

**DRAFT**

ANGUILLA

A BILL FOR  
**SECURITIES AND INVESTMENT FUNDS ACT,  
2022**

2nd Draft, For Consultation Purposes Only

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**SECURITIES AND INVESTMENT FUNDS ACT, 2022**

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2nd Draft, For Consultation Purposes Only

I Assent

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Date

ANGUILLA

No. /2022

A BILL FOR

**SECURITIES AND INVESTMENT FUNDS ACT, 2022**

An Act to repeal the Mutual Funds Act; to enable the establishment of fund structures that are primarily intended for investment by professional and high net worth investors; to regulate activities and institutions in the securities industry; to enable the establishment of investment funds to be sold in currencies other than the Eastern Caribbean currency; and to provide for the licensing and regulation of digital payment token services and securities exchanges.

[Gazette Dated: \_\_\_\_\_, 2022] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

**Interpretation**

1. (1) In this Act, unless the context otherwise requires -

“approved exchange” means a company that is approved by the Commission under section 58 as an approved exchange;

“approved professional fund” means a company that is approved by the Commission under section 73 as an approved professional fund;

“auditor” means a person who has qualified as an accountant by examination of, and holds a practising certificate issued by, 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 recognised by the Commission as such for the purposes of this Act;

“blockchain” means a continuously growing list of synchronized decentralized digital records that are linked and secured using cryptography;

“business company” means a company that is incorporated or continued under the Business Companies Act;

“business day” means a day which is not a Saturday, a Sunday or a public holiday in Anguilla on which banks are open for non-automated business;

“business entity” means -

- (a) a company;
- (b) a partnership; or
- (c) an unincorporated association;

“category” and “subcategory”, in relation to a licence, mean a category or “subcategory” as specified in the regulations;

“client” means a person with or for whom securities investment business is transacted or mutual fund business is carried on;

“client assets” means investments and other assets that, in the course of its business, a regulated person holds, has custody or control of or is otherwise responsible for that -

- (a) belong to a client or potential client of the regulated person; or
- (b) are held by the regulated person on behalf of a client or potential client;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

“company” means a body corporate, wherever incorporated or constituted;

“constitutional documents” means -

- (a) in the case of a company, the memorandum and articles of association, the company’s constitution or such other equivalent constituting instrument;

- (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 equivalent instrument by which the unit trust is organised or governed; and
- (d) in the case of a mutual fund that does not fall within paragraph (a), (b) or (c), the principal instrument by which the mutual fund is constituted, formed or organised and governed;

“control relationship” means the relationship that exists between a person and an investment manager or operator if -

- (a) that person is a controller of the investment manager or operator;
- (b) the investment manager or operator is a controller of that person; or
- (c) a controller of that person is also a controller of the investment manager or operator;

“controller” means a person who, in relation to another person, holds, directly or indirectly, more than 50% of the economic interests or voting power in that other person;

“country” includes a territory;

“Court” means the High Court;

“currency” means currency notes and coins that are legal tender in Anguilla or a country other than Anguilla;

“custodian” means a person established in Anguilla or a recognised Country or Jurisdiction who -

- (a) is authorised or otherwise permitted in Anguilla or any recognised Country or Jurisdiction to provide custody services; and
- (b) does not have a control relationship with the investment manager or operator;

“dealing in”, in relation to any digital payment token, means the buying or selling of that digital payment token in exchange for any money or any other digital payment token (whether of the same or a different type), but does not include -

- (a) facilitating the exchange of digital payment tokens;
- (b) accepting any digital payment token as a means of payment for the provision of goods or services; or
- (c) using any digital payment token as a means of payment for the provision of goods or services;

“depository” means an entity appointed under section 44;

“digital asset” means cryptocurrencies, digital payment tokens and anything that exists in binary format and comes with the right to use it, and “digital asset” includes a digital representation of value that -

- (a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets; or
- (d) is intended to provide access to an application or service or product by means of distributed ledger technology;

but “digital asset” does not include -

- (i) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
- (ii) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

“digital payment token” means any digital representation of value that -

- (a) is expressed as a unit;
- (b) is not denominated in any currency, and is not pegged by its issuer to any currency;
- (c) is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt;
- (d) can be transferred, stored or traded electronically; and
- (e) satisfies such other characteristics as may be prescribed;

and “digital payment token” includes a digital asset and a fiat asset but does not include an excluded digital representation of value or a utility token as defined in the Anguilla Utility Tokens Exchange Act;

“digital payment token exchange” means a place, or a facility (whether electronic or otherwise), where -

- (a) offers or invitations to buy or sell any digital payment token in exchange for any money or any other digital payment token (whether of the same or a different type), are regularly made on a centralised basis;
- (b) those offers or invitations are intended, or may reasonably be expected, to result (whether directly or indirectly) in the

acceptance of those offers or in the making of offers to buy or sell digital payment tokens in exchange for money or other digital payment tokens (whether of the same or a different type), as the case may be; and

- (c) the person making any such offer or invitation, and the person accepting that offer or making an offer in response to that invitation, are different persons;

but “digital payment token exchange” does not include a place or facility (whether electronic or otherwise) that is used exclusively by one person to do only either or both of the following -

- (i) to make offers or invitations to buy or sell any digital payment token in exchange for any money, or any digital payment token (whether of the same or a different type);
- (ii) to accept any offer to buy or sell any digital payment token in exchange for any money, or any digital payment token (whether of the same or a different type);

“digital payment token service” means any of the following services -

- (a) any service of dealing in digital payment tokens (other than utility tokens as defined in the Anguilla Utility Tokens Exchange Act); and
- (b) any service of facilitating the exchange of digital payment tokens (other than utility tokens as defined in the Anguilla Utility Tokens Exchange Act);

“director”, in relation to a business entity, means a person appointed to direct the affairs of the business entity and includes -

- (a) a person who is a member of the governing body of the business entity; and
- (b) a person who, in relation to the business entity, occupies the position of director, by whatever name called;

“distributed ledger” means a consensus of replicated, shared and synchronized digital data geographically spread across multiple sites, countries and institutions;

“document” means a document in any form and includes -

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes,
- (c) books and drawings; and

- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and includes any court application, order and other legal process and any notice;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“e-money” means any electronically stored monetary value that -

- (a) is denominated in any currency, or pegged by its issuer to any currency;
- (b) has been paid for in advance to enable the making of payment transactions through the use of an account;
- (c) is accepted by a person other than its issuer; and
- (d) represents a claim on its issuer,

but does not include any deposit accepted in Anguilla, from any person in Anguilla; and, for the purposes of this definition, “issuer” means a licensed financial institution as defined in section 1 of the Banking Act;

“economic interests” means -

- (a) in relation to an entity with a share capital, allotted or issued shares;
- (b) in relation to an entity with capital but no share capital, rights to share in the capital of the entity;
- (c) in relation to an entity without capital, interests -
  - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the entity, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the entity in the event of a winding up;

“excluded digital representation of value” means a digital representation of value that is prescribed as an excluded digital representation of value;

“facilitating the exchange of digital payment tokens” means establishing or operating a digital payment token exchange, in a case where the person that establishes or operates that digital payment token exchange, for the purposes of an offer or invitation (made or to be made on that digital payment token exchange) to buy or sell any digital payment token in exchange for any money, fiat currency or any digital payment token (whether of the same or a different type), comes into possession of any money, fiat currency or any digital payment token, whether at the time that offer or invitation is made or otherwise;

“fiat currency” means currency issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through amongst other things, government decree, regulation, or law;

“financial statements”, in relation to a financial year of a person, means -

- (a) a statement of the financial position of the person as at the last date of the financial year,
- (b) a statement of the financial performance of the person in relation to the financial year,
- (c) a statement of cash flows for the person in relation to the financial year; and
- (d) such other statements as may be prescribed, together with any notes or other documents giving information relating to the matters specified in paragraph (a), (b) or (c);

