

THE NEVIS INTERNATIONAL MUTUAL FUNDS ORDINANCE, 2004

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**No. of 2004 The Nevis International Mutual Funds Island of Nevis
Ordinance, 2004**

I assent,

**Eustace John C.M.G.
Deputy Governor-General**

ISLAND OF NEVIS
NO. OF 2004

AN ORDINANCE to provide for the regulation, authorization and control of mutual funds and their managers and administrators carrying on business from within Nevis and for related matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same as follows:-

**Short Title
and commencement.**

1. This Ordinance may be cited as the **NEVIS INTERNATIONAL MUTUAL FUNDS ORDINANCE, 2004** and shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

Interpretation.

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

“administrator” means a person who,

(a) for valuable consideration provides a mutual fund with administrative services 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 recognized country or jurisdiction;

“approved professional” means a professionally qualified person with adequate knowledge of forming mutual funds and approved by the Minister;

“auditor” means a person who is entitled to practice as public accountant and to perform as public accountant and to perform audits under the laws of the Federation of St. Kitts and Nevis or of a recognized country or jurisdiction;

“company” means a body corporate, wherever incorporated or constituted;

“constitutional documents” 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 organized or governed;
- (d) in the case of any other similar body formed or organized, the agreement or other instrument by which it is formed and governed;

“custodian” means the person who holds the property of the mutual fund in safe keeping;

“dollar” means the United States of America currency;

“existing entity” means

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

which was carrying its business or, in the case of a public, private or professional fund, was managing or administering its affairs in or from within Nevis immediately before the coming into force of this Ordinance.

“financial 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;

“financial intelligence unit” means the body created by the Financial Intelligence Unit Act 2000.

“financial services commission” means the body created by the Financial Services Commission Act 2000;

“government” means the Nevis Island Administration;

“independent director” means an individual who is not an employee of or a member of the immediate family of an employee of a fund or is not a former officer, director, legal counsel of the fund’s manager, principal underwriter or affiliates of the fund;

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

“legal adviser” means the person appointed by the Nevis Island Administration to carry out the function as legal adviser.

“manager” means a person not being an officer or an employee of a person licensed under this ordinance or a person licensed under this Ordinance who has been delegated management functions by a mutual fund and 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 recognized country or jurisdiction;

“material change” means a change in management, the underlying assets or more than twenty percent (20%) of the ownership of the fund.

“minister” means the Minister of Finance in the Nevis Island Administration

“mutual fund” or **“fund”** means a company incorporated, a partnership formed, a unit trust organized or other similar body formed or organized under the laws of Nevis or of any other country or jurisdiction which

- (a) collects and pools investor funds for the purpose of collective investment and
- (b) issues shares (as herein defined) that entitle the holder to receive or demand or within a specified period after demand an account 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 the unit trust or other similar body, as the case may be,
and 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 one or more investors which is a mutual fund not registered or recognized under this Ordinance.but excludes any body which is designated by regulations as not being a mutual fund;

“officer” includes

- (a) a director, alternate director, the president, a vice-president, 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 (members of a member-managed limited liability company or the Manager of a manager-managed limited liability company);
- (c) a trustee of a unit trust; and
- (d) any person in the case of any other body formed or organized who performs out the functions of a director, general partner, manager or trustee

“operator” in respect of a mutual funds, means-

- (a) where the mutual fund is a unit trust a trustee of that trust;
- (b) where the mutual funds is a partnership, a general partner in that partnership (or members of a member-managed Limited Liability Company or the manager of a manager-managed Limited Liability Company); or

- (c) where the mutual funds is a company, a director of that company.
- (d) where the mutual funds is any other body formed or organized, the person who performs the functions of a director, general partner or trustee.

