

SAINT LUCIA

No. 22 of 2006

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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

20th March, 2006.

SAINT LUCIA

No. 22 of 2006

AN ACT to provide for the regulation, authorisation and control of international mutual funds and their administrators and managers, the carrying on of international mutual fund business in or from Saint Lucia and for related matters.

[On Order]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

PART I
PRELIMINARY

Short title and commencement

1.— (1) This Act may be cited as the International Mutual Funds Act 2006.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. — (1) In this Act —

“auditor” means a person who —

- (a) is a member of the Institute of Chartered Accountants of the Eastern Caribbean or another professional accounting institute or association and who is approved as an auditor by the Minister;
- (b) is independent of the international mutual fund or the administrator or the manager which he or she is auditing; and
- (c) has at least five years of experience in performing audits of financial institutions or mutual funds;

“administrator” means a person who holds a valid international public mutual fund administrator licence;

“certificate of registration “ means a certificate of registration issued pursuant to section 4(5)(b);

“Director” means the Director of Financial Services appointed as such pursuant to the Registered Agent and Trustee Licensing Act 1999, No. 37;

“eligible company” means a body corporate which is incorporated or continued under the International Business Companies Act for the purpose of carrying on international public mutual fund business and whose objects or business activities are restricted to international public mutual fund business;

“equity interest” means a share, a partnership interest, a trust unit or other security or vote —

- (a) that carries an entitlement to participate in the profits or gains of a company, a partnership or a unit trust; and
- (b) which may or may not be redeemable or repurchasable at the option of the investor;

“international business company” means a company incorporated pursuant to the International Business Companies Act;

“International Business Company Act” means the International Business Companies Act 1999, No. 40;

“international mutual fund business” means engaging in the business of establishing and operating or attempting to establish or operate mutual funds which does not involve —

- (a) undertaking mutual fund business with any resident;
- (b) investing in any asset which represents a claim on any resident, except a claim resulting from a loan to an international business company registered under the International Business Companies Act, or to a company licensed under the International Banks Act 1999, No. 43, or to an international mutual fund subject to this Act, or to an international trust registered under the International Trust Act 2002, No. 15;

and “international private mutual fund business” and “international public mutual fund business” shall be construed accordingly;

“international partnership” means a partnership registered pursuant to the law in force in Saint Lucia relating to international partnerships;

“international private mutual fund” means a private mutual fund registered as an international private mutual fund pursuant to section 4 of this Act;

“international public mutual fund” means a public mutual fund in respect of which a person has been granted an international public mutual fund licence pursuant to section 6;

“international public mutual fund administration services” means —

- (a) the administration of an international public mutual fund;
- (b) the provision of the registered office of an international public mutual fund in Saint Lucia;

(c) the provision of the administrative services to an international public mutual fund including the accounting, valuation and reporting services; or

(d) in relation to an international public mutual fund, the maintenance of any register of equity interests;

but does not mean the provision of a registered office where corporate secretarial and related services are provided to a mutual fund or the filing and payment of fees under the International Business Companies Act, any law relating to trusts or this Act; or the provision of investment advice;

“international public mutual fund administrator licence” means an international public mutual fund administrator licence granted pursuant to section 13;

“international public mutual fund licence” means an international public mutual fund licence granted pursuant to section 6;

“international public mutual fund licensee” means a person who holds a valid international public mutual fund licence;

“international public mutual fund manager licence” means an international public mutual fund manager licence granted pursuant to section 24;

“international public mutual fund management services” include—

(a) the management of an international public mutual fund;

(b) the provision of investment advice to an international public mutual fund;

“international trust” means an international trust registered pursuant to the International Trust Act 2002, No. 15;

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

“licence” means a licence issued pursuant to this Act;

“licensee” means a person issued with a licence pursuant to this Act;

“manager” means a person who holds a valid international public mutual fund manager licence;

“Minister” means the Minister responsible for International Financial Services;

“mutual fund” means a pool of investors funds for the purpose of collective investment arranged in the form of a company incorporated, a partnership formed or a unit trust organized pursuant to the law in force in Saint Lucia which issues equity interests that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the company, the partnership, the unit trust or other similar body as the case may be;

“offering document” means a document or series of documents on the basis of which equity interests in the mutual fund are offered for sale or persons are invited to subscribe for or purchase equity interests in the mutual fund, but does not include any other notice, circular, advertisement, letter or other communication used in connection with the offer for sale of an equity interest in the mutual fund and containing the information required pursuant to section 8;

“officer” includes a person employed in a managerial position for valuable consideration;

“person” includes a body corporate or an unincorporated body;

“prescribed” means prescribed in the Regulations;

“promoter” means a person acting alone or in conjunction with others directly or indirectly who takes part in forming or organizing the business of a mutual fund;

“public mutual fund” means a mutual fund—

- (a) the constitutional documents, offering document and any other documents which specify that the making of an invitation to subscribe to the mutual fund is to be made to the public; or
- (b) which is designated as a public mutual fund;

“private mutual fund” means a mutual fund where the constitutional documents specify –

- (a) its equity interests are held by not more than one hundred persons;
- (b) the minimum total investment in the fund is fifty thousand dollars per person;
- (c) that it is not marketed to the public;

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

“registered agent” has the meaning given to it pursuant to the Registered Agent and Trustee Licensing Act 1999, No. 37;

“registered office” means —

- (a) in respect of an international business company incorporated or continued pursuant to the International Business Companies Act, the registered office of the international business company for the purpose of that Act;
- (b) in the case of an international trust registered pursuant to the International Trusts Act 2002, No. 15 the place shown in the Register maintained by the Registrar of International Trusts as the address of the registered trustee of the international trust;
- (c) in the case of an international partnership formed pursuant to the law in force in Saint Lucia relating to the international partnerships, the address of the registered general partner;

“registered trustee” has the meaning given to it under the Registered Agent and Trustee Licensing Act 1999, No. 37;

“Registrar of International Trusts” means the Registrar of International Trusts designated as such pursuant to the International Trusts Act 2002, No. 15;

“Regulations” means Regulations made pursuant to this Act;

“resident” means —

- (a) a natural person who is resident in Saint Lucia in accordance with the Income Tax Act 1989, No. 1;
- (b) a company, partnership, limited partnership or other body, incorporated, established, formed or organised in Saint Lucia under the law in force in Saint Lucia, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (a);
- (c) any other corporation, partnership, limited partnership, or other entity which is a resident of, or ordinarily resident or domiciled in Saint Lucia under the law in force in Saint Lucia;

but does not mean a person registered or licensed under any law in force in Saint Lucia relating to international financial services;

“unit trust” means a trust under which for valuable consideration are issued, trust units in profits or gains arising from the acquisition holding, management or disposal of investments by the trustee of the trust.

(2) In this Act, the expression “carrying on business from within Saint Lucia” means carrying on business outside Saint Lucia from a place of business or a registered office within Saint Lucia.

(3) The Minister may recognise any jurisdiction for the purposes of this Act and shall cause a notice of the recognition to be published by an Order in the *Gazette*.