“financial year” means the period at the end of which the balance of accounts is determined for the purpose of preparing the financial statements of a person, which period may be up to 18 months in the case of the first or last such period, or in the case of a change in the date from which the period is determined, but which shall not otherwise exceed 12 months in duration;

“foreign company” means a company that is incorporated, formed or registered outside Anguilla;

“foreign fund” means a mutual fund that is incorporated, constituted, formed or organised under the laws of a country outside Anguilla;

“functionary”, in relation to a mutual fund, means -

- (a) the investment manager, fund administrator, investment advisor or custodian of the fund;
- (b) in the case of a fund that is a unit trust, the trustee; or
- (c) a person undertaking such other function with respect to the fund as may be specified in the regulations;

“fund administrator” means a person who, by way of business, provides a mutual fund with fund administration services, including the performance of net assessment value calculations for mutual funds;

“fund interest” means the rights or interests, however described, of the investors in a fund with regard to the property of the fund, but does not include a debt;

“Governor” means the Governor in Council;

“group of companies” has the meaning assigned by section 3;

“instrument” includes any record whether or not in the form of a document;

“investment” means an asset, right or interest specified in the regulations;

“investment manager” means a person who, by way of business, provides a fund with fund management services;

“investor”, in relation to a fund, means a person who owns or holds fund interests issued by a fund;

“licence” means a licence granted under this Act;

“licensed fund administrator” means a licensee holding a category 4, subcategory B licence as specified in the regulations;

“licensed investment manager” means a licensee holding such category and subcategory of licence as may be prescribed;

“licensee” means a person holding a licence;

“limited liability company” means a limited liability company registered under the Limited Liability Company Act;

“listing” means the grant of a list and permission to deal in securities on an approved exchange, and “listed” has a corresponding meaning;

“market maker” means a person who engages in activities specified in the regulations in compliance with rules made by an approved exchange or a recognised overseas regulatory Commission;

“money” includes e-money but excludes any digital payment token and any excluded digital representation of value;

“mutual fund” or “fund” means a company incorporated, a partnership formed, a unit trust organised or other similar body formed or organised under the laws of Anguilla or the laws of any other country, which, using a currency other than the Eastern Caribbean currency -

- (a) collects and pools investor funds for the purpose of collective investment, and
- (b) issues fund 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 a part of the net assets of the company or other body, partnership or unit trust, as the case may be, and includes -
  - (i) an umbrella fund whose fund interests 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 any company, partnership, unit trust or other body which is of a type or description designated by the regulations as not being a mutual fund;

“net assessment value” means the value of a business entity's assets minus the value of its liabilities;

“net worth” means the excess of assets over liabilities;

“non-registrable persons” means persons specified in the regulations as persons who are not required to register under this Act;

“officer” includes -

- (a) a director, alternate director, the president, a vice-president, compliance officer and any other person designated as an officer of a company by by-law, by resolution of the directors or by any other instrument;
- (b) a partner of a partnership; and
- (c) a trustee of a unit trust;

“operator”, in respect of a fund, means -

- (a) where the fund is a unit trust, a trustee of that unit trust;
- (b) where the fund is a partnership, a partner in that partnership;
- (c) where the fund is a company, a director of that company or, in the case of a company that is a limited liability company, an investment manager of that limited liability company; or
- (d) where the fund is any other type of corporate entity, a senior officer approved by the Commission;

“partnership” means -

- (a) a partnership established under the Partnership Act;
- (b) a limited partnership registered under the Limited Partnership Act; or
- (c) a partnership constituted under the laws of a country other than Anguilla;

“person” includes an individual, a mutual fund, any company, partnership, unit trust or trustee, or other legal entity recognised as such under the laws of another recognised Country or Jurisdiction;

“platform” means any blockchain based distributed digital ledger platform, with or without smart contract (scripting) functionality, or such other platforms as may be prescribed;

“prescribed” means prescribed by regulations made under section 86;

“private fund” means a fund that is registered under section 35 as a private fund;

“professional fund” means a fund that is registered under section 35 as a professional fund;

“professional investor” means an investor that possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs;

“promoter” means a person acting alone or in conjunction with others directly or indirectly who takes the initiative in forming or organising a fund, but does not include an underwriter who receives an underwriting commission without taking any part in the founding or organising of the fund business;

“prospectus”, in relation to a public fund, means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests, and includes an amended prospectus;

“public fund” means a fund that is registered under section 24 as a public fund;

“recognised Country or Jurisdiction” means any country or jurisdiction that is recognised by the Commission under subsection (6);

“recognised foreign fund” means a foreign fund that is recognised by the Commission under section 37;

“recognised overseas regulatory Commission” means a regulatory Commission which is in a country outside Anguilla and which is recognised by the Commission under subsection (6);

“Register” means a register kept and maintained by the Commission under section 79;

“registered person” means a person who is specified in the regulations and who has registered with the Commission in accordance with section 11(6);

“registrable person” means a person specified in the regulations as a person required to be registered;

“regulated activities” means such activities as may be specified in the regulations;

“regulated person” means a -

- (a) person holding a licence, or registered, under Part 2;
- (b) person approved under Part 5;
- (c) professional fund approved under Part 6;
- (d) person holding a licence under Part 7;
- (e) registered public fund;
- (f) registered private fund; and
- (g) registered professional fund;

“regulations” means regulations made under section 86;

“rules” mean rules made by a securities exchange for the purposes of this Act;

“securities” means assets, rights or interests specified in the regulations;

“securities exchange” means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities using digital payment tokens, and sets rules for the execution of securities transactions

or for the negotiation or conclusion of sales and purchases of securities using digital payment tokens, but does not include the office or facilities of a member of a licensed securities exchange;

“securities exchange licence” means a licence granted by the Commission under section 76;

“securities investment business” has the meaning assigned to it in section 4;

“securities market” means a stock market or a place where, facility or arrangement by which (and situated in whole or in part in Anguilla) securities are listed, regularly offered for purchase or sale or by reference to which transactions in securities are regularly entered into by or on behalf of competing buyers;

“senior officer” means a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function;

“share” means share in the share capital of a company and includes -

- (a) an interest in a partnership and a trust unit; and
- (b) in the case of a company limited by guarantee, an interest of a member of the company;

“single family”, in relation to a single family office, means -

- (a) an individual; or
- (b) a group of individuals who are connected in at least one of the ways specified in the regulations;

“single family office” means a legal entity or legal arrangement formed in Anguilla by a single family to conduct securities investment business for or on behalf of that single family where -

- (a) the securities are not beneficially owned by a third party; and
- (b) the legal entity or legal arrangement does not hold itself out to the public as conducting securities investment business for any person except members of the single family;

“smart contract” means a blockchain based computer protocol intended to facilitate, verify, or enforce the negotiation or performance of a digital set of agreed upon terms, or contract;

“token” means any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer;

“trust unit” means a unit of participation in a unit trust;

“trustee”, in relation to a unit trust, means the person holding the property of the fund on trust for the investors;

“underwriter” means a person who -

- (a) as principal, agrees to purchase shares issued by funds with a view to offering them to the public; or
- (b) as agent for a fund, offers for sale or sells to the public shares issued by the fund;

“unit trust” means an arrangement creating a trust under the laws of Anguilla or of any other recognised Country or Jurisdiction in which unit holders participating in the arrangement are the beneficiaries of the trust.

(2) For the purposes of the definitions of “fund administrator” and “investment manager”, the terms “fund administration services” and “fund management services” -

- (a) include such specific activities, and
- (b) exclude such specific activities,

as may be prescribed.

(3) In this Act -

- (a) in every company incorporated and every partnership formed or unit trust organised under the laws of Anguilla for the purpose of carrying on business as a mutual fund, an investment manager or fund administrator shall, if carrying on business anywhere outside Anguilla, be deemed to be carrying on business from within Anguilla;
- (b) the expression “carrying on business from within Anguilla” includes carrying on business outside Anguilla from a place of business or a registered office within Anguilla;
- (c) a fund is carrying on or attempting to carry on business in or from within Anguilla, if it is incorporated or established in Anguilla and it is in receipt of capital contributions from investors for the purposes of investment; and
- (d) a mutual fund which is not incorporated, formed or organised or carrying on its business in or from within Anguilla shall be deemed to be carrying on business in Anguilla if it makes an invitation to subscribe for or purchase shares to an individual within Anguilla, except where the purchase is a result of an approach made by the individual without any invitation to subscribe for or purchase shares being made.

