



SAINT VINCENT AND THE GRENADINES

ACT NO. 12 OF 1998

I ASSENT

CHARLES J. ANTROBUS

Governor-General

15th December, 1998

{ L.S. }

AN ACT to amend the Mutual Funds Act, 1997

{ By Proclamation }

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

1. This Act may be cited as the **Mutual Funds (Amendment) Act, 1998** and shall come into force on such date as the Governor-General may appoint by proclamation published in the Gazette.

Short title and
Commencement

2. (1) The Mutual Funds Act, 1997 (hereinafter referred to as "the principal Act") is amended in subsection (1) of section 2

Section 2 of
Mutual Funds Act
amended

(a) by inserting as the first two definitions in Section 2 the following:

"accredited fund" means a mutual fund

(a) the shares of which are made available only to accredited investors and the initial investment in which, in respect of the majority of such investors, is not less than twenty-five thousand dollars per investor in the United States currency or its equivalent in any other currency; provided, such minimum investment threshold shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the fund; or

(b) which is designated as an "accredited fund" by regulations;

“accredited investor” means a person

- (a) whose ordinary business involves, whether for its own account or the accounts of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or
- (b) who has signed a declaration that it or he, whether individually or jointly with his spouse (as applicable), has net worth in excess of one million dollars in the United States currency or its equivalent in any other currency and that it or he consents to being treated as an accredited investor;“;
- (b) by deleting from paragraph (a) of the definition of “administrator” the words “and facilities”;
- (c) by repealing the definition of “auditor” and substituting the following in lieu thereof;

““auditor” means a person who is entitled to practice as a public accountant and to perform audits under the laws of Saint Vincent and The Grenadines or of a recognised Country or Territory or has qualified as an accountant and auditor by examination of one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member of good standing of one of the above institutes.”

- (d) by inserting, immediately after the definition of “company”, the following three definitions:

““constituted” means,

- (a) in the case of a company, incorporated under the Companies Act, 1994 or under the International Companies Act, 1996;
- (b) in the case of a trust, settled by deed or agreement which chooses the law of the State as the proper law; or
- (c) in the case of a partnership, formed or established under the laws of the State;

“constitutional documents” means

- (a) in the case of a company, the articles of incorporation, memorandum and articles of association or other instrument of incorporation;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;
- (c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

“custodian” means the person who holds any of the assets of the mutual fund in safe keeping”

- (e) by inserting in the definition of “existing entity”
 - (i) between the words “private” and “fund” in paragraph (b) thereof and wherever those words occur in the Act, the words “or accredited”; and
 - (ii) immediately after the word “business” in the closing paragraph thereof, the words “or, in the case of a public, a private, or an accredited fund, was managing or administering its affairs,“;
- (f) by repealing the definition of “financial year” and substituting therefor the following:

“financial year” means the period not exceeding twelve months at the end of which the balance of the accounts is struck, and may be up to eighteen months in the case of the first or last period or when the period is changed;”
- (g) by repealing the definition of “investor” and substituting therefor the following:

““investor”. in respect of a mutual fund, means the legal holder of record or legal holder of a bearer instrument representing a share issued by a mutual fund, but does not include a promote’ of or a professional adviser to that fund;”

- (h) in the definition of "manager", by inserting between the words "person" and "who" the words "not being an officer or an employee of a person licensed under this Act or mutual fund which has delegated management functions to a person licensed under this Act," and by capitalising the words "country" and "jurisdiction" in the last of that definition.
- (i) in respect of the definition of "mutual fund"
- (i) by inserting in the opening paragraph a comma after the word "formed" and deleting the word "or" immediately following;
 - (ii) by deleting from the opening paragraph the comma after the word "organised" and inserting immediately thereafter the words "or other similar body formed or organised";
 - (iii) by capitalising the words "Country" and "Jurisdiction" in the last line of the opening paragraph;
 - (iv) by inserting in paragraph (a) immediately after the word "pools", the word "investor" and deleting from the same paragraph the words "in accordance with the principle of risk spreading";
 - (v) by deleting from paragraph (b) the words "or the unit trust," and substituting therefor the words "the unit trust or other similar body"; and
 - (vi) by deleting the closing phrase from paragraph (b) beginning "and includes". and substituting therefor the following:

"and includes

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

but excludes activities licensed under the Banking Act Cap 63, the International Banks Act, 1996, the International Insurance Act, 1996, and the Insurance Act Cap 103, as each of the same may have been or may be amended, unless the Authority determines otherwise, and any arrangements which are designated by the regulations as not being mutual funds;";

- (j) by deleting from paragraph (a) of the definition of "officer" the words "the secretary, the treasurer;";
- (k) by capitalising the words "Country" and "Jurisdiction" in the penultimate line of the definition of "partnership";
- (l) by inserting, in the definition of "person" after the word "trustee", the words ", or other legal or juridical entity recognised under the laws of any country or jurisdiction"
- (m) by repealing the definition of "private fund" and substituting the following:
 - ""private fund" means a mutual fund
 - (a) the constitutional documents of which specify that it will have no more than fifty investors;
 - (b) the constitutional documents of which specify the making of an invitation to subscribe for or purchase shares issued by the mutual fund is to be made on a private basis, which shall include
 - (i) an invitation made to specified persons and is not calculated to result in shares becoming available to other persons or to a large number of investors, or
 - (ii) by reason of a private or business connection between the person making the invitation and the investor; or
 - (c) which is designated as a private fund by the regulations;";
- (n) by inserting the following after the definition of "private fund":
 - ""professional advisor" means a barrister, a solicitor, an attorney-at-law, a lawyer, a certified public accountant or chartered accountant, or an auditor;"

- (o) by inserting the words "only;" after the word "receives" in the definition of "promoter";
- (p) by adding in the definition of "promoter" after the last word "business" in that definition, the phrase "or a professional advisor acting for or on behalf of such a person;"
- (q) by repealing the definition of "prospectus" and substituting the following
- ""prospectus" means any prospectus or similar document the purpose of which is to make an invitation to the public or any section thereof to subscribe for or purchase shares issued by a mutual fund;"
- (r) by repealing the definition of "public fund" and substituting therefor the following:
- ""public fund" means a mutual fund which is not a private fund or an accredited fund;"
- (s) by deleting from the definition of "Registrar" the words "or Deputy Registrar of Mutual Funds"; and
- (t) by deleting from the definition of "unit trust" the words "a contractual" and substituting therefor the word "an".
- (2) Subsection (2) of section 2 of the principal Act is amended
- (a) by deleting the word "and" at the end of paragraph (a);
- (b) by replacing the full-stop at the end of paragraph (b) with a semi-colon and inserting immediately thereafter the following:
- "(c) If a mutual fund which not incorporated, formed, organised or carrying on its business in or from within the State shall be deemed to be carrying on business in the State if it solicits a person within the State to purchase its shares, except where the purchase is a result of an approach made by the person without any solicitation being made."
- (3) Section 3 of the principal Act is amended
- (a) by deleting the word "and" at the end of paragraph (a);
- (h) by replacing the full-stop at the end of paragraph (h) with a semi-colon; and

- (c) by inserting Immediately after paragraph (b) the following:
- "(c) the power to prescribe such forms as he considers necessary for the purposes of this Act or the regulations; and
- (d) the authority to issue directives and policy guidelines for the purpose, of this Act or the regulations."
4. Section 8 of the principal Act is amended by deleting the words "any" and "arrange" and substituting therefor, respectively, the words "its" and "manage". Section 8 amended
5. Section 9 of the principal Act is amended by Section 9 amended
- (a) deleting the words "Schedule 1" and inserting, in lieu thereof, the words "the regulations";
- (b) deleting the word "instrument" and inserting the words "constitutional documents" in subsection (2) (i) (iii)
6. Section 10 of the principal Act is amended by Section 10 amended
- (a) deleting the phrase "of a letter setting out the particulars of the proposed public fund;" in paragraph (2) a), and inserting, in lieu thereof, the words "prescribed in the regulations"; and
- (b) deleting the word "upon" in sub-section (4), and inserting the words "prior to" in lieu thereof
7. Section 11 of the principal Act is amended by repealing subsection (2) and substituting therefor the following: Section 11 amended
- "(2) Notwithstanding subsection (1), the Authority shall refuse to grant registration or its consent, as the case may be, if
- (a) the public fund has a name which is undesirable or misleading;
- (b) the public fund does not have a custodian who is functionally independent of the manager or administrator; or
- (c) it determines that it is not in the public interest that such registration or consent should be granted"