“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 Nevis or of any other country or jurisdiction and includes a Limited Liability Company formed under the laws of Nevis notwithstanding any statutory definition thereof to the contrary;

“permanent secretary” means the permanent secretary of the ministry of finance of the Nevis Island Administration;

“person” includes an individual natural person, a mutual fund, any company, partnership, unit trust or trustee or other legal entity recognized as such under the laws of Nevis or any other country or jurisdiction;

“private 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 and this 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
 - (ii) by reason of a private or business connection between the person making the invitation and the investor; or
- (c) which is designated as a private fund by regulations;

“professional 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, but this minimum initial investment limit shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the professional fund;
- (b) which
 - (i) was carrying on business or engaged in an activity as a mutual fund on the date of the coming into force of the Ordinance; or
 - (ii) re-domiciled its place of incorporation or constitution from one of the countries prescribed under section 48, within six months of the coming into force of this Ordinance; and
 - (iii) the initial investments in respect of the majority of each of the investors in the mutual fund have been not less than one hundred thousand dollars in the United States currency or its equivalent in any other currency; and
 - (iv) the shares of the mutual fund are, after the date of the coming into force of the Ordinance, made available only to professional investors; or
- (c) which is designated as a professional fund by regulations;

“professional 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;

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

“prospectus” means any prospectus or similar document the purpose of which is to make an invitation to any person to subscribed for or purchase shares issued by a public, private or professional fund;

“public fund” means a mutual fund which is not a private fund or a professional fund;

“recognized country or jurisdiction” means any country or jurisdiction recognized by the Minister under subsection (3);

“registrar” means the Registrar of Mutual Funds appointed under this Ordinance or such other person as may be performing the duties of the Registrar under this Ordinance;

“regulator” means the person appointed by the Minister to perform the functions of supervisor and includes any person acting as assistant or deputy regulator;

“regulations or the regulations” means regulations made under this Ordinance;

“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;

“**serious criminal offence**” means any offence triable on indictment.

“**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 an arrangement creating a trust under the laws of the Nevis or of any other country or jurisdiction in which unit holders participating in the arrangement are the beneficiaries of the trust.

(2) In this Ordinance,

- (a) every company incorporated and every partnership formed or unit trust organized or any other similar body formed or organized under the laws of Nevis for the purpose of carrying on business as a mutual fund, a manager or administrator shall, if carrying on business anywhere outside Nevis, be deemed to be carrying on business from within Nevis;
- (b) the expression “carrying on business from within Nevis” includes carrying on business outside Nevis from a place of business or a registered office within Nevis;

- (3) The Minister may recognize any country or jurisdiction for the purposes of this Ordinance 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 who shall be a public officer; and
 - (b) any other public officers as may be necessary to administer this Ordinance.
- (2) The Registrar has
- (a) the duty to supervise mutual funds and managers and administrators in accordance with this Ordinance;
 - (b) in and for the discharge of that duty, the powers conferred upon him by this Ordinance;
 - (c) the power to prescribe such forms as he considers necessary for the purposes of this Ordinance regulations; and
 - (d) the authority to issue directives and policy guidelines for the purposes of this Ordinance or the regulations.
- (3) The Registrar may, upon request by any person to whom this Ordinance applies and the payment of the prescribed fee, issue to such person a certificate of compliance in the prescribed form.
- (4) The Registrar, or any employee of the office of the Registrar shall not, knowingly, have any financial interest in any person registered, recognized or licensed under this Ordinance.

Delegation of power.

4. (1) The Minister may in writing delegate any of his respective powers conferred upon him by this Ordinance to the Registrar or any other person and thereupon this Ordinance

shall be read as if those powers were originally conferred upon the Registrar or that other person.

(2) The Registrar may delegate any of his powers or duties under this Ordinance to another public officer and thereupon this Ordinance shall be read as if those powers or duties were originally conferred or imposed upon that officer.

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 Ordinance;
- (ii) registrations, recognitions and licences granted under this Ordinance;
- (iii) enforcement proceedings or disciplinary measures taken under this Ordinance; 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 Cabinet of Nevis Island Administration.

Records of the Registrar.

6. (1) The Registrar shall keep separate registers for all

(a) registered public funds;

(b) recognized private and professional funds;

(c) exempted public, private or professional funds; and

(d) licensed managers and administrators.