(4) Where the Commission is permitted or required by this Act to consider the “public interest”, the “public” includes -

- (a) the public inside and outside Anguilla; and
- (b) any persons who have a legitimate interest in the decision to be made by the Commission including, in the case of a mutual fund, its investors or potential investors.

(5) For the purposes of this Act, one person (the “first person”) has a close connection with another person (the “second person”), if the first person is -

- (a) where the second person is a business entity-
  - (i) a director or employee of the second person,
  - (ii) an affiliate of the second person,
  - (iii) a relative of an individual who is, or was, a director or employee of the second person;
- (b) where the second person is an individual, a relative of the second person; or
- (c) such other person as may be specified in any regulations;

and an individual’s relatives are his or her parents, spouse, siblings, children (including step-children) and grandchildren.

(6) The Commission may recognise -

- (a) a country or jurisdiction; or
- (b) a regulatory Commission which is in a country outside Anguilla,

for the purposes of this Act and shall cause a notice of such recognition to be published in the *Gazette*.

#### **Meaning of “fit and proper”**

2. (1) For the purposes of this Act, “fit and proper” means a determination by the Commission taking into account a person’s -

- (a) financial status or solvency;
- (b) education or other qualifications or experience, having regard to the nature of the functions that the person performs or will perform;
- (c) the ability to carry on the activity for which a person is responsible competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity of -
  - (i) where the person is an individual, the individual, or
  - (ii) where the person is a company, partnership or unit trust, an officer of the company, partnership or unit trust;
- (e) satisfactory completion of any examination requirements specified by the Commission; and
- (f) any other matter that the Commission may consider relevant.

(2) Without limiting the generality of subsection (1), the Commission may, in considering whether a person is a fit and proper person, take into account -

- (a) a decision made in respect of the person by the Commission or any recognised overseas regulatory Commission; and
- (b) any information in the possession of the Commission, whether provided by the person or not, relating to -
  - (i) the person,
  - (ii) any other person who is or is to be employed by or associated with the person for the purposes of the activity under consideration by the Commission,
  - (iii) any other person who will be acting for or on behalf of the person in relation to the activity under consideration by the Commission, and
  - (iv) where the person is a company in a group of companies -
    - (A) any other companies in the same group of companies,
    - (B) whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements, and
    - (C) the state of affairs of any other business that the person carries on or proposes to carry on.

**Meaning of “group of companies”**

3. (1) For the purposes of this Act, a group of companies comprises every company which, directly or indirectly, is a subsidiary of the same holding company, and such a group includes the holding company.

(2) A company shall be treated as a subsidiary (“the subsidiary”) of another company (“the holding company”) where -

- (a) the holding company is a member of the subsidiary and controls the composition of the subsidiary’s board of directors;
- (b) the holding company, directly or indirectly, controls more than half of the votes which may be cast at general meetings of the subsidiary; or
- (c) the subsidiary is a subsidiary of any other company which is itself a subsidiary of the holding company.

(3) In subsection (2)(a), the composition of a company’s board of directors shall be treated as controlled by another company if that other company, by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

**Meaning of “securities investment business”**

4. For the purposes of this Act and subject to section 11(4), a person carries on securities investment business if that person, using a currency other than the Eastern Caribbean dollar, is engaged in the course of business, in any one or more regulated activities and that person -

- (a) is -
  - (i) a company incorporated under the Business Companies Act,
  - (ii) a partnership established under the Partnership Act,
  - (iii) a foreign company registered under Part 4 of the Companies Act,
  - (iv) a limited liability company formed and registered under the Limited Liability Companies Act,
  - (v) a limited partnership formed and registered under the Limited Partnership Act, or
  - (vi) a foundation established under the Anguilla Foundation Act; and
- (b) has established a place of business in Anguilla through which the activities are carried on.

**Meaning of “inside information”**

5. The term “inside information” means information which -

- (a) relates to particular listed securities or to a particular issuer of listed securities or to particular issuers of listed securities and not to listed securities generally or to issuers of listed securities generally;
- (b) is specific or precise;
- (c) has not been made public; and
- (d) is price sensitive.

**Meaning of “price-affected securities” and “price-sensitive information”**

6. Listed securities are “price-affected” securities in relation to inside information, and inside information is “price-sensitive” in relation to listed securities, if the information would, if made public, be likely to have a significant effect on the price or value of the listed securities.

**Meaning of “information as an insider”**

7. An individual has information as an insider if -

- (a) it is, and that individual knows it is, inside information; and
- (b) that individual has it, and knows that that individual has it, from an inside source, that is to say -
  - (i) by virtue of being a director, employee or shareholder of an issuer of listed securities,

- (ii) by virtue of having access to the information through that individual's employment, office or profession, or
- (iii) by virtue of the direct or indirect source of that individual's information being a person who has it in either of the ways set out in subparagraph (i) or (ii).

**Meaning of "made public"**

8. (1) The term "made public" shall be construed in accordance with subsections (2) and (3), but those provisions are not exhaustive as to the meaning of that expression.

(2) Information is made public if -

- (a) it is published in accordance with the rules of an approved exchange for the purpose of informing investors and their professional advisors;
- (b) it is contained in records which by virtue of law are open to inspection by the public;
- (c) it can be readily acquired by those likely to deal in any listed securities, or with any issuer of listed securities, to which the information relates; or
- (d) it is derived from information which has been made public.

(3) Information may be treated as made public even though -

- (a) it can be acquired only by persons exercising diligence or expertise;
- (b) it is communicated to a section of the public and not the public at large;
- (c) it can be acquired only by observation;
- (d) it is communicated only on payment of a fee; or
- (e) it is published only outside Anguilla.

**Meaning of "organised market"**

9. (1) In this Act, "organised market" means -

- (a) a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes (whether through that place or facility or otherwise); or

- (b) such other facility or class of facilities as the Governor may, by order, prescribe.

(2) Notwithstanding subsection (1), “organised market” does not include a place or facility used by only one person -

- (a) to regularly make offers or invitations to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes; or
- (b) to regularly accept offers to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes.

#### **Meaning of “collective investment schemes”**

**10.** (1) In this Act, “collective investment scheme” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements shall be such that the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements shall also have either or both of the following characteristics -

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

## **PART 2**

### **SECURITIES INVESTMENT BUSINESS**

#### **Requirement for a licence, registration, deregistration and fees payable**

**11.** (1) A person shall not carry on or purport to carry on securities investment business in or from within Anguilla unless that person holds a licence or registration granted under this Part or is exempt from holding a licence or registration.

(2) In addition to complying with the requirements of subsection (1), a person who is an individual shall not carry on or purport to carry on securities investment business in or from within Anguilla unless the individual is a non-registrable person.

(3) A person who carries on securities investment business activities for which a licence or registration is required shall be -

- (a) a company incorporated under the Business Companies Act;
- (b) a partnership established under the Partnership Act;
- (c) a foreign company registered under Part 4 of the Companies Act;
- (d) a limited liability company formed and registered under the Limited Liability Companies Act;
- (e) a limited partnership formed and registered under the Limited Partnership Act; or
- (f) a foundation established under the Anguilla Foundation Act.

(4) Non-registrable persons do not require a licence to conduct securities investment business but may apply to be licensed under this Part.

(5) For the purposes of subsection (1), a person may be considered to purport to carry on securities investment business where that person -

- (a) uses one or more words which connote securities investment business, either in English or in any other language, in the description or title under which that person carries on business;
- (b) makes a representation in a document or in any other manner that that person is carrying on securities investment business; or
- (c) otherwise holds that person out as carrying on securities investment business.