PART II

INTERNATIONAL MUTUAL FUNDS

Division 1-Requirement for Licence or Registration

Requirement for licence or registration

3.— (1) A person shall not carry on international mutual fund business from within Saint Lucia unless that person —

- (a) is granted and holds a valid international public mutual fund licence and complies with the provisions of this Act, the Regulations and the terms and conditions of the international public mutual fund licence; or
- (b) is registered as an international private mutual fund and complies with the provisions of this Act, the Regulations and the terms and conditions of the registration of the international private mutual fund.

(2) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding five years or to both.

Division 2-International Private Mutual Funds

Registration of international private mutual fund

4.— (1) In order for a person to carry on international mutual fund business as an international private mutual fund from within Saint Lucia, that person shall through its registered agent or registered trustee and

in the prescribed form apply to the Director for registration of the private mutual fund as an international private mutual fund.

(2) An application made pursuant to subsection (1) shall be accompanied by the prescribed application fee together with any information the Director may require.

(3) A person shall not in connection with the registration of an international private mutual fund supply to the Director information that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(5) Upon receipt of an application for registration of an international private mutual fund the Director subject to section 5 and if satisfied that the applicant complies with the requirements of subsection (6), shall on payment by the applicant of the prescribed registration fee —

- (a) register the mutual fund as an international private mutual fund in a register to be maintained by the Director; and
- (b) issue a certificate of registration in the prescribed form—
 - (i) specifying that the international private mutual fund has been duly registered in accordance with this Act;
 - (ii) specifying any terms and conditions of the registration of the international private mutual fund as the Director sees fit including the condition that the Director shall be informed of any material changes to the information supplied to the Director on application for the registration of the international private mutual fund.; and
 - (iii) specifying the date upon which it was so registered.

(6) The requirements referred to in subsection (5) are as follows—

- (a) that the applicant satisfies the prescribed due diligence test; and
- (b) that the applicant is of sound reputation.

Name of international private mutual fund

5.— (1) The Director may refuse to register a private mutual fund as an international private mutual fund where the proposed name of the international private mutual fund —

- (a) is identical with that of any company, partnership, business or other entity or which so nearly resembles the name of the company, partnership, business or entity as to be likely to deceive;
- (b) is likely to falsely suggest the patronage of or connection with some person, or authority, whether in Saint Lucia or elsewhere; or
- (c) is likely to falsely suggest that the international private mutual fund has a special status in relation to or derived from the Government or the Crown.

(2) If in the Director's opinion a person is carrying on or attempting to carry on international private mutual fund business from Saint Lucia using a name that the Director would have refused by virtue of subsection (1), the Director may direct —

- (a) the registered agent or registered trustee of the international private mutual fund; and
- (b) the person carrying on the international private mutual fund business;

to change the name of the international private mutual fund to a name approved by the Director.

(3) The registered agent or registered trustee of an international private mutual fund shall ensure compliance with a direction given to it in accordance with subsection (2).

(4) The registered agent or registered trustee of an international private mutual fund who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.

(5) A person mentioned in subsection (2)(b) who contravenes a direction given pursuant to subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

*Division 3-International Public Mutual Funds***Application for and grant of international public mutual fund licence**

6.— (1) Subject to subsection (2), in order to carry on international public mutual fund business from within Saint Lucia an eligible company, an international partnership or international trust shall apply to the Minister for the grant of an international public mutual fund licence.

(2) An application pursuant to subsection (1) shall be made by an administrator, a registered agent or a registered trustee on behalf of the person requiring the international public mutual fund licence and be submitted to the Director in the prescribed form accompanied by —

- (a) the current offering document or, if one has not been finally settled, the latest draft of the offering document together with a synopsis of that document;
- (b) details necessary to satisfy the Minister that the international public mutual fund business complies or will be complying with this Act, the Regulations or the conditions and terms specified in the international public mutual fund licence ;
- (c) the prescribed application fee; and
- (d) any such documents or additional information as the Minister may reasonably require for the purpose of determining the application.

(3) A person shall not, in connection with an application for an international public mutual fund licence supply to the Minister information that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding three years or to both.

(5) Subject to subsection (7) and section 7, the Minister may grant an international public mutual fund licence if the administrator or a registered agent or a registered trustee making the application pursuant to this section satisfies the Minister that —

- (a) each promoter of the international public mutual fund is of sound reputation;
- (b) the administration of the international public mutual fund will be undertaken by persons who have sufficient expertise to administer the international public mutual fund;
- (c) an administrator is providing international public mutual fund administration services to the international public mutual fund in Saint Lucia;
- (d) a manager is providing international public mutual fund management services to the international public mutual fund in Saint Lucia;
- (e) the international public mutual fund business and any offer of equity interests in the international public mutual fund will be carried out in accordance with this Act;
- (f) a current offering document in respect of the international public mutual fund that complies with section 8 has been filed with the Director.

(6) Nothing in this section is to be taken as prohibiting the Minister from granting an international public mutual fund licence to take effect on the incorporation of an international business company, the formation of an international partnership or on the registration of an international trust.

- (7) An international public mutual fund licence shall be issued —
- (a) on payment of the prescribed licence fee by the applicant;
 - (b) in the prescribed form; and
 - (c) subject to any conditions as the Minister considers appropriate including the condition that the Minister shall be informed of any material changes to the information supplied to the Minister on application for the grant of the international public mutual fund licence.

(8) On the written application of an international public mutual fund licensee the Minister may waive, vary or revoke any condition contained in the international public mutual fund licence.

Name of international public mutual fund

7.— (1) The Minister may refuse to grant an international public mutual fund licence where the proposed name of the international public mutual fund —

- (a) is identical with that of any company, partnership, business or other entity, or which so nearly resembles the name of the company, partnership, business or entity as to be likely to deceive;
- (b) is likely to falsely suggest the patronage of or connection with some person, or authority, whether in Saint Lucia or elsewhere; or
- (c) is likely to falsely suggest that the international public mutual fund has a special status in relation to or derived from the Government or the Crown.

(2) If in the Minister's opinion a person is carrying on or attempting to carry on international public mutual fund business from Saint Lucia using a name that the Minister would have refused by virtue of subsection (1), the Minister may direct —

- (a) the administrator or manager of the international public mutual fund; and
- (b) the person carrying on the international public mutual fund business;

to change the name of the international public mutual fund to a name approved by the Minister.

(3) The administrator or manager of an international public mutual fund shall ensure compliance with a direction given to it in accordance with subsection (2).

(4) The administrator or manager of an international public mutual fund who contravenes subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars.