(2) The registers required under subsection (1) shall show

- (a) the information required under section 28 (1) (a),
- (b) and (c) with respect to each registered public

fund, recognized 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 44, 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.
Advisory Committee.

(1) There shall be a Committee called 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 and experience in the mutual funds industry.

(2) The Permanent Secretary shall be the Chairman of the Mutual Funds Advisory Committee and the Registrar of Mutual Funds and the Regulator shall be ex-officio members 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 deems necessary.

PART II

Public Funds

- Registration.**
8. No public fund shall carry on its business or manage or administer its affairs in or from within Nevis unless it is registered under this Ordinance.
- Application for Registration.**
9. (1) A public fund may apply to the Registrar for registration to carry on business from within Nevis.
- (2) An application shall be
- (a) made in the form and contain the information as prescribed, and
- (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 Nevis including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business;
- (ii) the prescribed application fee ;
- (iii) the instrument by which the applicant is constituted or such other proof as may be satisfactory to the Registrar that the applicant is lawfully constituted under the laws of Nevis or of any other country or jurisdiction;
- (iv) the notices required under section 28;
- (v) a certificate by an approved professional stating that nothing contained in the constitutional documents of the fund is adverse to the laws of Nevis; and
- (vi) such other documents or information as the Registrar may reasonably require for the purpose of determining the application.
- (3) The Registrar shall forward the application made under this section to the Minister

Application for consent
to be registered.

10. (1) The promoters of a public fund that is proposed to be formed, may apply to the Registrar for consent to register such proposed public fund upon being lawfully constituted under the laws of Nevis or of any other country or jurisdiction and upon complying with the requirements of this Ordinance.
- (2) An application for consent under subsection (1) shall be
- (a) made in the form prescribed ; and
 - (b) accompanied by the prescribed application fee.
 - (c) accompanied by
 - (i) where the public fund that is proposed to be formed is to be lawfully constituted under the laws of Nevis, a certificate by an approved professional stating that nothing contained in the constitutional documents of the fund is adverse to the laws of Nevis, or
 - (ii) where the public fund that is to be proposed to be formed is lawfully constituted under any other country or jurisdiction, a certificate by an approved professional that stating that nothing contained in the constitutional documents of the fund is adverse to this Ordinance as if had been constituted under the laws of Nevis.
- (3) The Registrar shall forward the application made under this section to the Minister.
- (4) The consent of the Minister shall be
- (a) in writing in such form as the Minister 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

Minister considers material, in any of the particulars contained in the application for consent.

- (5) The promoters of a proposed public fund may, upon the expiry of the three months period referred to in subsection (4) (b), apply for the renewal of the Minister's consent subject to
 - (a) supplying such documents or information as the Registrar may require; and
 - (b) the payment of the application fee required under subsection (2) (b).

**Power to grant
Registration or consent**

- 11. (1) The Minister may, in his discretion, grant or refuse to grant
 - (a) registration under section 9;
 - (b) his consent under section 10, or
 - (c) his approval under section 49 (2) (b)
- (2) notwithstanding subsection (1), the Minister shall refuse to grant registration, his consent or approval as the case may be, if
 - (a) the public fund or proposed public fund, as the case may be, has a name which is undesirable or misleading;
 - (b) the public fund or proposed public fund, as the case may be, 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.
- (3) Except as provided in section 36, where the Minister, in the exercise of his powers under subsection (1) (a), (b) or (c) makes a decision refusing to grant registration, consent or approval 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 procedure.

12. (1) Where the Minister grants 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 Minister showing the date of registration.
- (2) Where the Minister grants his consent under section 10, the promoters of the proposed public fund shall, within the three months period referred to in section 10 (4) (b) from the date of granting such consent or the renewal thereof, deliver to the Registrar.
- (a) the consent of the Minister;
 - (b) satisfactory proof that the proposed public fund is lawfully constituted in Nevis or elsewhere;
 - (c) the certificate of the approved professional;
 - (d) the application fee required under section 9(2) (b) (ii); and
 - (e) the notices referred to in section 9 (2) (b) (iv).
- (3) Where the Minister grants his approval under section 49 (2) (b), the proposed public fund to be continued or redomiciled shall, within three months from the date of the granting of such approval , deliver to the Registrar.
- (a) the approval of the Minister;
 - (b) satisfactory proof that the proposed public fund is lawfully constituted in Nevis or elsewhere;
 - (c) the certificate of the approved solicitor