(6) A registrable person shall register with the Commission and such person, in order to be registered, shall file an application in the prescribed form and pay the prescribed registration fee to the Commission.

(7) An applicant for registration shall not be registered unless the applicant has satisfied the Commission that the applicant's shareholders, directors and senior officers are fit and proper persons.

(8) Where a registered person ceases to carry on securities investment business, the registered person shall within 21 days after the date of ceasing to carry on in Anguilla any regulated activity -

- (a) notify the Commission of its intention to deregister; and
- (b) file the prescribed details to deregister in the manner specified by the Commission.

(9) A registered person shall notify the Commission within 10 days after any major or significant change in the information filed by the registered person in its application or annual declaration.

(10) A registered person shall -

- (a) file with the Commission, on or before the 15th day of January in each year, an annual declaration in such form as the Commission may approve; and
- (b) pay to the Commission the prescribed annual fee at the time of the filing of the declaration.

(11) Subject to subsection (4), a person who carries on or purports to carry on securities investment business without being the holder of a current licence or registration under this Act commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

(12) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with securities investment business carried on by that person in contravention of subsection (1).

### **Application for a licence**

**12.** (1) A person, other than a registered person or a person to whom section 11(4) refers, who wishes to carry on securities investment business shall apply in writing to the Commission for the grant of a licence under this Part.

(2) The Commission shall, in relation to an application received under subsection (1) -

- (a) grant the licence;
- (b) grant the licence subject to conditions; or
- (c) refuse the licence.

(3) A licence shall specify one or more of the regulated activities that the licensee is permitted to carry on.

(4) An application under this section shall include such information and shall be accompanied by such fee as may be prescribed.

(5) A licence shall not be granted to an applicant unless the applicant has satisfied the Commission that -

- (a) the applicant will be able to comply with the provisions of this Act and any regulations;

- (b) the applicant will be able to comply with the requirements of the Anti-Money Laundering and Terrorist Financing Regulations;
- (c) it will not be against the public interest, including the need to protect investors, for the application to be approved;
- (d) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Commission considers appropriate having regard to the nature and scale of the business; and
- (e) the applicant's senior officers and managers are fit and proper persons.

(6) The conditions which the Commission may impose on a licensee may include conditions -

- (a) limiting the nature and scope of the securities investment business which may be carried on by the licensee;
- (b) specifying whether or not the licensee may hold client assets;
- (c) requiring the licensee or a senior officer or investment manager of the licensee to acquire and maintain membership of an approved exchange; and
- (d) such other conditions as the Commission considers appropriate.

(7) The Commission may, by notice in writing to a licensee, revoke at any time any condition attached to the licence.

(8) The Commission may grant a restricted licence by limiting the number of clients to whom the licensee may provide services or setting the minimum value of an individual client's investment.

(9) Where the Commission has granted a licence under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the *Gazette*.

(10) A person licensed under this Part, a registrable person or a non-registrable person, is not required to be licensed under the -

- (a) Insurance Act; or
- (b) Trades, Businesses, Occupations and Professions Licensing Act,

in respect of the carrying on of securities investment business.

#### **Securities Investment Business Licence fees**

**13.** (1) Every person to whom a licence under this Part is first granted shall at the date of such grant pay the prescribed fee.

(2) The holder of the licence shall, on or before the 15th January in each year, pay the prescribed renewal fee.

(3) A licence in respect of which the prescribed renewal fee remains unpaid for 3 full months after the 15th January in any year shall lapse immediately but if, within a period of one month after the date of lapse, the person who held the licence prior to its lapse pays -

- (a) the prescribed renewal fee; and
- (b) an administration fee of 10% of the prescribed renewal fee,

the licence may be renewed for the period from the 1st January to the 31st December, inclusive, of the year in question.

(4) A holder of a licence under this Part shall inform the Commission of any changes made relating to any of the information furnished in accordance with section 12(4) within 21 days after any such change has occurred.

#### **Creation of false or misleading market**

**14.** (1) A person who creates or does anything which is calculated to create a false or misleading appearance of active trading in any listed securities or a false or misleading appearance with respect to the market for, or the price of, any such securities, commits an offence.

(2) In any proceedings against a person for a contravention of subsection (1), it is a defence if the defendant establishes that the purpose for which the defendant created or did anything was not, or did not include, the purpose of creating a false or misleading appearance of active trading in any listed securities or a false or misleading appearance with respect to the market for, or the price of, any such securities.

#### **Insider dealing**

**15.** Subject to the defences available under this Part, any individual who has information as an insider commits an offence of insider dealing if -

- (a) the individual deals in listed securities that are price-affected securities in relation to the information;
- (b) the individual encourages another person to deal in listed securities that are (whether or not that other knows it) price-affected securities in relation to the information; or
- (c) the individual discloses the information otherwise than in the proper performance of the functions of that individual's employment, office or profession, to another person.

#### **Defences**

**16.** (1) An individual does not commit the offence of insider dealing by virtue of dealing in listed securities or encouraging another person to do so if that individual shows -

- (a) that that individual did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the listed securities;
- (b) that at the time that individual believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing in the listed securities would be prejudiced by not having the information; or
- (c) that that other person would have done what that other person did even if that other person had not had the information.

(2) An individual does not commit the offence of insider dealing by virtue of a disclosure of information if that individual shows -

- (a) that that individual did not at the time expect any person, because of the disclosure, to deal in listed securities; or
- (b) that, although that individual had such an expectation at the time, that individual did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to listed securities.

(3) References to a profit include avoidance of a loss.

(4) The following special defences shall have effect for the purposes of this Part -

- (a) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another person to deal if that person shows that that person acted in good faith in the course of -
  - (i) that person's business as a market maker, or
  - (ii) that person's employment in the business of a market maker;
- (b) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another to deal if that person shows that -
  - (i) the information which that person had as an insider was market information, and
  - (ii) it was reasonable for a person in that person's position to have acted as that person did despite having that information as an insider at the time, and in determining whether it is reasonable for a person to do any act despite having market information at the time, there shall in particular be taken into account -
    - (A) the content of the information,
    - (B) the circumstances in which that person first had the information and in what capacity, and
    - (C) the capacity in which that person now acts; and

- (c) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another person to deal if that person shows -
  - (i) that that person acted -
    - (A) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals, and
    - (B) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals, and
  - (ii) that the information which that person had as an insider was not (??) market information arising directly out of that person's involvement in the acquisition or disposal or series of acquisitions or disposals.

(5) Market information is information consisting of one or more of the following facts -

- (a) that listed securities of a particular kind have been or are to be acquired or disposed of or that their acquisition or disposal is under consideration or the subject of negotiation;
- (b) that listed securities of a particular kind have not been or are not to be acquired or disposed of;
- (c) the number of listed securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
- (d) the price (or range of prices) at which listed securities have been or are to be acquired or disposed of or the price (or range of prices) at which listed securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; and
- (e) the identity of the persons involved or likely to be involved in any capacity in the acquisition or disposal.

#### **Territorial scope of offence of insider dealing**

17. (1) An individual is not guilty of an offence falling within section 15(a) unless -

- (a) the individual was in or from within Anguilla at the time when that individual is alleged to have done any act constituting or forming part of the alleged dealings; or
- (b) the dealing occurred on an approved exchange.

(2) An individual is not guilty of an offence falling within section 15(b) or (c) unless -

- (a) the individual was within Anguilla at the time when that individual is alleged to have disclosed the information or encouraged the dealing; or
- (b) the alleged recipient of the information or encouragement was within Anguilla at the time when that individual is alleged to have received the information or encouragement.

**Dealing in listed securities**

**18.** A person deals in listed securities if -

- (a) the person acquires or disposes of listed securities (whether as principal or agent); or
- (b) the person procures, directly or indirectly, an acquisition or disposal of listed securities by another person.

**Penalties**

**19.** Any person who commits an offence under section 14 or 15 is liable -

- (a) on summary conviction, to a fine of \$50,000 and to imprisonment for one year; or
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for a term of 7 years or to both.

