

# **VIRGIN ISLANDS**

## **MUTUAL FUNDS REGULATIONS, 2010**

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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2010 NO. 18**

**SECURITIES AND INVESTMENT BUSINESS ACT, 2010  
(No. 2 of 2010)**

**Mutual Funds Regulations, 2010**

[Gazetted 29<sup>th</sup> April, 2010]

The Cabinet, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by section 62 of the Securities and Investment Business Act, 2010 (No. 2 of 2010), makes these Regulations:

**PRELIMINARY PROVISIONS**

1. These Regulations may be cited as the Mutual Funds Regulations, 2010 and shall come into force on the date that the Act is brought into force. Citation and commencement.
  
2. (1) In these Regulations, unless the context otherwise requires, Interpretation.
  - “Act” means the Securities and Investment Business Act, 2010; No. 2 of 2010
  
  - “Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act, 2001; and No. 12 of 2001
  
  - “offering document” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private or professional fund, and includes an amended offering document.
  
3. For the purposes of the definition of “fund administrator” in section 40(1) of the Act, “fund administration services” includes the following activities: Fund administration services.
  - (a) acting as registrar or transfer agent with respect to mutual funds; and
  
  - (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

## PART I

### PRIVATE AND PROFESSIONAL FUNDS

#### *Application for recognition*

Application for  
recognition as  
private or  
professional fund.

**4.** (1) An application to the Commission for the recognition of a private or professional fund shall be in the approved form and shall specify the following:

- (a) the address of the fund's place of business in the Virgin Islands;
- (b) the name and address of each of the fund's directors;
- (c) the name and address of the fund's authorised representative;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) the address of any place or places of business that the fund may have outside the Virgin Islands;
- (f) the name and address of the fund's auditor;
- (g) the name and address of each of the fund's functionaries;
- (h) whether the fund has issued, or intends to issue, an offering document;
- (i) in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands, written details of the nature and scope of the fund's business; and
- (j) such other information as may be required by the approved form.

(2) An application under sub-regulation (1) shall be accompanied by the following:

- (a) a copy of the fund's constitutional documents;
- (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
- (c) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to
  - (i) why it is not considered necessary for a custodian to be appointed; and

- (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
- (d) if application is made to exempt the fund from the requirement to appoint a manager, notification of the person who will fulfil the management function together with an explanation as to the arrangements made, or to be made, to ensure that the management function is adequately fulfilled;
- (e) if the mutual fund has issued, or intends to issue, an offering document, a copy of the offering document or the proposed offering document; and
- (f) if the mutual fund has not issued and does not intend to issue an offering document, an explanation as to why no offering document is to be issued including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors and potential investors.

(3) The Commission may require any documents submitted under sub-regulation (2) (a) and (b) to be certified in such manner as it considers appropriate.

**5.** (1) For the purposes of the definition of “professional investor” in section 40 (1) of the Act, the specified sum is \$1,000,000.

Matters required to be prescribed, professional investor and professional fund.

(2) For the purposes of section 55 (2) (c) of the Act, the minimum initial investment of each investor, other than an exempted investor, in a professional fund is \$100,000 or its equivalent in another currency.

(3) For the purposes of section 55 (4) of the Act, the following are exempted investors with respect to a fund:

- (a) the manager, administrator, promoter or underwriter of the fund;
- (b) any employee of the manager or promoter of the fund; and
- (c) such other class or description of persons as the Commission may, by notice published in the *Gazette*, specify as exempted investors.

*Obligations on private and professional funds*

**6.** (1) A private fund and a professional fund shall at all times have at least two directors, at least one of whom shall be an individual.

Directors.

(2) Where a private or professional fund is in breach of sub-regulation (1), it shall immediately notify the Commission of that fact in writing.

Functionaries of private and professional funds.

**7.** (1) Subject to subsection (2), a private fund and a professional fund shall at all times have

- (a) a fund manager;
- (b) a fund administrator; and
- (c) a custodian.

(2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint a custodian or a fund manager.

(3) An application under sub-regulation (2) may be made together with the application for recognition or at any subsequent time.