- (d) the prescribed application fee ; and
 - (e) the notices referred to in section 28.
- (4) If the Registrar is satisfied that the proposed public fund has complied with the requirements of subsection (2) or (3), he shall register the public fund and issue to it a certificate of registration in accordance with the procedure set out in subsection (1).
- (5) The Registrar shall refuse to register the proposed public fund if he determines that
- (a) its registration has not received the consent or approval of the Minister pursuant to section 10 or section 49(2)(b) as the case may be; or
 - (b) it has not complied with any of the requirements of subsection (2) or (3) as the case may be.
- (6) Any person aggrieved by a decision of the Registrar under subsection (5) may appeal to the Financial Services Commission in accordance with the procedures set out in section 37.

**Accounting records
Financial statements.**

13. (1) Every registered public fund shall
- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with international financial reporting standards; and
 - (b) keep such accounting records and financial statements available for examination by the Registrar or any person authorized under his hand at
 - (i) its place of business or registered office in Nevis; 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 or registered office in Nevis.

- (2) The financial statements required under subsection (1) shall be
 - (a) audited by an auditor acceptable to the Regulator (in this Ordinance called “the approved auditor”) in accordance with international auditing standards;
 - (b) accompanied by the report of the approved auditor thereon which 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; and
 - (c) provided to or made available for examination by all investors of the registered public fund.

**Duty to publish
and file a prospectus .**

- 14. (1) No registered public fund shall in or outside Nevis make an invitation to the public or any section thereof to purchase its shares unless prior to such invitation it publishes in writing a prospectus signed by or on behalf of the 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 approved the contents of the prospectus or authorized its publishing, and files a copy thereof with the Registrar.
- (2) Every prospectus shall
 - (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;
 - (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) 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.
- (4) Where in a prospectus any of the disclosures required under subsection (2) (a) ceases to be accurate in a material particular, the registered public fund shall within fourteen days of the change occurring publish an amendment thereto giving accurate disclosures and provide a copy thereof to each of its investors and to the Registrar.
- Certificate of Compliance** 15. (1) Every registered public fund, wherever it is constituted, which carries on business outside Nevis 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.
- (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 carries on business in more than one country or jurisdiction, 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.
- 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 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, or would have been aware of the misrepresentation had he made reasonable investigations consistent with his duties, authorized 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.

(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 action
and amount recoverable**

17. (1) Notwithstanding any provision of law to the contrary, any action pursuant to section 16 (2) may not be commenced after
- (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 amount at which the shares were purchased or subscribed, including any fees or other charges paid by the claimant.

PART III

Private and Professional Funds

- | | | |
|------------------------------------|-----|---|
| Recognition. | 18. | <ol style="list-style-type: none">(1) Subject to subsection (2), no private or professional fund shall carry on its business or manage or administer its affairs from within Nevis unless it is recognized under this Ordinance.(2) A professional fund may carry on its business or manage or administer its affairs from within Nevis for a period of up to fourteen days without being recognized under this Ordinance. |
| Application for recognition | 19. | <ol style="list-style-type: none">(1) A private or professional fund that is constituted under the laws of Nevis may apply to be recognized under this Ordinance by sending to the Registrar an application made in form prescribed and accompanied by<ol style="list-style-type: none">(a) proof satisfactory to the Registrar that it<ol style="list-style-type: none">(i) is a private or professional fund within the meaning of this Ordinance; and(ii) is lawfully constituted under the laws of Nevis; and(b) a statement setting out the nature and scope of the business to be carried out;(c) a certificate by an approved professional stating that nothing contained in the constitutional documents of the fund is adverse to the laws of Nevis; and(d) the notices required under section 28. |

- (2) A private or professional fund that is constituted outside Nevis may apply for recognition under this Ordinance by sending to the Registrar an application in the prescribed form and accompanied by
 - (a) the prescribed application fee;
 - (b) the notices required under section 28; and
 - (c) proof satisfactory to the Registrar that the applicant is
 - (i) a private or professional fund within the meaning of this Ordinance; and
 - (ii) lawfully constituted under the laws of another country or jurisdiction.
 - (d) a certificate by an approved professional stating that nothing contained in the constitutional documents of the fund is adverse to this Ordinance, as if it had been constituted under the laws of Nevis.

