

MUTUAL FUNDS REGULATIONS 2001

(Legal Notice 11 of 2001)

Cap 13 MADE by the Governor under sections 4, 8(1), 10, 12, 13, 19(2) and 32 of the Mutual Funds Ordinance, 1998

General

Citation and commencement 1. (1) These Regulations may be cited as the Mutual Funds Regulations 2001 shall come into operation on 16th March 2001.

Exempt Mutual Funds

Qualifications of professional investors 2. For the purpose of section 10 of the Mutual Funds Ordinance, the qualifications of a professional investor shall be that -

- (i) he is a qualified licensed securities broker; or
- (ii) he is acting either on his own account or on behalf of an investor with investments of \$5,000,000 or more in securities quoted on the stock exchanges specified in Schedule 1; and

under either paragraph (i) or (ii) from his application form he satisfies the Superintendent that he has sufficient knowledge and experience to understand the funds stated in the prospectus.

Applications and forms

Reference to form numbers 3. In regulations 5 to 10 the references to numbered forms shall be to the numbered forms in Schedule 2.

Qualifications for investors in registered mutual fund 4. For the purposes of a registered mutual fund the qualifications for an investor shall be that -

- (i) he has investments of \$100,000 or more in securities quoted on the stock exchanges specified in Schedule 1; and
- (ii) from his application form he satisfies the Superintendent that he has sufficient knowledge and experience to understand the funds stated in the prospectus.

Application form for recognized mutual fund 5. The form of application for registration of a mutual fund shall be form number 1.

Application form for registered mutual fund 6. The form of application for recognition of a mutual fund shall be form number 2.

7. (1) For the purpose of this Regulation a “controller” is a person who holds more than 10% of the equity interests in a mutual fund.

(2) The form of application for licensing of a mutual fund shall be form number 3.

(3) An application for licensing of a mutual fund shall be accompanied by -

- (a) evidence of each operator’s -
 - (i) experience and qualifications to undertake the duties and responsibilities of a licensed mutual fund; and
 - (ii) sound reputation;
- (b) a curriculum vitae for each operator or controller together with biographical details including proof of identity;
- (c) particulars of the mutual fund’s management structure;
- (d) a copy of the management agreement ;
- (e) an assurance that there will be at least two directors where the mutual fund is a company;
- (f) a copy of the fund manager’s authorisation;
- (g) a copy of the proposed prospectus in the form and with the content set out in Schedule 3;
- (h) a copy of the business plan giving for the next three years details of anticipated assets and liabilities and a forecast of income;
- (i) a note of the procedures within the mutual fund for ensuring that the fund’s investment policies are adhered to;
- (j) evidence that the mutual fund’s investment policies include –
 - (i) adequate diversification of investments;
 - (ii) restrictions on speculative investments;
 - (iii) restrictions on the amount of capital which can be borrowed; and
 - (iv) requirements about the capacity of liquid assets to meet general liabilities;
- (k) an assurance of an annual certificate that the mutual fund is in compliance with the conditions of its licence;
- (l) a copy of the audited accounts for the past two years if the applicant has been in existence for two years;

- (m) where the mutual fund is a company, a copy of the memorandum and articles of association and certificate of incorporation;
- (n) where the mutual fund is a partnership, a copy of the partnership agreement; and
- (o) where the mutual fund is a unit trust, a copy of the trust deed.

Application for mutual funds administrator's licence and restricted licence

8. The form of application for a mutual funds administrator's licence or for a restricted mutual funds administrator's licence shall be form number 4.

Administrator's licence and return

Return form of mutual funds administrators

9. The form of a mutual funds administrator's licence or a restricted mutual funds administrator's licence shall be form number 5 or form number 6 respectively.

Mutual funds administrator's obligations

10. The form of the return by a mutual funds administrator of the mutual funds for which it acts shall be form number 7.

Fees

Fees

11. (1) The fees which shall accompany an application for registration, recognition or licensing of a mutual fund or for a mutual funds administrator's licence or for a restricted mutual funds administrator's licence for the first year shall be as set out in Part 1 of Schedule 4.