(5) A person mentioned in subsection (2)(b) who contravenes a direction given pursuant to subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Offering document

8.— (1) An offering document in respect of equity interests in an international public mutual fund shall —

- (a) provide full, true and plain disclosure of-
 - (i) the issue price of any equity interests being offered;
 - (ii) particulars of the business and finances of the international public mutual fund offering such equity interests; and
 - (iii) all facts present or foreseeable that significantly affect or would reasonably be expected to have a significant effect on the disclosure required in sub-paragraphs (i) and (ii);
- (b) contain a summary of the rights of investors as provided in section 9;
- (c) state whether the international public mutual fund is to be organized in the form of an international business company, international partnership or international trust;
- (d) include, the financial statements for the last five financial years of the international public mutual fund and the auditor's report of the mutual fund, or for such shorter period of the existence of the international public mutual fund;
- (e) contain such other information as is necessary to enable a prospective investor in the international public mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests; and
- (f) be signed by all of the directors of the international business company under which the international public mutual fund is organized, the general partners of international partnership under which the international public mutual fund is established or trustees of the international trust under which the international public mutual fund is to be set-up.

(2) Subsection (1) is without prejudice to any duty of disclosure pursuant to any law in force in Saint Lucia or the law of any other jurisdiction.

(3) A person shall be deemed not to have filed with the Director a current offering document or the prescribed details in respect of a current offering document if there is a continuing offer of equity interests where any promoter or administrator, registered agent or registered trustee of the international public mutual fund —

- (a) is aware of any change that materially affects any information in the offering document filed with the Director; and
- (b) has not within twenty-one days of becoming so aware filed with the Director an amended offering document or amended prescribed details to incorporate that change.

(4) A person shall not offer for sale equity interests in an international public mutual fund for which an international public mutual fund licence has been granted unless prior to the offer the person —

- (a) produces and makes available in writing an offering document that complies with subsection (1);
- (b) makes available a copy of the offering document to each prospective investor; and
- (c) files a copy of the document with the Director.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(6) The Director shall not accept a copy of an offering document for filing pursuant to section 6 (2) unless it is accompanied by a certificate in the prescribed form of the administrator who is providing the public mutual fund with mutual fund administration services certifying that it complies with the requirements of subsection (1).

(7) If all or any part of the offering document is not in the English language the Director shall require that an English translation of the offering document or that part of the offering document verified in a manner satisfactory to the Director be filed along with the offering document with the Director.

(8) Where subsequent to the filing of an offering document any of the disclosures required pursuant to subsection (1) ceases to be accurate, the administrator providing the international public mutual fund administration services shall publish an amendment to the offering document giving accurate disclosures and provide a copy of the amendment to each of its investors and to the Director.

(9) A person who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Rights of investors

9.— (1) If a person publishes an offering document or an amendment to the offering document that contains any misrepresentation relating to any of the disclosures required pursuant to section 8(1), an investor who purchased any equity interests pursuant to such offering document or amendment is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) An investor 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 promoters, administrator, registered agent, registered trustee and any person who was aware of the misrepresentation and signed the offering document or amendment to the offering document and consented to or caused it to be published or filed.

(3) A person shall not be liable pursuant to this section if that person proves that the investor purchased the equity interests offered by the offering document or amendment to the offering document with knowledge of the misrepresentation.

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

(5) For the purposes of this section “misrepresentation” means —

- (a) an untrue or misleading statement of any of the disclosures required pursuant to section 8(1); or
- (b) an omission to disclose any of the disclosures required pursuant to section 8 (1).

Limitation of action

10.— (1) Notwithstanding any provision of law to the contrary, any action pursuant to section 9 (2) may not be commenced after —

- (a) one hundred and eighty days from the day that the claimant 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 pursuant to section 9 (2), the amount recoverable shall not exceed the amount at which the equity interests were purchased or subscribed, including any fees or other charges paid by the claimant.

*Division 4 – Annual Fee***Annual fee**

11.— (1) The prescribed annual fee shall be paid on or before the 15th day of January in each year following first licensing or registration in respect of each international public mutual fund licence and in respect of each international private mutual fund.

(2) If the annual fee referred to in subsection (1) is not paid on or before the 15th day of January in each year, there is payable an additional fee equal to twenty five percent of the annual fee for each month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(3) The Minister may in writing for reasonable cause waive any additional fee imposed by virtue of subsection (2).

(4) If the annual fee plus the additional fee due under subsection (2) has not been paid —

- (a) the Minister may revoke the international public fund licence after three months immediately following the date the annual fee was due; or
- (b) the Director may cancel registration of the international private mutual fund;

and shall cause a notice to be published in the *Gazette* to that effect and may cause such notice to be published, whether within Saint Lucia or in another jurisdiction, in such news paper or other publication as may be considered necessary in the circumstances.

PART III

INTERNATIONAL PUBLIC MUTUAL FUND ADMINISTRATION AND MANAGEMENT

*Division 1-Administration***Requirement for international public mutual fund administrator licence**

12.— (1) A person shall not provide international public mutual fund administration services unless that person is granted and holds a valid international public mutual fund administrator licence pursuant to this Part and complies with the provisions of this Act, the Regulations and the terms and conditions of the international public mutual fund administrator licence.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Application for and grant of international public mutual fund administrator licence

13.— (1) Subject to subsection (2), in order to provide international mutual fund administration services from within Saint Lucia, a person who is an international business company incorporated for that purpose shall apply to the Minister for an international public mutual fund administrator licence.

(2) An application pursuant to subsection (1) shall be in the prescribed form and shall be accompanied by such information that the Minister requires to determine the application and the prescribed application fee.

(3) Subject to subsection (5), the Minister shall grant an international public mutual fund administrator licence if satisfied —

- (a) that the person making up the application has sufficient knowledge, expertise and resources to administer an international public mutual fund and will administer an international public mutual fund in the best interests of its investors according to any law applicable to the international public mutual fund;
- (b) is a fit and proper person to be engaged in the business proposed;

- (c) subject to subsection (3), that person has —
 - (i) in the case where the person also applies for or has been granted an international public mutual fund manager licence, a fully paid up equity capital of at least two hundred and fifty thousand United States dollars or the equivalent in another currency or such other amount as may be determined by the Minister;
 - (ii) in any other case, a fully paid up equity capital of at least one hundred thousand United States dollars or the equivalent in another currency or such other amount as may be determined by the Minister; and
- (d) that person is an international business company acting in compliance with the International Business Companies Act.

(4) The Minister may want compliance with subsection (3) (c) if the Minister is otherwise satisfied as to the financial viability of the person making the application.

(5) An international public mutual fund administrator licence shall be —

- (a) issued on payment of the licence fee;
- (b) in the form prescribed; and
- (c) subject to such conditions as the Minister considers appropriate including the condition that the Minister shall be informed of any changes to the information supplied on application for the grant of the international public mutual fund administrator licence.

(6) An administrator shall not change its registered office and its registered agent without first giving the Director notice of its intention to do so.

(7) An administrator who contravenes subsection (6) commits an offence and is liable on conviction to a fine of twenty thousand dollars or to imprisonment for a term not exceeding three months or to both.

(8) An administrator shall when carrying on or attempting to carry on business comply with any conditions contained in this Act, the Regulations and its international public mutual fund administrator licence.

(9) An administrator who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding three years or to both.

(10) A person shall not in connection with an application for an international public mutual fund administrator licence supply to the Minister information which that person knows or should reasonably know is false or misleading.