- (3) A private or professional fund applying for approval under section 49(2)(b) shall send to the Registrar an application in the prescribed form and accompanied by
 - (a) the prescribed application fee;
 - (b) the notices required under section 28; and
 - (c) proof satisfactory to the Registrar that the applicant is
 - (i) a private or professional fund within the meaning of this Ordinance; and
 - (ii) lawfully constituted under the laws of another country or jurisdiction.
 - (d) a certificate by an approved professional stating that nothing contained in the constitutional documents of the fund is adverse to this Ordinance, as if it had been constituted under the laws of Nevis

- (4) The Registrar shall forward the application made under this section to the Minister.
 - (5) 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.
- Power to grant recognition.** 20. (1) The Minister may, in his discretion, grant or refuse to grant recognition under section 19(1) or (2) or approval under section 49(2)(b).
- (2) Where the Minister refuses to grant recognition under section 19(1) or (2) or approval under section 49(2)(b), the provisions of section 11 (3) shall apply mutatis mutandis.
- Recognition procedure.** 21. Where the Minister grants recognition or approval to a private or professional fund, he shall direct the Registrar accordingly and the Registrar shall
- (a) enter the particulars relating to the private or professional fund in the register maintained by him for the purpose under section 6; and
 - (b) issue a certificate of recognition to the private or professional fund as directed by the Minister showing the date of recognition.
- Registrar to be notified of material change in fund.** 22. Where there has been a material change in a private or professional fund the operator shall within 14 days thereof, through the person authorized under section 28 to represent the private or professional fund, file copies of the changes with the Registrar .

PART IV

Managers and Administrators

- Licensing.** 23. (1) No person shall, in or from within Nevis, carry on or hold himself out as carrying on business as manager or administrator of a mutual fund unless that person is licensed for the purpose under this Ordinance.
- (2) Subsection (1) does not apply to a person who
- (a) is not ordinarily resident or domiciled in Nevis;

- (b) is a manager or administrator of mutual funds (by whatever name called) under the laws of a recognized country or jurisdiction; and
 - (c) has received written person from the Minister to carry on business as manager or administrator of mutual funds from within Nevis.
- Application for licences.** 24. (1) A person who wishes to do so may make an application in the prescribed form to the Registrar to carry on business from within Nevis as
- (a) manager;
 - (b) administrator; or
 - (c) both manager and administrator of mutual funds.
- (2) An application shall be accompanied by
- (a) the prescribed application fee;
 - (b) a statement of the financial and human resources available to the applicant for the competent and efficient conduct of its business; and
 - (c) such other documents or information as the Registrar may reasonably require for the purpose of considering the application.
- (3) The Registrar shall forward the application made under this section to the Minister.
- (4) No person shall act as both manager and administrator to the same fund.
- Power to grant licences.** 25. (1) The Minister may, in his discretion, grant or refuse to grant a licence to any applicant.
- (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 proposed;
 - (b) has or has available to him adequate knowledge, expertise, resources and facilities necessary for the nature and scope of the business proposed; and
 - (c) has appointed an auditor satisfying such conditions as may be prescribed by the Minister.
- (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.
- (5) Without limiting the generality thereof in deciding if an applicant is a fit and proper person the Minister shall have regard to the following:
- (a) The Integrity of the applicant to properly discharge the responsibilities of being in a fiduciary position with regards to investments and savings of others;
 - (b) The financial stability, solvency and financial control of the applicant;
 - (c) The skill, competence and managerial control of the applicant; and
 - (d) The track record and viability of the applicant.
- (6) The Minister in renewing the licence of an applicant granted under this section shall request of the regulator a continually ongoing assessment of the applicant according to the principles and standards set out in subsection (5) of this section.

