

CAYMAN ISLANDS



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**THE MUTUAL FUNDS (AMENDMENT) (PRUDENT
ADMINISTRATION) LAW, 2001**

(LAW 4 OF 2001)

**THE MUTUAL FUNDS (AMENDMENT) (PRUDENT
ADMINISTRATION) LAW, 2001**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Insertion of section 2A in the Mutual Funds Law (1999 Revision) - determination of fitness and propriety.
3. Amendment of section 4 - Mutual Fund Licences.
4. Amendment of section 11 - Mutual Fund Administrators Licences.
5. Repeal and substitution of section 12 - restriction on issue, etc., or transfer of shares in licensed mutual fund administrator
6. Amendment of section 29 - powers of Authority in respect of regulated mutual funds.
7. Amendment of section 30 - powers of Governor in respect of licensed mutual fund administrators.

CAYMAN ISLANDS

Law 4 of 2001.

I Assent

P.J. SMITH

Governor.

24 April, 2001

**A LAW TO AMEND THE MUTUAL FUNDS LAW (1999 REVISION) TO
PROVIDE FOR THE PRUDENT ADMINISTRATION OF MUTUAL
FUNDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Mutual Funds (Amendment) (Prudent Administration) Law, 2001.

2. The Mutual Funds Law (1999 Revision), in this Law referred to as “the principal Law”, is amended by inserting after section 2, the following section -

“Determination of fitness and propriety

2A. In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person’s -

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.”

3. Section 4 of the principal Law is amended in subsection (2) by repealing paragraph (b) and substituting the following paragraph -

- “(b) the administration of the mutual fund will be undertaken -
 - (i) by persons who have sufficient expertise to administer the mutual fund; and

Short title

Insertion of the Mutual Funds Law (1999 Revision) and provisions

Amendment - Mutual Funds Law

Deleted: For the purposes of sections 4(2)(b)(ii), 11(2)(aa), 29(1)(d) and 30(1)(d), “sufficient”, with reference to the number of directors, managers and officers of a mutual fund, means sufficient having regard to the range and scale of the mutual fund, and in

Deleted: in particular

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Deleted: (a) . to his probity;¶
(b) . to his competence and soundness of judgement for fulfilling the responsibilities of that position;¶
(c) . to the diligence with which he is likely to fulfil those responsibilities; and¶
(d) . to whether the interests of investors in the mutual fund are likely to be in any way threatened by his holding that position.”.

	(ii) by persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions; and”.
Amendment of section 11 - Mutual Fund Administrators Licences	<p>4. Section 11 of the principal Law is amended in subsection (2) -</p> <p>(a) by repealing paragraph (a) and substituting the following paragraph -</p> <p>“(a) that he has sufficient expertise to administer regulated mutual funds;” and</p> <p>(b) by inserting, after paragraph (a), the following paragraph -</p> <p>“(aa) that his business as a mutual fund administrator will be administered by persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions;”.</p>
Repeal and substitution of section 12 - restriction on issue, etc., or transfer of shares in licensed mutual fund administrator	<p>5. The principal Law is amended by repealing section 12 and substituting the following section -</p> <p>“Restriction on issue, etc., or transfer of shares in licensed mutual fund administrator</p> <p>12. (1) Where a licensed mutual fund administrator is a company, the company shall not issue shares or a person owning or having an interest in shares in the company shall not transfer or otherwise dispose of or deal in those shares or that interest, unless the Governor has given his approval to the issue, transfer, disposal or dealing, as the case may be, and any conditions of the approval are complied with.</p> <p>(2) The Governor may, in respect of a licensed mutual fund administrator whose shares are publicly traded on a stock exchange recognised by the Authority, waive the obligation to obtain approval under subsection (1), and any such waiver -</p> <p>(a) shall be subject to a condition that the licensed mutual fund administrator shall, as soon as reasonably practicable, notify the Authority of -</p> <p>(i) any change in control of the licensed mutual fund administrator;</p> <p>(ii) the acquisition by any person or group of persons of shares representing more than ten percent of the issued share capital or total voting rights of the licensed mutual fund administrator; or</p> <p>(iii) the acquisition by any person or group of persons of shares representing more</p>

than ten percent of the issued share capital or total voting rights of the parent company of the licensed mutual fund administrator;

- (b) shall be subject to a condition that the licensed mutual fund administrator shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensed mutual fund administrator in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and other conditions as the Governor may deem necessary.

(3) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine of twenty thousand dollars.”.

6. Section 29 of the principal Law is amended by repealing subsection (1) and substituting the following subsection -

Amendment of section 29 - powers of Authority in respect of regulated mutual funds

“ (1) The Authority may take all or any of the actions specified in subsection (3) if it is satisfied that -

- (a) a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due;
- (b) a regulated mutual fund is 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;
- (c) a regulated mutual fund, in the case of a licensed mutual fund, is carrying on or attempting to carry on business without complying with any condition of its Mutual Fund Licence contrary to section 4(5);
- (d) the direction and management of a regulated mutual fund, has not been conducted in a fit and proper manner; ~~or~~
- (e) a person holding a position as a director, manager or officer of a regulated mutual fund is not a fit and proper person to hold the respective position.”.

Deleted: or

Deleted: by a sufficient number of persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions.

Amendment of section
30 - powers of Governor
in respect of licensed
mutual fund
administrators

7. Section 30 of the principal Law is amended -

- (a) by repealing subsection (1) and substituting the following subsection -

“(1) The Governor may take any actions specified in subsection (3) if he is satisfied that -

- (a) a licensed mutual fund administrator is or is likely to become unable to meet its obligations as they fall due;
- (b) a licensed mutual fund administrator is carrying on or attempting to carry on business or is winding up its mutual fund administration business in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or to the creditors of any such mutual fund;
- (c) a licensed mutual fund administrator is carrying on or attempting to carry on the business of mutual fund administration without complying with any condition of its Mutual Fund Administrators Licence, contrary to section 11(6);
- (d) the direction and management of a licensed mutual fund administration business has not been conducted in a fit and proper manner;
- ~~(e) a person holding a position as a director, manager or officer of a licensed mutual fund administration business is not a fit and proper person to hold the respective position; or~~
- (f) a person acquiring control or ownership of a licensed mutual fund administration business in the circumstances set out in section 12(2)(a) is not a fit and proper person to have such control or ownership.”; and

Deleted: or

Deleted: by a sufficient number of persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions

- (b) in subsection (3) -

- (i) by re-lettering paragraph (a) as paragraph (aa); and
- (ii) by inserting before paragraph (aa), the following paragraph -

“(a) revoke any Mutual Fund Administrators Licence the mutual fund administrator holds;”.

Transitional provisions

8. (1) Any waiver granted to a mutual fund administrator under the repealed section 12 and in force at the coming into operation of this Law shall, if the

mutual fund administrator is licensed, continue in force and effect on and after the coming into operation of this Law, but (whether or not the shares of the mutual fund administrator are publicly traded on a stock exchange recognised by the Authority) subject in all cases to the terms and conditions set out in the new section 12(2).

(2) In this section -

“the new section 12” means the section inserted in the principal Law by section 5 of this Law; and

“the repealed section 12” means the section repealed by section 5 of this Law.

Passed by the Legislative Assembly the 20th day of April, 2001.

MABRY S. KIRKCONNELL

Speaker.

GEORGETTE MYRIE

Clerk of the Legislative Assembly.