(11) A person who contravenes subsection (10) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Name of administrator

14.— (1) The Minister may refuse to grant an international public mutual fund administrator licence authorising a person to carry on business as an administrator in a name that is —

- (a) identical with that of any company, partnership, business or other entity, or which so nearly resembles the name of such company, partnership, business or entity as to be likely to deceive;
- (b) likely to falsely suggest the patronage of or connection with some person or authority, whether in Saint Lucia or in another jurisdiction; or
- (c) likely to falsely suggest that the administrator has a special status in relation to or derived from the Government or the Crown.

(2) If, subsequent to granting an international public mutual fund administrator licence, the Minister finds that the administrator is authorised to carry on business as an administrator in or from Saint Lucia in a name which in the Minister's opinion the Minister would have refused by virtue of subsection (1), the Minister may direct the administrator to change that name to a name approved by the Minister.

(3) An administrator shall comply with a direction given to it in accordance with subsection (2).

(4) An administrator who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both .

Restriction on issue

15.— (1) An administrator shall not issue shares or a person owning or having an interest in shares in the administrator shall not transfer or otherwise dispose of or deal in those shares or that interest, unless

- (a) the Minister has given his or her approval to the issue, transfer, disposal or dealing; or
- (b) the Minister has in respect of the administrator waived the obligation to obtain that approval, and any conditions of the approval or waiver are complied with.

(2) An administrator who contravenes subsection (1) commits an offence, and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Annual fee for administrator

16.— (1) An administrator shall, on or before the 15th day of January in each year, pay the prescribed annual licence fee.

(2) If an annual fee referred to in subsection (1) is not paid on or before the 15th day of January in each year, there is payable an additional fee equal to fifty percent of the annual fee for each month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(3) The Minister may in writing for reasonable cause waive any additional fee imposed under subsection (2).

(4) If the annual fee plus the additional fee due under subsection (2) has not been paid, the Director shall within one month immediately following the date specified in that subsection publish in the *Gazette* and serve on the administrator a notice stating that the administrator's international public mutual fund administrator licence shall be revoked on the expiry of three months from the date of the notice if the licence fee is not paid.

(5) Where an administrator's international public mutual fund administrator licence has been revoked, the Director shall publish a notice in the *Gazette* stating that the administrator's international public mutual fund administrator licence has been revoked.

Direction to increase capital value

17.— (1) If the Minister is satisfied that there is reasonable cause to do so or the paid up equity capital of an administrator is less than any amount set in section 13 (3)(c), the Minister may direct the administrator to provide such guarantees or other financial support as the Minister thinks fit within the time specified by the Minister.

(2) An administrator who fails to comply with a direction given pursuant to subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Notice

18.— (1) If an administrator knows or has reason to believe that an international public mutual fund licensee for which it is providing international public mutual fund administration services —

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with this Act or any other law in force in Saint Lucia; or
- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors of the international public mutual fund or creditors of the international public mutual fund licensee;

the administrator shall immediately give the Director written notice of its knowledge or belief giving its reason for that knowledge or belief.

(2) An administrator who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Misrepresentation as administrator

19.— (1) A person other than an administrator shall not represent in any way that the person is carrying on or attempting to carry on business in or from Saint Lucia as an international public mutual fund administrator.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Notification

20.— (1) Unless an administrator is exempted from such a requirement by the Minister a person shall not act as a director or an officer of the administrator without prior written approval being given by the Minister.

(2) A director or an officer of an administrator shall not continue to act as such —

- (a) if he or she becomes bankrupt or is convicted of an offence involving dishonesty; or
- (b) the Minister revokes the approval of appointment given pursuant to subsection (1).

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Number of directors

21.— (1) An administrator shall at no time have less than two directors all of whom are natural persons and one of whom shall be a resident.

(2) An administrator who contravenes subsection (1) is liable to suspension or revocation of its international public mutual fund administrator licence after thirty days of receipt of a notice given to that effect by the Director except that the Director may specify a longer period of time within which the administrator must comply with subsection (1).

Compliance by administrator

22.— (1) An administrator shall ensure that it complies with this Act, the Regulations and any conditions contained in its international public mutual fund administrator licence.

(2) An administrator who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(3) Where an administrator becomes aware that a person for which the administrator is providing international public mutual fund administration services pursuant to subsection (1) is carrying on or

attempting to carry on any international public mutual fund business from Saint Lucia in breach of this Act, the administrator shall immediately inform the Minister.

(4) An administrator who contravenes subsection (3) commits an offence and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for three years or to both.

Division 2-Management

Requirement for international public mutual fund manager licence

23.— (1) A person shall not act or carry on business as an international public mutual fund manager unless that person is granted and holds a valid international public mutual fund manager licence pursuant to this Part and complies with the provisions of this Act, the Regulations and the terms and conditions of the international public mutual fund manager licence.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Application for and grant of international public mutual fund manager licence

24.— (1) Subject to subsection (2), in order to provide international mutual fund management services from within Saint Lucia, a person who is an international business company incorporated for that purpose shall apply to the Minister for an international public mutual fund manager licence.

(2) An application pursuant to subsection (1) shall be in the prescribed form and shall be accompanied by such information that the Minister requires in order to determine the application and the prescribed application fee.

(3) Subject to subsection (5), grant an international public mutual fund manager licence if satisfied —

- (a) that the person making the application has sufficient knowledge, expertise and resources to manage an international public mutual fund and will manage an international public mutual fund in the best interests of its investors according to any law applicable to the international public mutual fund;

- (b) is a fit and proper person to be engaged in the business proposed;
- (c) subject to subsections (4), that person has —
 - (i) in the case where the person also applies has been granted an international public mutual fund administrator licence, a fully paid up equity capital of at least two hundred and fifty thousand United States dollars or the equivalent in another currency or such other amount as may be determined by the Minister;
 - (ii) in any other case, a fully paid up equity capital of at least one hundred thousand United States dollars or the equivalent in another currency or such other amount as may be determined by the Minister; and
- (d) that person is an international business company acting in compliance with the International Business Companies Act.

(4) The Minister may waive compliance with subsection (3) (c) if the Minister is otherwise satisfied as to the financial viability of the person making the application.

(5) An international public mutual fund manager licence shall be —

- (a) issued on payment of the prescribed licence fee;
- (b) in the form prescribed; and
- (c) subject to such conditions as the Minister considers appropriate including the condition that the Minister shall be informed of any material changes to the information supplied on application for the grant of the international public mutual fund manager licence.

(6) A manager shall not change its registered office and its registered agent without first giving the Director notice of its intention to do so.

(7) A manager who contravenes subsection (6) commits an offence and is liable on conviction to a fine of twenty thousand dollars or to imprisonment for a term not exceeding three months or to both.

(8) A manager shall when carrying on or attempting to carry on business comply with any conditions contained in this Act, the Regulations and its international public mutual fund manager licence.

(9) A manager who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(10) A person shall not in connection with an application for an international public mutual fund manager licence supply to the Minister information which that person knows or should reasonably know is false or misleading.