Licensing procedure.

26. Where the Minister grants a licence 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.
- Code of Practice.** 27. (1) The Minister may by Order prescribe a Code of Practice directing the holder of a licence under section 25 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.
 - (g) Anti-money laundering regulations under the Proceeds of Crime Act 2000.
 - (h) The provisions of the Anti-Terrorism Act 2002 and its regulations.
 - (i) The provisions of the Organised Crime (Prevention and Control) Act 2002 and its regulations.
- (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.

PART V

General

- Notices to accompany applications.** 28. (1) In addition to any other requirement under this Ordinance, every application for registration, recognition or a licence made under this Ordinance shall be accompanied by a notice of

- (a) the address of the applicant's place of business and its address for service in Nevis;
 - (b) the name and address of a person resident in Nevis who is authorized 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 of Nevis.
- (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 or professional 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 certificates and licences.** 29. (1) A certificate or a licence may be granted subject to terms, conditions, restrictions or limitations as the Minister sees fit to specify therein.
- (2) A certificate or a licence shall
- (a) be in such form as may be prescribed by the Minister;
 - (b) be admitted in all courts as prima facie evidence of the facts stated therein; and
 - (c) remain in force until it is cancelled.
- Documents to be file in English.** 30. Every document, instrument or form filed or required to be filed under this Ordinance shall be in the English language, except that the name of a fund licenced or recognized herein may be in another language if written in English letters or characters.
- Directors** 31. (1) A public, private or professional fund licenced or recognized under this Ordinance shall have two independent directors.
- (2) The independent directors have a duty to protect the interest of investors of the fund and in carrying out that

duty the independent directors shall at the expense of the fund engage the services of legal counsel and auditors independent of any legal counsel and auditors engaged by the manager of the fund.

Annual fees.

32. (1) Where
- (a) a public fund is granted registration;
 - (b) a private or professional 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 prescribed fee.

- (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 prescribed annual fee.
- (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 etc
of certificates
or licences.**

33. The Minister, in the case of a registered public fund, and in the case of a recognized private or professional fund or a Licensed Manager or administrator, may, subject to sections 34 and 35, cancel a certificate or a licence, as the case may be, or impose new or additional conditions, restrictions or limitations in respect of such certificate or licence
- (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 Nevis;
 - (ii) has contravened any provision of this Ordinance, the regulations or the Code of Practice prescribed under section 27, 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 Ordinance or of a serious 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 Ordinance 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.

34. (1) Before cancelling a certificate or a licence under paragraph (b) of section 33, the Minister 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 33 (b)
- (i) the Minister decides to cancel a certificate, or
 - (ii) 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.

35. 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 37.

Appeal by existing entitles.

36. Notwithstanding any provision in this Ordinance, where
- (a) the Minister, 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 25 (1) refuses to grant a licence,

to any existing entity, he shall give such existing entity a notice in writing of his decision and the reasons thereof and the existing entity may appeal such decision in accordance with section 37.

Appeal procedure.

- 37. (1) An appeal under sections 12 (5), 35, 36 or 42 (4) shall be made within 14 days after receiving notice of the decision to the Financial Services Commission.
- (2) The appellant shall forthwith serve a copy of the Notice on the Minister and Registrar.
- (3) The appellant shall be entitled to have legal representation at the hearing of the appeal.
- (4) The Financial Services Commission shall set a date for hearing within 14 days of receiving the appeal and the date of the hearing of the appeal shall be within 30 days of receiving the appeal in accordance with the rules of natural justice.
- (5) Any person aggrieved by the decision of the Financial Services Commission may appeal within 14 days to a Judge or Master of the High Court in chambers by way of Form 6 of the Civil Procedure Rules 2000 and the decision of the Judge or Master shall be final.
- (6) The bringing of an appeal suspends the decision appealed against pending the determination or abandonment of the appeal.