**PART 3****MUTUAL FUNDS***Prohibition on Unauthorised Mutual Fund Business***Prohibitions with respect to business of unregistered or unrecognised funds**

**20.** (1) Subject to sections 22 and 23 -

- (a) a company shall not carry on business or hold itself out as carrying on business as a mutual fund in or from within Anguilla;
- (b) the partners of a partnership that is a mutual fund shall not carry on or hold themselves out as carrying on the business of the fund in or from within Anguilla;
- (c) the trustee of a unit trust that is a mutual fund shall not carry on or hold itself out as carrying on the business of the unit trust in or from within Anguilla; and
- (d) a mutual fund that does not fall within paragraph (a), (b) or (c) shall not carry on or hold itself out as carrying on business as a mutual fund in or from within Anguilla,

unless, the mutual fund concerned is a public fund, a professional fund, a private fund or a recognised foreign fund.

(2) A person shall not act as the functionary, or otherwise be concerned with the management or administration, of a mutual fund that carries on business in or from within Anguilla, unless the mutual fund concerned is a public fund, a professional fund, a private fund or a recognised foreign fund.

(3) For the purposes of this section -

- (a) a mutual fund, whether incorporated, formed or organised within or outside Anguilla, is deemed to carry on business in Anguilla, if -
  - (i) it operates from a place of business in Anguilla, or
  - (ii) it solicits an individual within Anguilla to subscribe for, or purchase, any of its fund interests; and
- (b) a mutual fund that carries on business outside Anguilla, is deemed to carry on business from within Anguilla if it is -
  - (i) a company,
  - (ii) a partnership formed under the laws of Anguilla, or
  - (iii) a unit trust governed by the trust laws of Anguilla and managed from within Anguilla.

(4) For the avoidance of doubt, a foreign fund does not carry on business in Anguilla as a mutual fund solely by reason of the fact that it appoints a licensee as its fund administrator, investment manager, investment advisor or custodian.

#### **Prohibition against promotion of mutual funds**

**21.** (1) A person, including the mutual fund itself, shall not, whether in or from within Anguilla, promote a mutual fund unless -

- (a) the fund is -
  - (i) a public fund,
  - (ii) a professional or private fund, or
  - (iii) a recognised foreign fund, andthe fund is promoted as permitted by this Act; or
- (b) the communication or advice is exempted by the regulations.

(2) Without limiting subsection (1), a person promotes a mutual fund if the person communicates, or causes to be communicated, an invitation or inducement to any other person, or advises or procures any other person, to become an investor, or to offer to become an investor, in a mutual fund.

(3) The regulations may provide that subsection (1) does not apply in relation to communications or advice -

- (a) of a prescribed category or description; or
- (b) made or given in prescribed circumstances.

**General exemptions to prohibition**

22. (1) A mutual fund incorporated, formed or organised outside Anguilla does not solicit an individual within Anguilla to subscribe for, or purchase, any of its fund interests in circumstances where the subscription or purchase is a result of an approach made by the individual to the fund without any solicitation being made by or on behalf of the fund.

(2) The regulations may specify circumstances in which section 20(1) or (2) does not apply with respect to certain prescribed categories or descriptions of mutual fund or person.

**Exemptions: fund to be recognised as professional fund**

23. (1) A mutual fund may carry on business in or from within Anguilla, as if a professional fund, for a continuous period not exceeding 21 days, if the fund -

- (a) satisfies the criteria for a professional fund specified in section 35(2)(a), (c) and (d); and
- (b) complies with, and is managed and administered in accordance with, the requirements of this Act and the regulations relating to professional funds, other than with respect to recognition;

and the mutual fund shall be deemed to be recognised as a professional fund for the period in which it carries on business in reliance on this subsection.

(2) A mutual fund that commences business in reliance on subsection (1) shall submit an application to the Commission for recognition as a professional fund within 14 days after the commencement of its business.

(3) During the period in which a mutual fund carries on business in accordance with subsection (1) -

- (a) the fund, a partner of the fund or, where the fund is a unit trust, the trustee, does not commit an offence under section 20(1);
- (b) a person does not commit an offence under section 20(2) by acting as the functionary of or being concerned with the management or administration of the fund; and
- (c) a person does not commit an offence under section 20(1) by promoting the fund.

*Public Funds***Registration of fund as public fund**

**24.** (1) An application may be made to the Commission for the registration of a mutual fund as a public fund in the case of -

- (a) a mutual fund that is a company, by the company itself;
- (b) a mutual fund that is a partnership, by a partner; or
- (c) a unit trust, by the trustee.

(2) The Commission may grant an application for registration under subsection (1), if it is satisfied that -

- (a) the fund is -
  - (i) a company,
  - (ii) a partnership, or
  - (iii) a unit trust that is governed by the trust laws of Anguilla and has a trustee that is based in Anguilla;
- (b) the fund satisfies the requirements of this Act;
- (c) the fund will, on registration, be in compliance with this Act;
- (d) the fund's functionaries are fit and proper persons;
- (e) the fund has, or on registration will have, an independent custodian;
- (f) the fund's name is not undesirable or misleading; and
- (g) registering the fund is not against the public interest.

(3) Where the Commission grants an application for registration under subsection (1), it shall -

- (a) register the public fund, specifying the relevant categories of registration in accordance with section 43; and
- (b) issue the fund with a certificate of its registration in the prescribed form.

(4) The registration of a public fund is subject to such conditions as may be imposed by the Commission.

(5) Where the Commission refuses an application for registration under subsection (1), it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

#### **Prohibition of sale to residents**

**25.** A public fund shall not -

- (a) market or sell interests in the fund to investors resident in Anguilla;
- (b) invest in any asset that represents a claim on any person resident in Anguilla, except a claim resulting from a transaction with another registered fund; or
- (c) invest in property contrary to the regulations.

#### **Prohibition on invitation to public to subscribe by public fund**

**26.** (1) A public fund shall not, whether in or outside Anguilla, make an invitation to the public to subscribe for or purchase its fund interests, unless the invitation -

- (a) is contained in a registered prospectus; and
- (b) complies with such requirements as may be specified in this Act or the regulations.

(2) For the purposes of subsection (1), an invitation to any person, whether in or outside Anguilla, to subscribe for or purchase fund interests, is an invitation to the public to subscribe for or purchase fund interests.

(3) Subsection (1) does not apply to an invitation that is deemed not to be an invitation to the public under section 27.

**Circumstances in which invitation not invitation to the public**

**27.** An invitation to a person to subscribe for or purchase fund interests is deemed not to constitute an invitation to the public if -

- (a) the invitation is made to, or directed exclusively at, one or more of the following:
  - (i) a professional investor,
  - (ii) a person having a close connection with the issuer, or
  - (iii) the Government of Anguilla;
- (b) the minimum aggregate purchase price payable by a person for the fund interests acquired by the person pursuant to the invitation -
  - (i) shall be paid before the fund interests are issued, and
  - (ii) equals or exceeds the minimum specified in the regulations, or the equivalent in another currency; or
- (c) the invitation is made -
  - (i) to such persons,
  - (ii) with respect to fund interests issued, or to be issued, by such persons, or
  - (iii) in such circumstances,as may be specified in the regulations.

**Form and content of prospectus**

**28.** (1) A prospectus intended to be submitted to the Commission for registration may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility that -

- (a) records or stores information in magnetic or electronic form; and
- (b) permits the information to be inspected and reproduced in legible and useable form.

(2) The prospectus shall -

- (a) be dated and signed by or on behalf of -
  - (i) in the case of a company, the board of the company,
  - (ii) in the case of a partnership, every partner, or
  - (iii) in the case of a unit trust, the investment manager or the trustee of the trust;
- (b) 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) contain a summary statement of investors' rights as provided in section 32;
- (d) contain the information, statements, certifications and other matters specified by the Commission; and
- (e) be submitted with such documents as may be specified by the Commission.

(3) The date of a prospectus shall be no later than the date of the application to the Commission for registration of the prospectus.