(11) A person who contravenes subsection (10) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both

Name of manager

25.— (1) The Minister may refuse to grant a public mutual fund manager licence authorising a person to carry on business as a manager in a name that is —

- (a) identical with that of any company, firm, business or other entity, or which so nearly resembles the name of such company, firm, business or entity as to be likely to deceive;
- (b) likely to falsely suggest the patronage of or connection with some person or authority, whether in Saint Lucia or in another jurisdiction; or
- (c) likely to falsely suggest that the manager has a special status in relation to or derived from the Government or the Crown.

(2) If, subsequent to granting an international public mutual fund manager licence the Minister finds that the manager is authorised to carry on business as a manager in or from Saint Lucia in a name which in the Minister's opinion the Minister would have refused by virtue of subsection (1), the Minister may direct the manager to change that name to a name approved by the Minister.

(3) A manager who fails to comply with a direction given pursuant to subsection (2) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both.

Restriction on issue

26. — (1) A manager shall not issue shares or a person owning or having an interest in shares in the manager shall not transfer or otherwise dispose of or deal in those shares or that interest unless —

- (a) the Minister has given his or her approval to the issue, transfer, disposal or dealing; or
- (b) the Minister has in respect of the manager waived the obligation to obtain that approval, and any conditions of the approval or waiver are complied with.

(2) A manager who contravenes subsection (1) commits an offence, and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Annual fee for manager

27.— (1) A manager shall on or before the 15th day of January in each year pay the prescribed annual licence fee.

(2) If an annual fee referred to in subsection (1) is not paid on or before the 15th day of January in each year there is payable an additional fee equal to fifty percent of the annual fee for each month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(3) The Minister may for reasonable cause waive any additional fee imposed under subsection (2).

(4) If the increased licence fee due under subsection (2) has not been paid, the Director shall within one month immediately following the date specified in that subsection, publish in the *Gazette* and serve on the manager, a notice stating that the manager's international public mutual fund manager licence shall be revoked on the expiry of three months from the date of the notice if the licence fee is not paid.

(5) Where a manager's international public mutual fund manager licence has been revoked, the Director shall publish a notice in the *Gazette* stating that the manager's international public mutual fund manager licence has been revoked.

Direction to increase capital value

28.— (1) If the Minister is satisfied that there is reasonable cause to do so or the fully paid up equity capital of a manager is less than any amount set in section 24 (3)(c) the Minister may direct the manager to provide such guarantees or other financial support as the Minister thinks fit within the time specified by the Minister.

(2) A manager who fails to comply with a direction given pursuant to subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Reputation of promoter

29.— (1) A manager shall not provide international public mutual fund management services to an international public mutual fund licensee unless it is satisfied that each promoter of that international public mutual fund licensee is of sound reputation.

(2) A manager who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both

Notice

30.— (1) If a manager knows or has reason to believe that an international public mutual fund licensee for which it is providing international public mutual fund management services —

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with this Act or any other law in force in Saint Lucia; or
- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors of the international public mutual fund or creditors of the international public mutual fund licensee;

the manager shall immediately give the Director written notice of its knowledge or belief giving its reason for that knowledge or belief.

(2) A manager who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred

and fifty thousand dollars or to imprisonment for a term not exceeding five years or to both.

Misrepresentation as manager

31.— (1) A person other than a manager shall not represent in any way that the person is carrying on or attempting to carry on business in or from Saint Lucia as an international public mutual fund manager.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Notification

32.— (1) Unless a manager is exempted from such a requirement by the Minister a person shall not act as a director or officer of the manager without prior written approval being given by the Minister.

(2) A director or officer of a manager shall not continue to act as such —

- (a) if he or she becomes bankrupt or is convicted of an offence involving dishonesty; or
- (b) the Minister revokes the approval of appointment given pursuant to subsection (1).

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Number of directors

33.— (1) A manager shall at no time have less than two directors all of whom are natural persons and one of whom shall be a resident.

(2) A manager who contravenes subsection (1) is liable to suspension or revocation of its international public mutual fund manager licence after thirty days of receipt of a notice given to that effect by the Director except that the Director may specify a longer period of time within which the Manager must comply with subsection (1).

Compliance by manager

34.— (1) A manager shall ensure that it complies with this Act, the Regulations and any conditions contained in its international public mutual fund manager licence.

(2) A manager who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(3) Where a manager becomes aware that a person for which the manager is providing international public mutual fund management services pursuant to subsection (1) is carrying on or attempting to carry on any international public mutual fund business from Saint Lucia in breach of this Act the manager shall immediately inform the Minister.

(4) A manager who contravenes subsection (3) commits an offence and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for three years or to both.

PART IV**SUPERVISION AND ENFORCEMENT****Audited accounts for international public mutual fund licensee**

35.— (1) An international public mutual fund licensee shall have its accounts audited annually or at such other times as the Director may require by an auditor appointed by the international public mutual fund licensee who shall conduct the audit in accordance with international standards on auditing.

(2) The audited accounts of the international public mutual fund licensee shall be forwarded to the Director within three months of the end of the financial year of the international public mutual fund licensee unless prior written approval for an extension has been granted by the Director.

(3) Where an international public mutual fund licensee changes its auditor, the administrator or manager shall immediately advise the Director of the change and as to the reason for the change and the Director if satisfied that the auditor meets the requirements of this Act shall record the change accordingly.

(4) An international public mutual fund licensee who contravenes subsections (1) to (2) or an administrator or manager who contravenes section (3) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

Duties of Director relating to international public mutual fund licensee

36. The Director shall —

- (a) from time to time as the Director thinks necessary examine the business and affairs of an international public mutual fund licensee for the purpose of satisfying himself or herself that this Act is being complied with and that its international public mutual fund is in sound financial position and, shall report to the Minister the results of every such examination;
- (b) when required by the Minister assist in the investigation of any offence which the Director has reasonable grounds to believe has or may have been committed by an international public mutual licensee or by any of its directors or officers in their capacity as such;
- (c) examine returns, certificates and audited annual accounts of the licensee and report on them to the Minister; and
- (d) examine and make recommendations to the Minister with respect to applications for licences pursuant to this Act.

Access to information relating to international public mutual fund licensee

37.— (1) In the performance of the Director's duties under this Act and to verify compliance with the provisions of this Act by the international public mutual fund licensee the Director is entitled at all reasonable times to —

- (a) have access at the registered office or the office of the registered trustee of the international public mutual fund licensee to such books, records, vouchers, documents, cash, securities and other information of a public mutual fund as may be specified by the Director;
- (b) require the directors, partners, trustees, managers, administrator or auditor of an international public mutual fund licensee to provide information and explanations of the condition and affairs of an international public mutual fund;

- (c) request any information from an international public mutual fund licensee, administrator, manager, registered agent or registered trustee in respect of an international public mutual fund either from time to time or on a regular basis; and
- (d) request from any person information or expert advice relevant to the duties of the Director.

(2) With the approval of the Minister, the Director may in writing authorise any other person to assist the Director in the performance of the Director's functions under the Act.