(4) The custodian of a private or professional fund shall,

- (a) be a person who is functionally independent from the fund manager and the fund administrator; or
- (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.

(5) Subject to sub-regulation (6), no person shall be appointed as a functionary of a private or professional fund unless at least seven days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (5).

Functionary ceasing to hold office.

**8.** (1) Written notice shall be given to the Commission by a private or professional fund within

- (a) seven days after a functionary of the fund resigns, his appointment is terminated or he otherwise ceases to act as functionary of the fund; or
- (b) such longer period as the Commission may specify.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where a functionary of a private or professional fund resigns, has his appointment terminated or otherwise ceases to act as functionary of the fund, the fund does not contravene regulation 7 (1) if another person is appointed to act as functionary within seven days of the original functionary ceasing to act.

**9.** (1) No offer or invitation shall be made to an investor or potential investor to purchase or subscribe for fund interests in a private or professional fund unless the investor or potential investor is provided with an investment warning that complies with these Regulations.

Investment  
warning.

(2) Where a private or professional fund issues an offering document, the investment warning shall be included in a prominent place in the offering document.

(3) Where a private or professional fund does not issue an offering document, the investment warning shall be provided to each investor as a separate document.

(4) The investment warning required to be provided to an investor or potential investor shall clearly indicate that the fund has been established as a private or professional fund, as the case may be, and that,

- (a) in the case of a private fund, the fund is suitable for private investors only and that the fund is limited to fifty investors or any invitation to subscribe for fund interests may be made on a private basis only;
- (b) in the case of a professional fund,
  - (i) the fund is only suitable for professional investors, as defined in the Act; and
  - (ii) a minimum investment of \$100,000 (or such larger sum as may apply with respect to the fund) is required;
- (c) the fund is not subject to supervision by the Commission or by a regulator outside the Virgin Islands and that requirements considered necessary for the protection of investors that apply to public funds do not apply to private or professional funds;
- (d) an investor in a private or professional fund is solely responsible for determining whether the fund is suitable for his investment needs;
- (e) by reason of the above, investment in a private or professional fund may present a greater risk to an investor than investment in a public fund.

*Financial statements and audit*

Preparation and  
audit of  
financial  
statements.

- 10.** (1) Subject to sub-regulation (2), a private fund and a professional fund shall
- (a) prepare financial statements for each financial year that comply with
    - (i) one of the accounting standards specified with respect to public funds in regulation **17** (1) (a) to (d); or
    - (ii) internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraph (i); and
  - (b) appoint, and at all times have, an auditor for the purposes of auditing its financial statements.
- (2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint an auditor.
- (3) The auditor of a private or professional fund shall
- (a) audit the fund's financial statements and prepare his report in accordance with
    - (i) the auditing standards specified or endorsed by the recognised professional body of which he is a member; or
    - (ii) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
  - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
  - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
  - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (4) A private or professional fund shall provide a copy of its audited financial statements to the Commission within six months after the financial year end for the financial statements or such extended period not exceeding fifteen months as, subject to subsection (5), the Commission may approve in writing.
- (5) The Commission shall not grant an extension under sub-regulation (4) of more than nine months unless it is satisfied that a further extension is justified by exceptional

circumstances.

**11.** (1) A private fund and a professional fund shall provide written notice to the Commission in accordance with this regulation of Notifications.

- (a) the appointment of a director, authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands,;
- (e) any amendment to its constitutional documents;
- (f) the issuance of an offering document that was not provided to the Commission with the fund's application for recognition; and
- (g) the amendment of any offering document previously provided to the Commission, whether with its application or in accordance with paragraph (f).

(2) Notification of the matters specified in sub-regulation (1) shall be provided as follows:

- (a) in the case of a notice provided in accordance with sub-regulation (1) (a), (b) or (c), within fourteen days after the date of the occurrence of the matter to be notified;
- (b) in the case of a notice provided in accordance with sub-regulation (1) (d), as soon as reasonably practicable after the change;
- (c) in the case of a notice provided in accordance with sub-regulation (1) (e), (f) or (g), no more than fourteen days after the occurrence of the matter in respect of which notice is given.

**PART II**  
**PUBLIC FUNDS**

*Registration*

Application for registration of public fund.