### **Registration of prospectus**

**29.** (1) An application may be made to the Commission for the registration of a prospectus by the directors of a public fund that is a company, the partners of a public fund that is a partnership, or the investment manager or trustee of a public fund that is a unit trust; and, when making the application, the applicant shall pay the prescribed application fee.

(2) If all or any part of the prospectus is not in the English language, the Commission may require that an English translation of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Commission, be provided along with the prospectus.

(3) Subject to subsection (4), the Commission may register a prospectus if the Commission is satisfied that the prospectus complies with this Act.

(4) The Commission shall not register a prospectus if it is of the opinion that, although complying with this Act -

- (a) the prospectus contains a material error or misdescription or a statement that is misleading, omits a material fact or particular or is unclear;
- (b) the prospectus does not 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; or
- (c) approving the prospectus would be contrary to the public interest.

(5) The Commission shall -

- (a) if it registers the prospectus, provide the applicant with a notice of registration; or
- (b) if it refuses to register the prospectus, provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

**Prospectus: supplementary provisions**

**30.** (1) A public fund shall make its prospectus available to each of its investors and provide a copy upon request, without cost to investors.

(2) Where any of the disclosures required under section 28(2)(b) cease to be accurate in a material particular, the public fund concerned shall, within 21 days of the change occurring, apply to the Commission under section 31 to register an amended prospectus giving accurate disclosures and, when registered, provide a copy of the amended prospectus to each of its investors, without cost to investors.

(3) Any advertisement issued or published, in whatever form or through whatever medium, by or on behalf of a public fund, the purpose of which is to make an invitation to the public or any section thereof to subscribe for or purchase fund interests issued by a public fund shall contain information as to where, at what times and at what cost, if any, a copy of the prospectus can be obtained and a copy of the advertisement shall be provided to the Commission within 14 days of its publication.

**Amendment of prospectus**

**31.** (1) An application to the Commission to register an amended prospectus -

- (a) may be made by the directors of a public fund that is a company, the partners of a public fund that is a partnership, or the trustee of a public fund that is a unit trust, at any time during the relevant period; and
- (b) shall be made by the directors of a public fund that is a company, the partners of a public fund that is a partnership, or the trustee of a public fund that is a unit trust if, during the relevant period, the directors become, or the trustee becomes, aware that the registered prospectus -
  - (i) contains a material error, or
  - (ii) omits a material fact or particular.

(2) For the purposes of subsection (1), the “relevant period” is the period commencing with the registration of the prospectus and ending with the closure of the offer of fund interests to which the prospectus relates.

(3) Section 28 applies to an amended prospectus and section 29 applies to the registration of an amended prospectus as if, in each case, the amended prospectus was the original prospectus.

(4) A person making an application under subsection (1) shall, at the time when the application is made, pay the prescribed application fee.

### **Investors' rights**

**32.** (1) If a public fund issues a prospectus that contains any misrepresentation relating to any of the disclosures required under section 28(2)(b), a person who purchased any fund interests on the basis of the prospectus is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person 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 fund, and every director of the fund, every partner of the fund, or in the case of a unit trust, every member of the equivalent governing body who -
  - (i) while aware of the misrepresentation, or
  - (ii) would have been aware of the misrepresentation had he or she made reasonable investigations consistent with his or her duties,

authorised the signing of, or approved, the prospectus and consented to its issue.

(3) For the purposes of this section, "misrepresentation" means -

- (a) an untrue or misleading statement with respect to any of the disclosures required under section 28(2)(b); or
- (b) an omission to disclose any of the disclosures required.

(4) No person is liable under this section if the person proves that the purchaser purchased the fund interests offered by the prospectus with knowledge of the misrepresentation.

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

### **Appointment and termination of directors, functionaries and others**

**33.** (1) No person shall be appointed as a director or functionary of a public fund without the prior written approval of the Commission.

(2) An application for approval under subsection (1) shall be made in such form and manner as the Commission may specify and shall be accompanied by such fee as may be prescribed.

(3) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is a fit and proper person and, where applicable, complies with the requirements of any guidelines issued by the Commission for the approval of such a person.

(4) Written notice shall be given to the Commission within 7 days (or such longer period as the Commission may specify) after -

- (a) a director ceases to hold office with a public fund; or
- (b) a functionary ceases to act for a public fund.

(5) The notice provided under subsection (4) shall include a statement of the reasons and any other matters required under any guidelines issued by the Commission for the director ceasing to hold office with, or the functionary ceasing to act for, the public fund and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

#### **Certificate of compliance**

**34.** (1) Every registered public fund, wherever it is constituted, which carries on business outside Anguilla shall every year, within 3 months of the end of its financial year, file with the Commission a certificate of compliance from the competent authority that is responsible for the regulation and supervision of the conduct of its business in a recognised Country or Jurisdiction.

(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 Commission that the required certificate could not be obtained for reasons beyond the control of the fund.

(3) Where a registered public fund which carries on business outside Anguilla carries on business in more than one recognised Country or Jurisdiction other than Anguilla, the certificate required to be filed under subsection (1) shall be from the competent authority in the recognised Country or Jurisdiction in or from which it carries on its principal business.

#### *Private and Professional Funds*

#### **Registration of private funds and professional funds**

**35.** (1) An application may be made to the Commission for the registration of a mutual fund as a private fund or as a professional fund -

- (a) in the case of a mutual fund that is a company, by the fund itself;
- (b) in the case of a unit trust, by the trustee;

- (c) in the case of a mutual fund that is a partnership, by a partner;
- (d) in any other case by the investment manager, or proposed investment manager, of the fund.

(2) The Commission may register a mutual fund as a private fund or a professional fund if it is satisfied that -

- (a) the fund is lawfully incorporated, constituted, formed or organised under the laws of Anguilla or under the laws of a country outside Anguilla;
- (b) in the case of a private fund, the constitutional documents of the fund specify that -
  - (i) the fund is not authorised to have more than 99 investors, or
  - (ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only;
- (c) in the case of a professional fund, the constitutional documents of the fund specify that -
  - (i) the interests of the fund shall be issued only to professional investors, and
  - (ii) the initial investment of each investor in the fund, other than persons specified in the regulations as exempted investors, shall be not less than \$100,000 or its equivalent in any other currency;
- (d) the fund satisfies such other criteria as may be prescribed for registration of a private or professional fund, as the case may be;
- (e) the fund satisfies the requirements of this Act with respect to the application;
- (f) the fund shall, on being registered, be in compliance with this Act; and
- (g) registering the fund as a private or professional fund is not against the public interest.

(3) For the purposes of subsection (2)(b)(ii), an invitation to subscribe for, or purchase, fund interests issued by a mutual fund on a private basis includes an invitation which is made -

- (a) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or
- (b) by reason of a private or business connection between the person making the invitation and the investor.

(4) For the purposes of subsection (2)(c), the minimum investment limit referred to does not apply in respect of an investment made by a person specified in the regulations as an exempted investor.

(5) Where the Commission grants an application for registration under subsection (1), it shall -

- (a) register the fund in the appropriate Register, specifying the relevant categories of registration in accordance with section 43; and
- (b) issue the fund with a certificate of registration in the prescribed form.

(6) The registration of a private or professional fund is subject to such conditions as may be imposed by the Commission.

(7) Where the Commission refuses an application for registration under subsection (1), it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

#### **Obligation to act in accordance with constitutional documents**

**36.** (1) No private or professional fund shall make any offer or invitation of its fund interests, issue any fund interests or carry on business in any manner that would result in the fund -

- (a) in the case of a private fund -
  - (i) having more than 99 investors, or
  - (ii) making any invitation to subscribe for, or purchase, its fund interests otherwise than on a private basis; or
- (b) in the case of a professional fund, issuing fund interests -
  - (i) to any person who is not a professional investor, or
  - (ii) where the initial investment, in respect of a professional investor who is not specified in the regulations as an exempted investor, is less than \$100,000 or its equivalent in any other currency.