(3) A person who fails to comply with any requirement under subsection (1) by the Director or by any person authorized under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years.

Penalties for breach of section 3(1)

38.— (1) If the Director has reasonable grounds for believing a person is carrying on or attempting to carry on international mutual fund business in or from Saint Lucia in contravention of section 3(1), the Director may instruct that person to give to the Director such information or explanation as the Director may reasonably require to enable the Director to carry out his or her duty pursuant to this Act.

(2) A person who fails to comply with an instruction given to the person in accordance with subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Director information or an explanation that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Unregulated international public mutual funds

39. If it appears to the Director that a person is carrying on or attempting to carry on international public mutual fund business in or

from Saint Lucia, and is doing so in breach of section 3, the Director may apply to the Court for such orders as the Director thinks fit to preserve the assets of the investors in the international public mutual fund and the Court may grant such orders.

Audited accounts for administrator

40.— (1) An administrator shall have its accounts audited annually or at such other times as the Director may require by an auditor appointed by the administrator who shall conduct the audit in accordance with international standards on auditing .

(2) The administrator shall forward its audited accounts to the Director within three months of the end of the financial year of the administrator unless prior written approval for an extension has been granted by the Director.

(3) When an administrator changes its auditor it shall immediately advise the Director of the change and the reason for the change and the Director shall record that change accordingly.

Duties of Director relating to administrator

41. The Director shall —

- (a) from time to time as the Director thinks necessary examine the business and affairs of any administrator for the purpose of satisfying himself or herself that this Act is being complied with and that the administrator is in a sound financial position and, shall report to the Minister the results of every such examination;
- (b) when required by the Minister assist in the investigation of any offence against any law in force in Saint Lucia which the Director has reasonable grounds to believe has or may have been committed by an administrator or by any of its directors or officers in their capacity as such;
- (c) examine returns, certificates and audited annual accounts of the administrator and to report on them to the Minister; and
- (d) examine and make recommendations to the Minister with respect to applications for licences pursuant to this Act.

Access to information relating to administrator

42.— (1) In the performance of the Director's duties pursuant to this Act and to verify compliance with the provisions of this Act by an administrator, the Director is entitled at all reasonable times to —

- (a) have access at the administrator's registered office to such books, records, vouchers, documents, cash securities and other information of the administrator and of the international public mutual funds administered by the administrator as may be specified by the Director;
- (b) require the directors, officers and auditor of an administrator to provide information and explanations of the condition and affairs of the administrator and of any international public mutual funds for which it is providing international public mutual fund administrative services;
- (c) request any information from any administrator either from time to time or on a regular basis; and
- (d) request from any person information or expert advice relevant to the duties of the Director.

(2) With the approval of the Minister, the Director may in writing authorise any other person to assist the Director in the performance of his or her functions pursuant to this Act.

(3) A person who fails to comply with any requirement pursuant to subsection (1) by the Director or by any person authorised under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years.

Information for breach of section 12

43. — (1) If the Director has reasonable grounds for believing a person is acting or carrying on business as an administrator in contravention of section 12, the Director may instruct that person to give in respect of alleged contravention of section 12 to the Director such information or explanation as the Director may reasonably require to enable the Director to carry out his or her duty under this Act.

(2) A person who fails to comply with an instruction given to that person pursuant to subsection (1) commits an offence and is liable on

conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Director information or an explanation that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Unlicensed persons acting as administrator

44. If it appears to the Director that a person is acting or carrying on business as an administrator and is doing so in breach of section 12, the Director may apply to the Court for an order as the Director thinks fit to preserve the assets of the investors in any international public mutual funds licensee being administered by that person and the Court may grant the order.

Audited accounts for manager

45.— (1) A manager shall have its accounts audited annually or at such other times as the Director may require by an auditor appointed by the manager who shall conduct the audit in accordance with international standards on auditing .

(2) The manager shall forward its audited accounts to the Director within three months of the end of the financial year of the manager unless prior written approval for an extension has been granted by the Director.

(3) When a manager changes its auditor it shall immediately advise the Director of the change and the reason for the change and the Director shall record that change accordingly.

Duties of Director relating to manager

46. The Director shall —

- (a) from time to time as the Director thinks necessary examine the business and affairs of any manager for the purpose of satisfying himself or herself that this Act is being complied

with and that the manager is in a sound financial position and, shall report to the Minister the results of every such examination;

- (b) when required by the Minister assist in the investigation of any offence against any law in force in Saint Lucia which the Director has reasonable grounds to believe has or may have been committed by a manager or by any of its directors or officers in their capacity as such;
- (c) examine returns, certificates and audited annual accounts of the manager and to report on them to the Minister; and
- (d) examine and make recommendations to the Minister with respect to applications for licences pursuant to this Act.

Access to information relating to manager

47.— (1) In the performance of the Director's duties pursuant to this Act and to verify compliance with the provisions of this Act by a manager, the Director is entitled at all reasonable times to —

- (a) have access at the manager's registered office to such books, records, vouchers, documents, cash securities and other information of the manager and of the international public mutual funds managed by the manager as may be specified by the Director;
- (b) require the directors, officers and auditor of a manager to provide information and explanations of the condition and affairs of the manager and of any international public mutual funds for which it is providing international public mutual fund management services;
- (c) request any information from any manager, either from time to time or on a regular basis; and
- (d) request from any person information or expert advice relevant to the duties of the Director.

(2) With the approval of the Minister, the Director may in writing authorize any other person to assist the Director in the performance of his or her functions pursuant to this Act.

(3) A person who fails to comply with any requirement pursuant to subsection (1) by the Director or by any person authorised under subsection (2) commits an offence and is liable on conviction to a fine

not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or both.

Information for breach of section 23

48.— (1) If the Director has reasonable grounds for believing a person is acting or carrying on business as a manager in contravention of section 23, the Director may instruct that person to give in respect of alleged contravention of section 23 to the Director such information or explanation as the Director may reasonably require to enable the Director to carry out his or her duty under this Act.

(2) A person who fails to comply with an instruction given to that person pursuant to subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Director information or an explanation that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Unlicensed person acting as manager

49. If it appears to the Director that a person is acting or carrying on business as a manager and is doing so in breach of section 23, the Director may apply to the Court for an order as that Director thinks fit to preserve the assets of the investors in any international public mutual funds licensee being managed by that person and the Court may grant the order.

Power of Director over international private mutual fund

50. — (1) Where the Director is of the opinion an international private mutual fund registered under this Act —

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to its investors;

- (c) is winding up its business voluntarily or in a manner that is prejudicial to its investors or creditors;
- (d) has contravened this Act or the Regulations;
- (e) has failed to comply with a condition of its registration;
- (f) is declared bankrupt;
- (g) has been convicted of an offence pursuant to this Act or of a criminal offence in any country or jurisdiction.
- (h) has knowingly or wilfully supplied misleading or inaccurate information or failed to disclose information required for the purpose of this Act or the Regulations.

the Director may do any of the things listed in subsection (2).