**12.** (1) An application to the Commission for the registration of a public fund shall be in the approved form and shall specify the following:

- (a) the address of the place of business of the fund in the Virgin Islands;
- (b) the name and address of the fund's authorised representative;
- (c) if the fund is a BVI business company, the name and address of the fund's directors;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) the name and address of any promoters of the fund;
- (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
- (g) the name and address of the fund's auditor;
- (h) the name and address of each of the fund's functionaries;
- (i) the place or places where the fund's financial and other records will be kept; and
- (j) such other information as may be required by the approved form.

(2) An application for the registration of a public fund shall be accompanied by the following:

- (a) a copy of the fund's constitutional documents;
- (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
- (c) a statement setting out the nature and scope of the business to be carried on by the fund in or from within the Virgin Islands, including the name of any other country where the fund is carrying on or intends to carry on business;

- (d) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to
  - (i) why it is not considered necessary for a custodian to be appointed; and
  - (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
- (e) a copy of the prospectus issued or proposed to be issued by or on behalf of the fund; and
- (f) a copy of each functionary agreement.

(3) The Commission may require any documents submitted under sub-regulation (2) (a) or (b) to be certified in such manner as it considers appropriate.

*Prospectus*

**13.** A prospectus issued by a public fund shall

- (a) state prominently at the head of the first page or on the cover that it is a prospectus prepared in accordance with the Act, these Regulations and the Public Funds Code;
- (b) contain the information specified in the Public Funds Code;
- (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 on those accounts, if the fund has completed a financial year in operation;
- (d) be accompanied by such other documents as may be specified in the Public Funds Code; and
- (e) contain such other matters as the Commission may require.

Content of prospectus of public fund.

*Other requirements*

**14.** (1) A public fund that is a BVI business company shall at all times have at least two directors.

Directors.

- (2) Only an individual shall be appointed as the director of a public fund.
- (3) Where a public fund is in breach of sub-regulation (1), it shall
  - (a) immediately notify the Commission of that fact in writing; and

- (b) within twenty-one days of the breach, submit an application to the Commission for the appointment of one or more new directors pursuant to section 54 of the Act in order to ensure compliance with sub-regulation (1).

Unit trust to have a trustee.

**15.** A public fund that is a unit trust shall at all times have a trustee that is a body corporate.

Functionaries of public fund.

**16.** (1) Subject to sub-regulation (2), a public fund shall at all times have

- (a) a fund manager;
- (b) a fund administrator; and
- (c) a custodian.

(2) The Commission may, on written application made by or on behalf of a public fund, exempt the fund from the requirement to appoint a custodian.

(3) An application under sub-regulation (2) may be made together with the application for registration or at any subsequent time.

(4) Each functionary of a public fund shall be functionally independent from every other functionary of the fund.

Prescribed accounting and audit standards.

**17.** (1) The following accounting standards are specified for the purposes of Part IV of the Act in relation to public funds:

- (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
- (b) UK GAAP;
- (c) US GAAP;
- (d) Canadian GAAP; or
- (e) such other recognised international accounting standards as may be approved by the Commission on a case by case basis.

(2) The auditor of a public fund shall

- (a) audit the fund's financial statements and prepare his report in accordance with
  - (i) the auditing standards specified or endorsed by the recognised

professional body of which he is a member; or

- (ii) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
- (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
- (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
- (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

**18.** (1) A public fund shall provide written notice to the Commission in accordance with this regulation of Notifications.

- (a) the appointment of a director, authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands,;
- (f) any proposed amendment to its constitutional documents;
- (g) its intention to issue an offering document not provided to the Commission with the funds application for registration; and
- (h) its intention to amend any offering document provided to the Commission with its application or in accordance with paragraph (g);

(2) Notification of the matters specified in sub-regulation (1) shall be provided as follows:

- (a) in the case of a notice provided in accordance with sub-regulation (1) (a), (b), (c) or (d), within fourteen days after the date of the occurrence of the matter to be notified;

- (b) in the case of a notice provided in accordance with sub-regulation (1) (e), as soon as reasonably practicable after the change;
- (c) in the case of a notice provided in accordance with sub-regulation (1) (f), (g) or (h), no less than twenty-one days prior to the issue of the proposed offering document or the proposed amendment, as the case may be, or such shorter period as the Commission may approve in writing.