(2) The fee paid for each year of registration, recognition, licensing or administration after the first year shall be as set out in Part 2 of Schedule 4.

Mutual funds administrator's obligations

Mutual funds administrator's Obligation

12. A mutual funds administrator shall -

- (a) ensure that the promoter and operator of a client mutual fund can fulfil their respective obligations in respect of the mutual fund;
- (b) communicate with investors and the public with regard to the financial affairs of the fund;
- (c) promote sales and accept subscriptions from new investors where the contract between the mutual fund and him allows him to do so;
- (d) maintain the mutual fund's principal books and records of accounts in the Islands;
- (e) publish or furnish the offer and redemption price of equity interests in the mutual fund;



- (f)* conduct meetings with investors and managers;
- (g)* make distributions of investor interests;
- (h)* provide an annual certificate of solvency stating that the assets of the mutual fund exceed the fund's liabilities by 15%; and
- (i)* provide evidence that the mutual funds administrator continues to hold an insurance policy with an insurance company acceptable to the Permanent Secretary, Finance to cover any claims arising from negligence or breach of duty by its employees.



SCHEDULE 1

(Regulation 2)

STOCK EXCHANGES

The stock exchanges to which reference is made in regulation 2 (ii) are stock exchanges authorised to do business in --

Australia,

Bermuda,

Canada,

Cayman Islands,

Hong Kong,

Japan,

a Member state of the European Union,

New Zealand,

Singapore,

Taiwan and

The United States of America.

SCHEDULE 2

(Regulations 3 and 5 to 10)

FORM NO. 1

APPLICATION FOR REGISTRATION OF MUTUAL FUND

1. Name of company, unit trust or partnership which is the mutual fund applying for registration

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2. Where a company –

(a) registered office of company

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(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

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(e) name and address of parent company

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(f) name and address of regulator of parent company

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3. Where a unit trust, names and addresses of trustees

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4. Where a partnership, name and address of partnership and of each partner.

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5. Local management company -

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6. Name and address of auditor

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7. Name and address of proposed custodian of documents and records

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Information to Accompany Form

- (i) Evidence that the mutual fund is constituted under the laws of the Islands and -
 - (a) is authorised to issue equity interests only to investors who meet the qualifications in regulation 4; or
 - (b) its equity interests are listed on a stock exchange including over the counter market, recognised by the Permanent Secretary, Finance for the purposes of section 4(1) of the Ordinance and with a notice of recognition published in the Gazette;
- (ii) Three references one of financial character from a bank with which the applicant has had a long standing relationship;
- (iii) Curriculum vitae for the promoter and operator of the mutual fund together with biographical details including proof of identity, past experience and qualifications;
- (iv) A copy of the audited accounts for the past two years if available;



- (v) Where a company a copy of the memorandum and articles of association and the certificate of incorporation;
- (vi) Where a unit trust, a copy of the trust deed;
- (vii) Where a partnership, a copy of the partnership agreement;
- (viii) A copy of the proposed management agreement;
- (ix) A copy of the proposed prospectus; and
- (x) the address of the applicant's office in the Islands.



FORM NO. 2

APPLICATION FOR RECOGNITION OF MUTUAL FUND

1. Name of company, unit trust or partnership applying for recognition

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2. Where a company –

(a) registered office of company

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(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

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(e) name and address of parent company

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(f) name and address of regulator of parent company

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3. Where a unit trust, names and addresses of trustees

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4. Where a partnership, name and address of partnership and of each partner

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5. Local management company

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6. Name and address of auditor

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7. Name and address of proposed custodian of documents and records

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Information to Accompany Form

- (i) Evidence that the mutual fund –
 - (a) is constituted under the laws of a foreign country or territory; and
 - (b) its equity interests are listed on a stock exchange including over the counter market and specified by the Permanent Secretary, Finance by notice published in the Gazette.
- (ii) A copy of the prospectus; and
- (iii) the address of the applicant's office in the Islands.