- (2) Where any of the incidents referred to in subsection (1) have occurred the Director may do as follows –
 - (a) impose conditions upon the international private mutual fund and may amend or revoke any such conditions.;
 - (b) cancel the registration of the international private mutual fund
 - (c) require such action to be taken by the international private mutual fund as the Director considers necessary.

(3) An international private mutual fund may within seven days of receipt of notice of the Director's decision pursuant to subsections (1) and (2) apply to the Minister for a reconsideration of the Director's decision.

(4) Where the Director cancels the registration of an international private mutual fund the Director may apply to the Court for an order that the international private mutual be wound- up forthwith.

(5) Where the Director cancels the registration of an international private mutual fund the Director shall cause notice of such revocation to be published in the *Gazette* and may cause the notice to be published, whether in Saint Lucia or elsewhere in such newspaper or other publication as the Director may consider necessary in the circumstances.

Power of Minister over international public mutual fund licensee

51.— (1) Where the Minister is of the opinion that an international public mutual fund licensee —

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to its investors;
- (c) is winding up its business voluntarily or in a manner that is prejudicial to its investors or creditors;
- (d) has contravened this Act or the Regulations;
- (e) has failed to comply with a condition of its international public mutual fund licence;
- (f) is declared bankrupt;
- (g) has been convicted of an offence pursuant to this Act or of a criminal offence in any country or jurisdiction; or
- (h) has knowingly or willfully supplied false, misleading or inaccurate information or failed to disclose information required for the purpose of this Act or the Regulations;

the Minister may do any of the things listed in subsection (2).

(2) The things referred to in subsection (1) which the Minister may do are as follows —

- (a) impose conditions, or further conditions, on the international public mutual fund licensee and may amend or revoke any such condition;
- (b) revoke the international public mutual fund licence held by the international public mutual fund licensee;
- (c) require the substitution of any director, general partner, trustee or manager of the international public mutual fund licensee;
- (d) at the expense of the international public mutual fund licensee appoint a person to advise the international public mutual fund licensee on the proper conduct of its affairs and to report to the Minister within three months of the date of that person's appointment;
- (e) at the expense of the international public mutual fund licensee appoint a person to assume control of the affairs of international public mutual fund licensee who shall with the necessary changes have all the powers of a person appointed as a receiver or manager of an international business company under the International Business Companies Act; or

(f) require such action to be taken by the international public mutual fund licensee as the Minister considers necessary.

(3) An international public mutual fund licensee may within seven days of a decision made pursuant to subsections (1) and (2) apply to the Minister for a reconsideration of the Minister's decision.

(4) A person appointed pursuant to paragraph (d) or (e) of subsection (2) or whose appointment has been extended pursuant to subsection (5), shall from time to time at that person's discretion and in any case within three months of the date of that person's appointment or of the extension of that person's appointment, prepare and furnish a report to the Minister of the affairs of the international public mutual fund licensee and of that person's recommendations.

(5) On receipt of a report pursuant to subsection (4), the Minister may —

- (a) revoke the appointment of the person appointed under paragraphs (d) or (e) of subsection (2);
- (b) extend the period of the person's appointment;
- (c) subject to such conditions as the Minister may impose, allow the international public mutual fund licensee to reorganize its affairs or the affairs of its public mutual funds in a manner approved by the Minister; or
- (d) revoke the international public mutual fund licence held by the international public mutual fund licensee and apply to the Court for an order that the international public mutual fund licensee be wound up by that Court.

(6) Notwithstanding any provisions in this Act the Minister may revoke an international public mutual fund licence if an international public mutual fund licensee —

- (a) has ceased to carry on international public mutual fund business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(7) Where the Minister revokes an international public mutual fund licence pursuant to this section the Minister shall cause notice of the revocation to be published in the *Gazette* and may cause the notice to be published, whether within Saint Lucia or in another jurisdiction

in such newspaper or other publication as the Minister may consider necessary in the circumstances.

(8) In any case in which an international public mutual fund licensee is being wound-up voluntarily the Minister may apply to the Court if the Minister considers that the winding-up is not being conducted in the best interests of the investors or other creditors and the Court shall make such order as it considers appropriate.

Power of Minister over administrator or manager

52.— (1) Where the Minister is of the opinion that an administrator or a manager —

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to its investors;
- (c) is winding up its business voluntarily or in a manner that is prejudicial to its investors or creditors;
- (d) has contravened this Act or the Regulations;
- (e) has failed to comply with a condition of its licence;
- (f) is declared bankrupt;
- (g) has been convicted of an offence pursuant to this Act or of a criminal offence in any country or jurisdiction; or
- (h) has knowingly or willfully supplied false, misleading or inaccurate information or failed to disclose information required for the purpose of this Act or the Regulations;

the Minister may do any of the things listed in subsection (2).

(2) The things referred to in subsection (1) which the Minister may do are as follows —

- (a) impose conditions or further conditions upon the administrator or the manager and may amend or revoke any such conditions;
- (b) revoke the international public mutual fund administrator licence or the international public mutual fund manager licence;
- (c) require the substitution of any director or officer of the administrator or manager;

- (d) at the expense of the administrator or manager appoint a person to advise the administrator or manager on the proper conduct of the administrator's or manager's affairs as the case may be and to report to the Minister within three months of the date of the person's appointment;
- (e) at the expense of the administrator or manager appoint a person to assume control of the administrator's or manager affairs as the case may be who shall with the necessary changes have all the powers of a person appointed as receiver of a business appointed under the International Business Companies Act; or
- (f) require such action to be taken by the administrator or manager as the Minister considers necessary.

(3) An administrator or manager may within seven days of receipt of notice of the Minister's decision pursuant to subsections (1) and (2) apply to the Minister for a reconsideration of the Minister's decision.

(4) A person appointed pursuant to paragraph (d) or (e) of subsection (1) or whose appointment has been extended pursuant to paragraph (b) of subsection (5) shall from time to time at that person's discretion and in any case within three months of the date of that person's appointment or of the extension of the person's appointment, prepare and furnish a report to the Minister of the affairs of the administrator or manager and of the person's recommendations.

(5) On receipt of a report pursuant to subsection (3) the Minister may —

- (a) revoke the appointment of the person appointed pursuant to paragraph (d) or (e) of subsection (1);
- (b) extend the period of that person's appointment;
- (c) subject to such conditions as the Minister may impose allow the administrator or manager to reorganize its affairs in a manner approved by the Minister; or
- (d) revoke the international public mutual fund administrator licence or international public mutual fund manager licence and apply to the Court for an order that the administrator or manager be wound-up immediately by that Court in which case the provisions of the International Business Companies Act relating to the winding-up of a company by that Court shall with the necessary changes apply.

(5) Notwithstanding any provisions in this Act, the Minister may revoke an international mutual fund administrator licence or an international public mutual fund manager licence if an administrator or manager —

- (a) has ceased to carry on the business of international public mutual fund administration or the business of international public mutual fund management; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(6) Where the Minister revokes an international public mutual fund administrator licence or an international public mutual fund manager licence pursuant to this section, the Minister shall cause notice of such revocation to be published in the *Gazette* and may cause the notice to be published, whether in Saint Lucia or elsewhere, in such newspaper or other publication as the Minister may consider necessary in the circumstances.

