subsection up to a period of twelve months.

(4) If after the period of twelve months prescribed under subsection (3) a person fails to comply with subsection (2), he commits an offence and may be proceeded against under section 40(2).

(5) Where a person is proceeded against under section 40(2), it shall, in addition to any penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).@

Schedule 1 amended. 25.

Schedule 1 of the principal Act is amended

(a) in paragraph 3

(i) by deleting from sub-paragraph (a) the words Aofficer of the fund@ and substituting therefor the words Aof the following officers of the fund@; and

(ii) by deleting the word Aofficer@ mentioned in sub-paragraphs (b) and (c) and substituting therefor respectively the words Aof the officers mentioned in sub-paragraph (a)@;

(b) in paragraph 4

(i) by inserting after the word Aand@, the words A, where it is the practice to make one available in the relevant jurisdiction,@; and

(ii) by deleting the word Aofficer@ and substituting therefor the words Aof the officers mentioned in paragraph 3 (a)@;

- (c) in paragraph 7
  - (i) by inserting immediately after the word Aofficers@, the words Amentioned in paragraph 3 (a)@; and
  - (ii) by deleting the word Alicence@ in sub-paragraph (a) thereof and substituting the word Alicensing@;
- (d) in paragraphs 8, 9 and 10 by deleting the words Aofficer of the fund or of any of its@ and substituting therefor respectively the words Aof the officers mentioned in paragraph 3 (a) or any of the@; and
- (e) by repealing the affidavit form and substituting therefor as follows:

AFFIDAVIT

I,..... of .....(address),  
 in my capacity as director/general partner/trustee,\* acting for and on behalf of  
 ....., the applicant public mutual fund herein, do depose and say that I have read  
 and understood the questions in the application submitted herewith and hereby certify under oath  
 that the answers and statements provided in respect of the application are true, correct and complete  
 to the best of my knowledge, information and belief.

Sworn before me  
 .....

Name and signature  
 of deponent.

**NOTARY PUBLIC**

.....  
 .....

in the city of ..... this

..... day of ....., .

**\* Delete as appropriate.@.**

- Schedule 2 amended.      26.      Schedule 2 of the principal Act is amended
- (a)    in Part I by deleting the reference to A(Section 3 (3) (b) *f*@ and substituting therefor A(Section 3 (3) *f*@; and
  - (b)    in Part II by deleting all references to section A23 (2) (b) (i)@ and substituting therefor A23 (2) (a)@.

Passed by the Legislative Council this 28th day of November, 1997.

Reuben Vanterpool  
Speaker

Hugh A. Hodge  
Clerk of the Legislative Council.

## **LEGAL REPORT**

This Act essentially amends the Mutual Funds Act, 1996 (Act No. 6 of 1996) by simplifying certain requirements under the Act and introducing new elements designed to facilitate the efficient and effective administration of the Act. Such matters relating to the power to prescribe forms and issue directives and guidelines, which were originally to be effected by way of regulations, have now been outlined in the Act so as to ensure flexibility and the timely and smooth implementation of the Act. The Bill introduces the concept of a professional fund, which will be available only to professional investors within the meaning of the Act. Furthermore, provision is made empowering the Minister to prescribe a Code of Conduct for licence holders under the Act to comply with requirements relating to the conduct of business, advertising, administration of clients' money and investments, and so on.

The Act, when enacted, will come into force on the same date the Mutual Funds Act, 1996 is brought into force. This will assist in implementing the Act on a sound footing.

The Act was introduced in the Legislative Council on 30th day of September 1997 and passed through its remaining stages on the 28th day of November 1997.

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

Attorney General

No. of 1997

VIRGIN ISLANDS

The Mutual Funds (Amendment) Act, 1997

ARRANGEMENT OF SECTIONS

*Section*

1. Short title and commencement.
2. Section 2 of Act No. 6 of 1996 amended.
3. Section 3 amended.
4. Section 4 amended.
5. Section 8 amended.
6. Section 11 amended.
7. Section 13 amended.
8. Section 14 amended.
9. Section 15 amended.
10. Section 16 amended.
11. Section 17 amended.

12. Heading of Part III amended.
13. Section 18 amended.
14. Section 19 amended.
15. Section 22 amended.
16. Section 23 amended.
17. Section 24 amended.
18. Insertion of new section 25A.
19. Section 29 amended.
20. Section 35 amended.
21. Insertion of new section 35A.
22. Section 40 amended.
23. Section 42 amended.
24. Section 43 amended.
25. Schedule 1 amended.
26. Schedule 2 amended.