Section 13
amended

8. Section 13 of the principal Act is amended

(a) in subsection (1)

- (i) by deleting from paragraph (a) the words “applicable in the State or in any other recognised Country or Jurisdiction”; and
- (ii) by inserting after the word “business” in subparagraphs (i) and (ii) of paragraph (b), the words “or registered office”;

(b) in subsection (2)

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

Section 14
amended

9. Section 14 of the principal Act is amended

(a) in subsection (1)

- (i) by adding the word “State” after the words “outside the” in the first line of such subsection;
- (ii) by deleting the word “offer its shares to the public” and substituting therefor the words “make an invitation to the public or any section thereof to purchase its shares.”;
- (iii) by deleting the word “offer” where it last occurs and substituting therefor the word “invitation”; and
- (iv) by deleting the words “its officers who” and substituting therefor the words “the board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, the equivalent governing body of the fund which”;

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

“(a) provide **full** and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;”;

(c) by repealing subsection (3); and

(d) in subsection (5) by inserting immediately after

(i) the word “accurate” where it first occurs, the words “in a material particular”; and

(ii) the word “shall”, the words,” within fourteen days of the change occurring,“.

10. Section 15 of the principal Act is amended by substituting the word “State” for the word “Territory” in the second line of the section, and by inserting a subsection “(1)” immediately after the figure “15.” And adding after the subsection the following:

Section 15
amended

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

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

11. Section 16 of the principal Act is amended by adding the word “rights” after “Investors” in the headnote, and in subsection (2) by deleting the closing paragraph and substituting **therefor** the following,

Section 16
amended

“jointly and severally against the **fund**, and every member of the board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had he made reasonable investigations consistent with his duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.“.

12. Section 17 of the principal Act is amended in subsection (2) by deleting the words “price at” and substituting **therefor** the words “amount for”.

Section 17
amended

Heading of Part III
amended

13. The heading in Part III of the principal Act is amended by inserting between the words "Private" and "Funds", the words "and Accredited".

Section 18
amended

14. The principal Act is amended by repealing section 18 and substituting therefor the following:

"Recognition. 18. (1) Subject to subsection (2), no private or accredited fund shall carry on its business or manage or administer its affairs in or from within the State unless it is recognised under this Act.

(2) An accredited fund may carry on its business or manage or administer its affairs in or from within the State for a period of up to fourteen days without being recognised under this Act.

Section 19
amended

15. Section 19 of the principal Act is amended

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

"(1) A private or accredited fund that is constituted under the laws of the State is entitled to be recognised under this Act if it provides

(a) proof satisfactory to the Authority that it

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

(ii) is lawfully constituted under the laws of the State;

(b) the application prescribed by the regulations; and

(c) the notices required under section 26.;"

(b) by inserting in subsection 19 (2) (c) (i) the words "or accredited" after the word "private" and by deleting the words "a letter" and inserting, in lieu thereof, the words "the application prescribed in the regulations"; and

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

“(3) In the case of an accredited fund, the materials and information required by subsections (1) and (2) shall be provided within fourteen days of the date it commences to carry on business in or from within the State.”.

16. Section 21 of the principal Act is amended by substituting the word “it” for “he” in the first line and by inserting the words “or accredited” after the word “private” in the second line of the section and in subsections (a) and (b). Section 21
amended

17. Section 22 of the principal Act is amended Section 22
amended

(a) in subsection (1) by inserting between the words “on” and “business”, the words “or hold himself out as carrying on”; and

(b) in subsection (2) by deleting from paragraph (b) the words “qualified and authorised”.

18. Section 23 of the principal Act is amended in section (2) Section 23
amended

(a) by adding immediately after the words “shall be” in the opening paragraph, the words “accompanied by”;

(b) by repealing paragraph (a);

(c) by deleting the words “(b) accompanied by”; and

(d) by substituting

(i) paragraph “(a)” for sub-paragraph “(i)”

(ii) paragraph “(b)” for subparagraph “(ii)” and

(iii) paragraph “(c)” for sub-paragraph “(iii)”

19. Section 24 of the principle Act is amended in subsection (2) Section 23
amended

(a) by deleting from paragraph (a) the words “of managing or administering the affairs of mutual funds;” and substituting therefor the word “proposed;”;

(b) by deleting from paragraph (b) the words “proper management or administration of mutual funds” and substituting therefor the words “nature and scope of the business proposed; and”; and

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

“(c) has appointed an auditor satisfying such conditions as may be prescribed by the Authority.”.