FORM NO. 3

APPLICATION FOR LICENSING A MUTUAL FUND

1. Name of company, unit trust or partnership which is the mutual fund applying to be licensed

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2. Where a company –

(a) registered office of company

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(b) date of incorporation

(c) place of incorporation

(d) names and addresses of directors

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(e) name and address of parent company

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(f) name and address of the regulator of parent company

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3. Where a unit trust, names and addresses of trustees

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4. Where a partnership, name and address of partnership and of each partner

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.5. Local management company

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6. Name and address of auditor

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7. Name and address of proposed custodian of documents and records

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FORM NO. 4

APPLICATION FOR MUTUAL FUNDS ADMINISTRATOR'S LICENCE

1. Name of company or partnership applying for mutual funds administrator's licence

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2. Whether the application is for a licence –

(a) to conduct mutual fund administration in respect of an unlimited number of mutual funds; or

(b) to conduct mutual fund administration only in respect of the mutual funds specified from time to time in the licence.

3. Where a company –

(a) registered office of company

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(b) date of incorporation

(c) place of incorporation

(d) names and addresses of direct

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address of parent company

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(f) name and address of regulator of parent company

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4. Where a partnership name and address of partnership and of each partner

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5. Name and address of auditor

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6. Name and address of proposed custodian of documents and records

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Particulars to Accompany Application

- (i) Particulars of the applicant's –
 - (a) knowledge, qualifications and experience; and
 - (b) fitness and propriety to administer mutual funds;
- (ii) An assurance that the promoter and operator of the client mutual fund can fulfil their respective obligations in respect of the mutual fund;
- (iii) An assurance that the client mutual fund will retain its principal books and records of accounts in the Islands;
- (iv) Evidence that the applicant holds an insurance policy with an insurance company acceptable to the Permanent Secretary, Finance to cover any claim arising from negligence or breach of duty by its employees;
- (v) A code of ethics and work which will include a prohibition on –
 - (a) misuse of insider information; and
 - (b) lending or making transactions in any investment in which a related person is involved; for the purpose of this paragraph a related person in relation to a mutual funds administrator has the same meaning as a “related person” has in relation to a licensed financial institution in section 15(3) of the Banking Ordinance; and
- (vi) The address of the applicant's office in the Islands.

FORM NO. 5

MUTUAL FUNDS ADMINISTRATOR'S LICENCE

1. operating from
..... in the Turks and Caicos Islands are granted an
unrestricted licence to conduct mutual funds administration in the Islands.

2. This licence is issued under and subject to the Mutual Funds
Ordinance 1998 and is subject to any conditions and restrictions stated on
this licence.

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Permanent Secretary Finance

Date

Licence No.

FORM NO. 6

RESTRICTED MUTUAL FUND ADMINISTRATOR'S LICENCE

1. operating from
..... in the Turks and Caicos Islands are granted licence
in the Islands.

2. The licence is issued under and subject to the Mutual Funds
Ordinance 1998, restricts the licensee to conduct mutual funds
administration only in respect of the mutual funds specified on this licence
and is subject to any further conditions and restrictions stated on this licence.

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Permanent Secretary , Finance

Date

Licence No

FORM NO. 7

RETURN BY MUTUAL FUNDS ADMINISTRATOR OF MUTUAL FUNDS

The following are the funds for which [] [name of mutual funds administration] acts –

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Signed

Date

SCHEDULE 3

(Regulation 7)

PROSPECTUS

FOR THE OFFERING OF SHARES

IN

XZY COMPANY

1. The prospectus shall contain the following in a prominent place in the prospectus before the information listed in paragraph 2 –

- (i) a warning –
 - (a) of the risks involved in investment;
 - (b) that there is no guarantee against loss; and
 - (c) that income may increase or decrease;
- (ii) restrictions which may apply to the distribution to investors in the mutual fund of their profits, gains or equity interests; and
- (iii) the names of –
 - members of the board of directors of the mutual fund;
 - the investment adviser;
 - the fund manager;
 - the custodian of fund assets, documents, and records;
 - the auditors; and
 - the legal advisers

2. The prospectus shall contain the following matters in numbered paragraphs.

1. Definition

Definition of terms and interpretation of words and phrases.