(2) Without limiting subsection (1), no person shall be accepted as an investor in a private or professional fund unless that person has provided -

- (a) in the case of a professional fund, written confirmation that he or she is a professional investor; and
- (b) in the case of a private or professional fund, a written acknowledgment that he or she has received, understood and accepted the prescribed investment warning.

#### *Foreign Funds*

#### **Recognition of foreign fund**

**37.** (1) An application may be made to the Commission by a foreign fund or by its investment manager for the fund to be a recognised foreign fund.

(2) The Commission may grant an application for the recognition of a foreign fund if the Commission is satisfied that -

- (a) the fund complies with the requirements of this Act in respect of the application and will, upon being recognised, be in compliance with the requirements of this Act with respect to recognised foreign funds;
- (b) the fund is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Commission, provides to investors in Anguilla protection at least equivalent to the protection provided under this Act for investors of public funds;
- (c) adequate arrangements exist, or will exist, for co-operation between the authorities of the country responsible for the authorisation and supervision of the fund and the Commission; and
- (d) the fund is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

*Provisions Applicable Generally to Mutual Funds*

**Use of digital payment tokens by mutual funds**

**38.** (1) Mutual funds may be formed in any legal form available under the laws of Anguilla, including companies, protected cell companies, partnerships, and trusts, unless that form is prohibited by the regulations.

(2) In the performance of a mutual fund's functions, the fund and any person acting as custodian in relation to the fund, may -

- (a) accept digital payment tokens as a means of payment for the provision of goods or services; and
- (b) use digital payment tokens as a means of payment for the provision of goods or services.

**Companies**

**39.** (1) Except as provided in this Act, the Companies Act, applies to a fund formed as a company.

(2) The fund shall maintain a registered office in Anguilla but the fund's directors shall not be required to reside in Anguilla.

(3) The fund shall be permitted to deal in redeemable, fractional and treasury shares and, subject to solvency, there shall be no restriction on distributions to shareholders.

**Limited partnerships**

**40.** (1) Except as provided in this Act, the Limited Partnership Act, applies to a fund formed as a limited partnership.

(2) At least one general partner shall be a company incorporated in Anguilla, a partnership formed in Anguilla or an individual resident in Anguilla.

(3) Subject to solvency, there shall be no restriction on distributions to partners.

#### **Unit trusts**

**41.** (1) Where a fund is formed as a unit trust, the rights attaching to the units shall be set out in the trust deed concerned.

(2) Subject to solvency, there shall be no restriction on distributions to unitholders.

#### **Variable Capital Companies**

**42.** Where a body corporate is incorporated under the Companies Act, as a variable capital company, the variable capital company may be formed as a fund with a variable capital structure and ability to pay dividends out of capital.

#### **Categories of registration**

**43.** (1) Where the Commission grants registration of a fund under this Act -

- (a) the Commission shall register the fund, in the appropriate Register and in one or more of the categories and subcategories specified in this Act and the regulations, thereby indicating the categories and subcategories of business that the registered fund is authorised to carry on;
- (b) the fund is subject to such conditions as may be imposed by the Commission; and
- (c) the registration does not authorise the registered fund to carry on any category or subcategory of business in respect of which it is not registered.

(2) The registration of a fund in Category 1, Investment Management, authorises the provision of investment management services for -

- (a) mutual funds;
- (b) segregated portfolios other than mutual funds;
- (c) pension schemes;
- (d) insurance products; or
- (e) other types of investment not specified in paragraphs (a) to (d).

(3) The registration of a fund in Category 2, Investment Advice, authorises the provision of investment advice in respect of -

- (a) mutual funds; or
- (b) entities other than mutual funds.

(4) The registration of a fund in Category 3, Custody of Investments, authorises the provision of investment custody services for -

- (a) mutual funds; or
- (b) entities other than mutual funds.

(5) The registration of a fund in Category 4, Administration of Investments, authorises the provision of investment administration services for -

- (a) mutual funds; or
- (b) entities other than mutual funds.

(6) The registration of a fund in Category 5, Operating an Investment Exchange, authorises the operation of an Investment Exchange.

## PART 4

### REGULATED PERSONS

#### Appointment of depositary

**44.** (1) A regulated person shall appoint as depositary any financial institution that is licensed to provide depositary services or act as custodian in a jurisdiction that is a recognised Country or Jurisdiction, but a regulated person may not be appointed as a depositary.

(2) A regulated person shall require its depositary -

- (a) to act honestly, fairly, professionally, and independently;
- (b) to act in the interest of the regulated person and its investors and to avoid conflicts of interest;
- (c) to safeguard (and segregate where necessary) or otherwise verify ownership of clients' funds and property;
- (d) to monitor its clients' cash flows; and
- (e) to ensure that its clients' business transactions are carried out in accordance with relevant documentation, that appropriate valuations are applied, that management instructions are carried out, and that clients' income is applied appropriately.

(3) Valuation and liquidity policy and procedures of the relevant fund shall -

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
- (b) be consistent with the provisions concerning valuation contained in the fund's constitutional documents and offering documents;
- (c) require valuations to be undertaken as appropriate for the assets held and at least annually;
- (d) include procedures for preparing reports on the valuation of fund property to ensure that -
  - (i) transactions relating to units in the fund are carried out in accordance with fund documentation,
  - (ii) appropriate valuations are applied,
  - (iii) management instructions are carried out, and
  - (iv) fund income is applied appropriately; and
- (e) specify the mechanisms for disseminating valuation information and reports to investors.

**Shares not to be issued or transferred without prior approval of Commission**

**45.** (1) No shares in a company or interests in a limited liability company or a partnership which is a regulated person shall be issued, and no issued shares or interests shall be voluntarily transferred or disposed of, without the prior written approval of the Commission.

(2) Notwithstanding subsection (1), the Commission may exempt from the provisions of this section a regulated person whose shares or interests are publicly traded on an approved exchange, and any such exemption -

- (a) shall be subject to a condition that the regulated person shall, as soon as reasonably practicable, notify the Commission of -
  - (i) any change in control of the regulated person,
  - (ii) the acquisition by any person or group of persons of shares representing more than 10% of the regulated person's issued share capital or total voting rights, or
  - (iii) the acquisition by any person or group of persons of shares representing more than 10% of the issued share capital or total voting rights of the regulated person's parent company;
- (b) shall be subject to a condition that the regulated person shall, as soon as reasonably practicable, provide such information to the Commission, and within such period of time, as the Commission may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the regulated person 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 other terms and conditions as the Commission may deem necessary.

(3) In subsection (1), the reference to shares or interests being transferred or disposed of includes the transfer or disposal of the legal or the beneficial interest in the shares or interests.

(4) In the event of shares in a company or the interests in a partnership which is a regulated person vesting involuntarily or through process of law in a person, the company or partnership, as soon as it becomes aware of such vesting, shall inform the Commission of the number of shares or interests and the identity of the person in whom they have vested, and the company or partnership and the person in whom they have vested shall comply with any instructions as to the licence, registration or the business of the company or partnership as may be given by the Commission.

#### **Use of names**

**46.** The Commission may require a regulated person with a name which -

- (a) is identical to that of another person, whether within Anguilla or not, or which so nearly resembles that name as to be likely to deceive;
- (b) in the opinion of the Commission connotes, falsely, the patronage of or connection with a person whether within Anguilla or not;
- (c) in the opinion of the Commission connotes, falsely, that it has a special status in relation to or derived from the Government, or has the official backing of or acts on behalf of the Government or of any of its departments or officials;
- (d) in the opinion of the Commission is liable to mislead investors, or constitute a misrepresentation; or
- (e) includes any prescribed word or expression,

immediately to change its name, and in default of compliance within 3 months of the receipt of notice from the Commission of its requirements, the Commission may revoke the regulated person's licence or cancel its registration.

#### **Segregation of property**

**47.** A regulated person shall separately account for the funds and property of each client and for the regulated person's own funds and property.

#### **Certain prohibitions on regulated persons**

**48.** (1) A regulated person shall not, without the prior written approval of the Commission, open outside Anguilla a subsidiary, branch, agency or representative office or change its name.