**Grant or
cancellation**

- 38. The Registrar shall publish in a newspaper of general circulation in Nevis, in such form as he thinks fit, notice of every

to be published.

grant or cancellation of a certificate or a licence under this Ordinance.

Power to grant exemptions.

39. (1) Upon the recommendation of the Registrar, the Minister 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 Ordinance 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.
- (2) A direction under this section may be
- (a) subject to any conditions as the Minister may see fit to specify therein; and
 - (b) revoked at any time at the discretion of the Minister.

Restriction on the use of the words “fund or “mutual fund”

40. Except where a person is a mutual fund within the meaning of this Ordinance, or with the written consent of the Registrar, no person shall
- (a) use or continue to use the words “fund” or “mutual 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 Nevis; and
 - (b) make or continue to make any representation in any advertisement, bill head, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on business as a fund or mutual fund.

Access to information and records by Registrar.

41. For the purpose of discharging his duties under this Ordinance and the regulations and subject to section 44, the Registrar or any person acting under his authority, may, at all reasonable times, in writing, direct any person to whom this Ordinance 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 Ordinance which, in the opinion of the Registrar, are necessary to enable him to ascertain compliance with the provisions of this Ordinance or the regulations.

**Access to
information and
records by Financial
Intelligence Unit
and Regulator**

42. (1) Where the Financial Intelligence Unit has cause under the Financial Intelligence Unit Act 2000, to investigate a public, private or professional fund licenced or recognized under this Ordinance, the Financial Intelligence Unit may directly or through the Regulator or any person acting under his authority, direct the operator of a public, private or professional fund licensed or recognized under this Ordinance to
- (a) furnish information, or
 - (b) provide access to any records, books, or other documents wherever it may be located,
 - (c) have its accounts audited for any period of time the fund has been in existence

and submit them to the Financial Intelligence Unit or to the Regulator, as the case may be, within a period of time determined by the Financial Intelligence Unit or the Regulator.

- (2) The operator of a public, private or professional fund shall ensure shall comply with the direction of the Financial Intelligence Unit or the Regulator in accordance with subsection (1) and any person who fails to follow the directions of the Financial Intelligence Unit or the Regulator as the case may be, commits an offence and liable on summary conviction to a fine of one hundred thousand dollars.
- (3) Where the operator of a public, private or professional fund is convicted under subsection (2), the Regulator may recommend to the Minister that any licence or recognition to that public, private or professional fund be cancelled.

- (4) Any person aggrieved by the decision of the Minister under subsection (3) may appeal to the Financial Services Commission in accordance with section 37.
- Immunity and actions by the Registrar.** 43. (1) No liability shall be incurred by and no suit, action or proceeding shall be brought against the Government, any agent thereof the Regulator, the Financial Services Commission, the Financial Intelligence Unit, 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 Ordinance 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 Ordinance or the regulations, or for the recovery of fees or other sums of money payable under this Ordinance or the regulations.
- Confidentiality.** 44. Notwithstanding section 6, any information, material or document furnished to or filed with the Registrar by any recognized private or professional fund is privileged and shall not be disclosed to any person except
- (i) the Minister, the Legal Adviser, the Regulator, the Financial Services Commission, the Financial Intelligence Unit or a public officer authorized by the Minister;
- (ii) on the order of a court of competent jurisdiction for the purpose of criminal proceedings.
- Exemption from certain enactments.** 45. (1) Notwithstanding any statutory provision or rule of law to the contrary
- (a) a public fund that is registered or a private or professional fund that is recognized under this Ordinance, and

- (b) an investor in any such registered public fund or recognized private or professional fund who is not ordinarily resident or domiciled in Nevis,

No. 17 of 1966
Cap. 257
Cap. 69

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

No. 4 of 1999

- (2) Notwithstanding the provisions of Part III Division B (Sections 338-359) of the Companies Ordinance 1999, a company that is incorporated outside of Nevis which establishes a place of business within Nevis to carry on business in accordance with the provisions of this Ordinance as

- (a) a registered public fund;
- (b) a recognized private or professional fund, or
- (c) a licensed manager or administrator,

is exempt from the provisions of that Part III Division B (Section 338-359) of the Companies Ordinance.