Public Funds  
Code.

**19. (1)** The following matters may be provided for in the Public Funds Code:

- (a) the management, control and administration of public funds, the persons who may be appointed as functionaries of a public fund and the duties of those functionaries;
- (b) the custodial arrangements to be put in place with respect to public funds;
- (c) the reporting of information and the submission of documents to the Commission, including periodic returns, and the verification of the information or documents, and returns to be submitted to the Commission by and in respect of public funds;
- (d) the issue and redemption of fund interests in public funds;
- (e) the rights of investors in public funds;
- (f) conflicts of interests;
- (g) title to, and the transfer of, public fund property;
- (h) segregation of assets;
- (i) the income of a public fund;
- (j) meetings of investors of public funds;
- (k) the retention of records by public funds and the functionaries of public funds;
- (l) requirements and restrictions with respect to
  - (i) the constitutional documents of a public fund;
  - (ii) investments and borrowing;
  - (iii) pricing and dealing;

- (iv) the suspension and termination by a public fund of its operation or business;
- (v) the valuation of assets and liabilities of a public fund; and
- (vi) payments made, and benefits provided, to the functionaries of a public fund.

### **PART III**

#### **MISCELLANEOUS PROVISIONS**

**20.** (1) The Registers maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility Registers.

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The registers required to be maintained under the Act shall

- (a) specify the following information with respect to each fund:
  - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for registration or recognition (“the applicant”);
  - (ii) the applicant’s authorised representative;
  - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
  - (iv) the date of registration or recognition of the fund;
  - (v) the status of the registration or recognition, if cancelled, and the date of cancellation;
  - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
  - (vii) such other information as the Commission considers to be appropriate; and

(b) be open to public inspection.

**21.** The transitional provisions specified in the Schedule shall have effect.

Transitional provisions.

## SCHEDULE

[Regulation 21]

### TRANSITIONAL PROVISIONS

- 1.** In this Schedule, Interpretation.
- “commencement date” means the date the Act is brought into force;
- “existing private fund” means a mutual fund that, immediately before the commencement date, was recognised as a private fund under the former Act;
- “existing professional fund” means a mutual fund that, immediately before the commencement date, was recognised as a professional fund under the former Act;
- “existing public fund” means a mutual fund that, immediately before the commencement date, was registered as a public fund under the former Act;
- “first transition date” means 3<sup>rd</sup> August, 2010;
- “former Act” means the Mutual Funds Act, 1996 repealed under the Act; and
- “second transition date” means the date the Public Funds Code comes into effect.
- 2.** The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing private or professional fund: Private and professional funds.
- (a) regulation 6;
  - (b) regulation 7 (1) and (4); and
  - (c) regulation 9.
- 3.** (1) For the purposes of this regulation, “current financial year”, in relation to an existing private or professional fund, means the financial year of the fund that commenced before, and ends after, the commencement date. Financial statements and audit re private and professional funds.
- (2) Regulation 10 (1) and (4) do not have effect with respect to the current financial year of an existing private or professional fund, or any financial statements prepared in respect of the current financial year.
- (3) Regulation 10 (3) does not have effect in relation to the auditor of an existing private or professional fund appointed in respect of the current financial year.

Public funds.

**4.** The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing public fund:

- (a) regulation 14;
- (b) regulation 16 (1) and (4); and
- (b) subject to paragraph 6 (2), regulation 17.

Prospectus of public fund.

**5.** Regulation 13 shall not take effect until the second transition date.

Audit of financial statements re public funds.

**6.** (1) For the purposes of this regulation, “current financial year”, in relation to an existing public fund, means the financial year of the fund that commenced before, and ends after, the commencement date.

(2) Regulation 17 (2) does not have effect in relation to the auditor of an existing public fund appointed in respect of the current financial year.

Made by the Cabinet this 28<sup>th</sup> day of April, 2010.

(Sgd.) Otto O’Neal  
Cabinet Secretary