(7) In any case in which an administrator or manager is being wound up voluntarily the Minister may apply to the Court if the Minister considers that the winding up is not being conducted in the best interest of the administrator's or manager's creditors, and the Court shall make such order as it shall consider appropriate.

PART V MISCELLANEOUS

Secrecy

53.— (1) Subject to subsections (2) and (3) no information shall be disclosed relating to —

- (a) any application made to the Minister for an international public mutual fund licence or an international public mutual fund administrator licence or international public mutual fund manager licence pursuant to this Act;
- (b) any application made to the Director for registration of an international private mutual fund;
- (c) the affairs of an international public mutual fund licensee or an administrator or manager; or;
- (d) the affairs of an international private mutual fund;

that the Minister, Director or a person acting under the authority of the Minister or Director has acquired in the course of their duties under this Act.

(2) Subsection (1) does not apply to a disclosure by the Minister or Director —

- (a) necessary for the effective regulation of an international public mutual fund licensee, international private mutual fund or an administrator or manager;
- (b) when lawfully required or permitted to do so by a court of competent jurisdiction in Saint Lucia;
- (c) permitted under this Act;
- (d) permitted under any other law in force in Saint Lucia; or
- (e) in respect of the affairs of an international public mutual fund licensee, an international private mutual fund or an administrator or manager with the authority of the international public mutual fund licensee, the international private mutual fund or the administrator or manager which has been voluntarily given.

(3) Subject to subsection (4), the Minister or Director may disclose to another regulatory authority outside Saint Lucia, information concerning the affairs of an international public mutual fund licensee, an international private mutual fund or an administrator or manager where —

- (a) the other regulatory authority permits reciprocal disclosure;
- (b) the disclosure pertains to actions of the international public mutual fund licensee, the international private mutual fund or the administrator or manager in violation of any law with respect to the failure of an international public mutual fund licensee, an international private mutual fund or an administrator or manager to comply with generally accepted principles relating to mutual funds.

(4) Nothing in subsection (3) authorises the Minister or Director to make a disclosure referred to in that subsection unless the Minister or Director is satisfied that the intended recipient regulatory authority is subject to adequate legal restrictions on further disclosures which may include the provision of an under-taking of confidentiality.

Appeal

54.— (1) An appeal lies to the Court from any decision of the Minister revoking an international public mutual fund licence or an international public mutual fund administrator licence or manager licence or of the Director cancelling the registration of an international private mutual fund.

(2) A person making an appeal under this section shall within seven days after the day on which the Minister or Director has given his or her decision serve a notice in writing signed by the person or the person's attorney-at-law on the Minister and the Attorney General, of the person's intention to appeal and of the general ground of his or her appeal.

(3) An appeal against the decision of the Minister or Director shall be on application pursuant to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, S.I. No. 95 of 2001 and must be filed within twenty-eight days after the day on which the decision of the Minister was given.

(4) A person aggrieved by a decision of the Minister or Director may, on notice to the Minister apply to the Court for leave to extend the time within which the notice of appeal or the appeal prescribed by this section may be served and the Court on hearing of such an application may extend the time prescribed by this section as it deems fit.

(5) The Court may adjourn the hearing of an appeal and may, upon the hearing confirm, reverse, or modify the decision of the Minister or the Director or remit the matter with the opinion of the Court to the Minister or the Director.

(6) An appeal against a decision of the Minister or Director shall not have the effect of suspending the execution of such decision.

Obligation of auditors

55.— (1) If an auditor in the course of carrying out an audit of the accounts of an international public mutual fund licensee becomes aware or has reason to believe that the international public mutual fund licensee or administrator or manager is —

- (a) or is likely to become unable to meet its obligations as they fall due;
- (b) carrying on, or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors; or

- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;

the auditor shall immediately give the Director written notice of the auditor's knowledge or belief giving the auditor's reason for that knowledge or belief.

(2) An auditor who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding one year or to both.

(3) If an auditor in the course of carrying out an audit of the accounts of an administrator or manager becomes aware of or has reason to believe the administrator or manager is —

- (a) or is likely to become unable to meet the administrator's obligations as they fall due;
- (b) carrying on or attempting to carry on business or winding up its international public mutual fund administration or international public mutual fund management services in a manner that is prejudicial to investors in any licensee for which it is providing international public mutual fund administration services or international public mutual fund management services to its creditors or the creditors of any such international public mutual fund licensee; or
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;

the auditor shall immediately give the Director written notice of the auditor's knowledge or belief giving the auditor's reason for that knowledge or belief.

(4) An auditor who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to both.

(5) A reference in this section to an auditor carrying out an audit of the accounts of an international public mutual fund licensee or an administrator or manager includes an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit or whose contract to carry out or complete the audit was otherwise terminated.

Offences triable on indictment

56. An offence pursuant to this Act is triable on indictment only.

Indemnity

57. Liability shall not be incurred by the Government and a Court proceeding shall not be brought against the Government, any agent of the Government, the Director or any person acting under the authority of the Minister or the Director 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, pursuant to this Act.

Exemption from compliance with Trade Licensing Act and Securities Act

58.— (1) International public mutual fund administration services and international public mutual fund management services may be carried on by an administrator or manager without reference to the Trade Licensing Act 1985, No. 5 or the Securities Act 2000, No. 21.

(2) International public mutual fund business may be carried on by an international public mutual fund licensee without reference to the Trade Licensing Act 2001, No. 5 or the Securities Act 2001, No. 21.

Exemption from other enactments

59. Notwithstanding any law to the contrary —

- (a) an international public mutual fund or international private mutual fund; and
- (b) an investor in an international public mutual fund or a international private mutual fund who is not resident in Saint Lucia;

are in all respects exempt from any and all of the provisions of the Income Tax Act 1989, No. 1 and the Stamp Duty Ordinance Cap 219.

Regulations

60. The Minister may make Regulations —

No. 22] *International Mutual Funds Act* [2006.

- (a) to prescribe anything that may be prescribed under this Act;
- (b) to control the form and content of advertising by a international public mutual fund licensee, an international private mutual fund, an administrator or a manager;
- (c) to prevent the use of an international private mutual fund or an international public mutual fund to obliterate the tracing of the proceeds of crime and to deal with any such proceeds held in the international private mutual fund or the international public mutual fund;
- (d) to set, waive or vary any fees payable under this Act; and
- (e) generally for carrying this Act into effect.

Repeal

61. The International Mutual Fund Act 1999, No. 44 is hereby repealed.

Savings

62.—(1) This Act shall operate without prepedice to a licence granted under repealed Act or any statutory instrument made under the repealed Act.

(2) For the purposes of this section repealed Act means the International Mutual Funds Act 1999, No. 44.

Passed in the House of Assembly this 7th day of February, 2006.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 2nd day of March, 2006.

HILFORD DETERVILLE,
President of the Senate.