Offences and penalties.

- 46. (1) A person who,
 - (a) willfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Ordinance or the regulations;
 - (b) willfully makes any statement or gives any information required for the purposes of this Ordinance 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 Ordinance 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 41 refuses or wilfully

neglects to comply with any lawful direction given under that section,

commits an offence under this Ordinance 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 Ordinance or the regulations for which no penalty is provided commits an offence against this Ordinance or the regulations, as the case may be 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 ten thousand dollars or to imprisonment for a period not exceeding six month or to both such fine and imprisonment.

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

False statements

47. Any person who--

(a) causes or permits to be included in any form, book or document provided or produced to the Minister, the Registrar, the Regulator, the Financial Services Commission, or the Financial Intelligence Unit a statement which he knows to be false in a material particular; or

(b) in purported compliance with any provision of this Ordinance or a requirement imposed under any such provisions, provides information which he knows to be false in material particular or recklessly provides information which is false in a material particular,

commits an offence 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..

Regulations.

48. (1) The Minister may from time to time make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to the provisions of this Ordinance and for the due administration thereof.
- (2) Without limiting the general powers conferred by subsection (1) of this section it is hereby declared that any regulations may be made under this section for all or any of the following purposes:-
- (a) prescribing fees payable under this Ordinance;
 - (b) designating arrangements which are not mutual funds;
 - (c) designating mutual funds or a class or classes thereof as private or professional funds;
 - (d) designating a class or sub-classes of a public fund;
 - (e) authorizing the Registrar to require that any document, statement, report, certificate, release, agreement, or other information be filed with, furnished or delivered to him;
 - (f) defining, for the purposes of this Ordinance, terms or expressions used in this Ordinance that are not defined in this Ordinance;
 - (g) prescribing any matter required to be or which may be prescribed under this Ordinance;
 - (h) 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.
- (viii) relating to the matters which should be contained in a prospectus of a public fund or a sub-clause of such fund; and

- (i) generally for the better administration of this Ordinance and for carrying the intent and purpose of its provisions into effect.

Transitional.

49. (1) Any person performing the functions of a manager or an administrator who, on the date of the coming into force of this Ordinance, is carrying on any business or engaged in any activity in relation to which he is required to be licensed under this Ordinance shall, within six months of the coming into force of this Ordinance, comply with the requirements of this Ordinance.
- (2) (a) Any person who, on the date of the coming into force of this Ordinance, is carrying on any business or engaged in any activity as a mutual fund shall, within six months from that date, comply with the provisions of this Ordinance.

- (b) Any mutual fund which, on the date of the coming into force of this Ordinance, is in good standing and validly licensed or recognised in any prescribed country or jurisdiction shall, for a period of six months after the coming into force of this Ordinance, be entitled subject to the filing of the prescribed forms and the payment of the prescribed fees and the approval of the Minister, upon its continuation or re-domiciliation to Nevis, to be recognised or licensed under this Ordinance as if it had been formed immediately after the coming into force of this Ordinance, and the same privilege shall accrue to the investment manager and administrator thereof..
- (3) Where a person fails to comply with subsection (2), it shall pay a non-compliance penalty of ten 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 46.
- (5) Where a person is proceeded against under section 46, it shall, in addition to any penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).

Sgd. Marjorie L. Morton
PRESIDENT

Passed in the Nevis Island Assembly this 16th day of November, 2004

Sgd. St. Clair Wallace
Clerk of the Nevis Island Assembly

OBJECTS AND REASONS

This Bill is designed to establish credibility to the ... 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 manager 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 Minister in Council, 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 on units to the general public and private funds (Part III) which offer their shares on 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 Nevis. In the case of private funds, however, these are only required to be recognized 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 Nevis 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 Nevis 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 Nevis 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 recognised Country or Jurisdiction to operate in or from within Nevis 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.

LEGAL REPORT

The purpose of this Bill is to establish credibility to Nevis 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.

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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 and passed through its remaining stages on the

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