2. The company

- (i) Background information on the company as a legal entity, i.e. its incorporation.
- (ii) Directors and company secretary
- (iii) The share capital

3. The mutual fund

- (i) Investment objectives

- (ii) Investment policy
- (iii) Dividend policy
- (iv) Investment and borrowing restrictions
- (v) Investment techniques
- (vi) Risk factors

4. Administration of the mutual fund

- (i) Classes of shares
- (ii) Determination of net asset value of the mutual fund; the basis for valuation of securities shall be –
 - (a) calculation of the net asset value,
 - (b) allocation of assets and liabilities,
 - (c) frequency of valuation and
 - (d) treatment of unquoted securities
- (iii) Subscription price per share
- (iv) Procedure for application of shares
- (v) Method of payment and currency of subscription to the mutual fund.
- (vi) Purchase restrictions
 - (a) repurchase of shares
 - (b) mandatory repurchase of shares and forfeiture of distribution
- (vii) issue of certificates to purchaser of shares
- (viii) availability and publication of share prices
- (ix) temporary suspension of valuation and issue and repurchase of shares
- (x) settlement terms and procedures

5. Management and administration

- (i) State the identity of the manager and the operators and give the date and a summary of the terms, of their agreement with the mutual fund.
- (ii) State the identity of the investment adviser and give the date and a summary of his terms of agreement with the mutual fund.
- (iii) State the identity of the custodian of fund assets, documents and records and give the date and a summary of his terms of agreement with the mutual fund.
- (iv) Procedures for dealing with income and expenditure, e.g., calculation of expenses on accrual basis.

- (v) Procedure for dealing with tax issues.
- (vi) General issues –
 - (a) procedure for dealing with conflict of interest
 - (b) meetings and voting rights of shareholders
 - (c) reports
 - (d) termination of the mutual fund
 - (e) registered office or address to which communications can be sent
 - (f) Address where documents can be inspected and copied.
- (viii) Disclosure of how fees and other charges are calculated.

SCHEDULE 4

(Regulation 11)

FEES FOR REGISTRATION,
RECOGNITION AND LICENSING

PART 1

(APPLICATION FEES)

Registration of mutual fund	\$500
Recognition of mutual fund	\$1, 200
Licensing of mutual fund	\$500
Mutual fund administrator's licence	\$2,000
Restricted mutual fund administrator's licence	\$1,000
Exempt mutual fund	\$200

PART 2

(ANNUAL FEES)

Registered mutual funds	\$500
Recognised mutual fund	\$200
Licensed mutual fund	\$500
Mutual fund administrator's licence	\$2,000
Restricted mutual fund administrator's licence	\$1,000
Exempt mutual fund	\$200

MADE this 3rd day of April 2001.

MERVYN THOMAS JONES
GOVERNOR



EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mutual Funds Regulations provide that they shall come into operation on 16th March 2001.

These Regulations prescribe exemptions from Part II of the Mutual Funds Ordinance (regulation 2)

They prescribe forms for –

- (i) application for registration of mutual funds (regulation 5 and form 1);
- (ii) application for recognition of mutual funds (regulation 6 and form 2);
- (iii) application for licensing mutual funds (regulation 7 and form 3);
- (iv) application for a mutual funds and restricted mutual funds administrator's licence (regulation 8 and form 4);
- (v) a mutual fund or restricted mutual funds administrator's licence (regulation 9 and forms 5 and 6 respectively); and
- (vi) the return by a mutual funds administrator of its mutual funds (regulation 10 and form 7).

They prescribe the form and content of the prospectus which accompanies the application for licensing of a mutual fund (regulation 6(3) and Schedule 3)

They define the qualifications for an investor in respect of a registered mutual fund (regulation 4) and a controller for the purpose of a licensed mutual fund (regulation 7 (1)).

Fees for applications and annual fees thereafter prescribed under regulation 11 and Schedule 4.

A mutual fund administrator's obligations are set out in regulation 12.