Section 25
amended

20. Section 25 of the principal Act is amended

- (a) by inserting a subsection "(1)" immediately after the figure "25.";
- (b) by adding a new subsections (2) and (3) to such section, as follows:-

(2) The Authority may by regulation prescribe a **Code of Practice** directing the holder of a **licence** under section 24 to comply with the requirements of the Code which may include matters relating to

- (a) conduct of business;
- (b) financial resources;
- (c) the giving of notice of specified events;
- (d) advertising;
- (e) clients' money and custody of investments. and
- (f) accounting records and audit requirements.

(3) A Code of Practice prescribed under subsection (2) may provide for **such** enforcement mechanisms as the Authority may consider necessary to ensure compliance with the provisions of that Code."

Section 26
amended

21. Section 26 of the principal Act is amended

- (a) by deleting the word "of" after "address" in subsection (1) (a), and inserting the word "for" in lieu thereof; and
- (b) by inserting the words "or accredited" after the word "private" in subsection 26 (2).

Section 28
amended

22. Section 28 of the principal Act is amended by inserting the words "or accredited" after the word "private" in subsection (1) (b).

Section 29
amended

23. Section 29 of the principal Act is amended

- (a) by inserting after the word "Cancellation" in the marginal note. the word ", etc.";

- (b) by adding, after the word "private" in the first paragraph, the word "or accredited";
- (c) by adding immediately after the words "as the case may be," in the opening paragraph, the words "or impose new or additional conditions, restrictions or limitations in respect of Such certificate or licence"; and
- (d) by inserting after the word "regulations" in subparagraph (ii) of paragraph (b), the words "or the Code of Practice prescribed under section 25(2)".

24. Section 30 of the principal Act is amended by

Section 30
amended

- (a) deleting the word "he" in subsection (1) (a), and inserting the word "it" in lieu thereof; and
- (b) deleting the words "him written representations to him" in subsection (1) (b) and inserting the word "it" in lieu thereof, and
- (c) deleting the word "he" in subsection (2) and inserting the word "it" in lieu thereof.

25. Section 33 of the principal Act is amended by deleting the words "as the case may be," in subsection (1) (b).

Section 33
amended

26. Section 34 of the principal Act is amended by deleting the word "he" and inserting the word "it" in lieu thereof.

Section 34
amended

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

Section 35
amended

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

Insertion of new
section 35A

"Restriction on use of the words 'fund' or 'mutual fund'" 35A. (1) Except where a person is a mutual fund within the meaning of this Act, or with the written consent of the Registrar, no person shall

- (a) use or continue to use the words "fund" or "mutual fund", either in English or in any other language, in the name, description or title under which that person is carrying on business in or from within the State; or

-
- (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on business as a fund or mutual fund.
- (2) If the Registrar may refuse to grant a certificate in respect of a mutual fund with a name that
- (a) is identical with that of any company, firm, business or other entity, whether or not registered or doing business in the State, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to confuse or deceive;
 - (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within the State or elsewhere; or
 - (c) is likely to suggest, falsely, that the fund has a special status in relation to or derived from the government of the State.
- (3) If, in the Registrar's opinion, a mutual fund is carrying on, or attempting to carry on, business in or from the State in a name that the Registrar would have refused by virtue of subsection (1) the Registrar may direct the mutual fund to change its name to a name approved by the Registrar.
- (4) The licensed manager of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (2), and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of two thousand dollars plus one hundred dollars in respect of each day during which the mutual fund failed to comply with the direction "

29. Section 38 of the principal Act is amended by

Section 38
amended

- (a) repealing subsection (a)(ii), and inserting the following in lieu thereof:

“(ii) as provided under procedures set forth in the Confidential Relationships Preservation (International Finance) Act, 1996.”;

- (b) adding the word “is” after the word “so” in the last *line* of subsection (b).

30. Section 39 of the principal Act is amended by

Section 39
amended

- (a) repealing subsection (1) and inserting the following in lieu thereof:

“(1) Notwithstanding any provision or rule of law in the State to the contrary

- (a) A mutual fund which holds a valid and subsisting certificate under this Act shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside the State or in connection with matters of administration or management which may occur in whole or in part in or from within the State.

- (b) For purposes of this section but without limiting the provisions of Section 2 (2), no mutual fund which holds a valid and subsisting certificate under this Act shall be considered to be doing business in the State solely because it engages in one or more of the following activities –

- (i) maintaining one or more bank, trust or securities accounts in the State;
- (ii) holding meetings of directors or investors in the State;
- (iii) maintaining corporate or financial records in the State;
- (iv) maintaining an administrative or managerial office in the State with respect to assets or activities outside the State;

- (v) maintaining a registered agent or registered office in the State; or
 - (vi) investing in stocks or entities doing business in the State or being a partner in a partnership existing under the laws of the State or a beneficiary of a trust or estate which has the State as its situs.
- (2) No estate, inheritance, succession or gift tax, rate, duty, levy or other similar charge is payable by persons who are not persons ordinarily resident or domiciled in the State with respect to any shares of a mutual fund to which this Act applies and which holds a valid and subsisting certificate under this Act.
- (3) Notwithstanding any provision of the Stamp Act to the contrary -
- (a) all instruments relating to transfers of any property to or by a mutual fund;
 - (b) all instruments relating in any way to the assets or activities of a mutual fund; and
 - (c) all instruments relating in any way to the assets or activities of a mutual fund,
- are exempt from the payment of stamp duty.
- (4) Any dividend or distribution by a mutual fund to individuals, trusts or other entities which are not ordinarily resident in the State shall be exempt from any tax or withholding provisions of State law which would otherwise be applicable to the recipient or the payer of the dividend or distribution.
- (5) A mutual fund to which this Act applies shall not be subject to the provisions of the Exchange Control Act Cap 322 or any order or regulation made thereunder, or to any other exchange or currency control legislation or regulations of the state from time to time.

(b) subsection "(2)" shall be changed to "(6)".

- (a) in subsection (1) by replacing the word “fund” with the word “fine” in the last line; and
- (b) in subsection (2) by inserting immediately after the word “Act” where it last occurs in the opening paragraph, the words “or the regulations as the case may be;”.

32. Section 41 of the principal Act (other than the margin note) is repealed, and the following is **inserted** in lieu thereof; Section 41
amended

“4 1. The Minister may by Notice or regulations published in the Gazette vary information contained in the regulations.”

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

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

“(d) designating arrangements which are not mutual funds;”;

(c) in paragraph (e),

- (i) by deleting the word “mutual” where it last occurs; and
- (ii) by inserting immediately after paragraph (e) the following:

“(ea) designating a class or sub-classes of a public fund;”;

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

“(i) relating to

- (i) the constitution, powers and duties of the manager, administrator and custodian;
- (ii) the issue and redemption of shares;
- (iii) the **appointment**, removal, and powers and duties of auditors;
- (iv) the restriction of regulation of investment and borrowing powers;
- (v) the preparation of periodical reports;

(vi) the rights of investors; and

(vii) the contents of constitutional documents, in respect of a public fund or a sub-class of such fund;

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

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

Section 43
amended

34. The principal Act is amended by repealing section 43 and substituting **therefor** the following":

"Transitional. 43, (1) Any person performing the functions of a manager or an administrator who, on the date of the coming into force of this Act, is carrying on any business or engaged in any activity in relation to which he is required to be licensed under this Act shall, within three months of the coming into force of this Act, comply with the requirements of this Act.

(2) Any person who, on the date of the coming into force of this Act, is carrying on any business *or* engaged in any activity as a mutual fund shall, on or before 30 June 1999, comply with the provisions of this Act.

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

(4) If after the period of twelve months prescribed under subsection (2), he commits an **offence** and may be proceeded against under section 40 (2).

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

35. Each of the **Schedules** in the principal Act is repealed.

**Schedules
amended**

Passed in the House of Assembly this 27th day of August, 1998.

J . THERESA ADAMS
Clerk of the House of Assembly

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