(2) A regulated person shall notify the Commission immediately of any change of address of its place of business.

(3) A regulated person shall not issue any bearer shares.

(4) For the purposes of subsection (3), “bearer share” means -

- (a) in the case of a corporate regulated person, a share represented by a certificate which states that the bearer of the certificate is the owner of the share, and includes a share warrant to bearer; and
- (b) in the case of any other regulated person, a certificate of ownership interest in the regulated person that is issued in bearer form.

#### **Number and approval of directors**

**49.** (1) No alterations in the senior officers of a regulated person shall be made without the prior written approval of the Commission.

(2) A regulated person shall remove or replace a senior officer who is convicted in any country of an offence involving dishonesty immediately upon conviction.

(3) A regulated person shall have, where the regulated person is -

- (a) a company incorporated under the Companies Act, a minimum of 2 directors or, if the regulated person is a company that does not have directors, 2 managers;
- (b) a partnership established under the Partnership Act, a minimum of 2 partners;
- (c) a foreign company registered under Part 4 of the Companies Act, a minimum of 2 directors (or equivalent officers);
- (d) a limited liability company formed and registered under the Limited Liability Companies Act, a minimum of 2 managers; or
- (e) a limited partnership formed and registered under the Limited Partnership Act, a minimum of 2 partners.

(4) The removal of a senior officer of a regulated person due to the officer’s termination, resignation or death, shall be notified to the Commission within 7 business days of the removal.

#### **Misleading advertisements, statements, etc.**

**50.** A regulated person shall not, in relation to any activity that constitutes investment business or the carrying on of business as a mutual fund, whether or not carried on by the regulated person and whether or not the activity is one that the regulated person is authorised to carry on, or in relation to any investment -

- (a) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a

- statement, promise or forecast, which the regulated person knows, in a material particular -
- (i) is false or misleading, or
  - (ii) contains an incorrect statement of fact;
- (b) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a statement, promise or forecast, where the regulated person is reckless as to whether the advertisement, brochure, document, statement, promise or forecast, in a material particular -
- (i) is false or misleading; or
  - (ii) contains an incorrect statement of fact, or
- (c) dishonestly conceal a material fact, whether in connection with an advertisement, brochure or similar document, statement, promise or forecast, or otherwise.

#### **Maintenance of records by regulated person**

- 51.** (1) A regulated person shall keep records that are sufficient -
- (a) to show and explain its transactions;
  - (b) at any time, to enable its financial position to be determined with reasonable accuracy;
  - (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Part; and
  - (d) to enable, if applicable, its financial statements to be audited in accordance with this Part.

(2) A regulated person shall retain the records required to be maintained under this section for a period of at least 5 years after the cessation of the relationship.

(3) Subsection (2) applies to a regulated person after the cancellation or revocation of its licence or registration as if its licence or registration had not been cancelled or revoked, and the retained records shall be kept by a custodian established in Anguilla.

#### **Compliance report**

**52.** The fund administrator shall forward to the Commission, a report certifying that during that year the fund complied with the laws of Anguilla and any relevant regulatory requirements; and the report shall be in such form and manner as may be prescribed.

#### **Accounting records and financial statements**

- 53.** (1) A regulated person shall -

- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and
  - (b) make such accounting records and financial statements available for examination by the Commission or any person authorised by the Commission at -
    - (i) the regulated person's place of business or registered office in Anguilla, or
    - (ii) such other place as the regulated person's officers may see fit, provided that copies of such records and statements or such other documents or information as the Commission may consider necessary are made available to the Commission.
- (2) Where a fund regularly trades securities or holds them on a consistent basis, a regulated person shall, in addition to complying with subsection (1), maintain a record of the identification codes of the securities it trades, including -
- (a) the International Securities Identification Number;
  - (b) if the International Securities Identification Number is not available, an alternative identification code that conforms to widely adopted international standards; or
  - (c) if an alternative identification code that conforms to widely adopted international standards is not available, a regional identification code or the legal entity identifier of the issuer.
- (3) The financial statements required under subsection (1) shall be -
- (a) audited by an auditor acceptable to the Commission in accordance with generally accepted auditing standards;
  - (b) accompanied by the report of the auditor thereon 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 the statements.
- (4) A regulated person shall retain the records required to be maintained under this section for a period of at least 5 years after the cessation of the relationship.
- (5) A regulated person shall not change its auditor without the prior written approval of the Commission and the regulated person shall explain the circumstances giving rise to the change of auditor prior to such approval being given.

#### **Duty of auditor**

- 54.** (1) If an auditor, in the course of carrying out an audit becomes aware of or has reasonable grounds to believe that a regulated person -

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in breach of this Act or any regulations;
- (c) is carrying on or attempting to carry on business in a manner that is prejudicial to its clients or is winding up its business voluntarily in a manner that is prejudicial to its clients or creditors; or
- (d) is carrying on or attempting to carry on business without maintaining any or sufficient accounting records or record keeping systems to enable the auditor to carry out an audit,

the auditor shall immediately give the Commission and the regulated person written notice of that auditor's knowledge or belief giving reasons therefor, and an auditor who contravenes this provision is liable to removal by the Commission from its list of approved auditors.

(2) A reference in this section to an auditor carrying out an audit on a regulated person includes an auditor who was engaged to carry out such an audit or who was in the course of so doing but resigned before completion or whose contract to carry out same was otherwise terminated.

(3) No duty to which an auditor of a regulated person may be subject shall be regarded as contravened by reason of that auditor's communicating in good faith to the Commission any information or opinion on a matter specified in subsection (1) or providing any information or opinion in response to a request made by the Commission pursuant to a power conferred by this Act.

(4) An auditor shall not be liable in damages for anything done or omitted to be done in the discharge or proposed discharge of that auditor's functions under this Act in relation to any notice given under subsection (1) unless it is shown that the act or omission was in bad faith.

#### **Powers and duties of Commission**

- 55.** (1) The Commission shall -
- (a) be responsible for supervision and enforcement in respect of regulated persons, and for the investigation of regulated persons where the Commission reasonably believes that they are or have been in breach of this Act;
  - (b) whenever the Commission considers it necessary, examine, by way of the receipt of regular returns, on-site inspections, auditors' reports or in such other manner as the Commission may determine, the affairs or business of any regulated person for the purpose of -
    - (i) assessing whether a regulated person is undertaking its authorised activities in accordance with this Act and any regulations,

- (ii) confirming that the provisions of the Anti-Money Laundering and Terrorist Financing Regulations are being complied with,
- (iii) confirming that the regulated person is in a sound financial position, or
- (iv) carrying out any other functions of the Commission.

(2) The Commission may require -

- (a) from a regulated person, information related to its business; or
- (b) from any person who, in the opinion of the Commission, is conducting business in contravention of this Act, information related to the person's business.

(3) The Commission may in writing authorise any other person to assist it to perform its functions under this Act.

(4) A person who knowingly or recklessly provides any information to the Commission which is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 6 months or to both.

### **Winding up**

**56.** (1) The Commission may apply to the Court for a regulated person that is or has been in contravention of this Act to be wound up by the Court, notwithstanding any voluntary winding up proceedings that have commenced.

(2) On an application under subsection (1), the Court may make an order for the regulated person to be wound up by the Court if the Court is of the opinion that the winding up would be in the public interest in all the circumstances of the case.

(3) The Commission may apply to the Court for an order that a registrable person that has been in contravention of this Act be wound up by the Court, notwithstanding any voluntary winding up proceedings that have commenced.

## **PART 5**

### **ORGANISED MARKETS**

#### **Regulation of organised markets**

**57.** (1) A person shall not establish or operate an organised market in or from within Anguilla, or hold itself out as operating an organised market in or from within Anguilla, unless the person is an approved exchange.

(2) A person shall not hold itself out as an approved exchange unless the person is an approved exchange.

(3) Where an approved exchange ceases to operate an organised market, the approved exchange shall within 21 days after the date of cessation notify the Commission.

(4) A person that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues. **Application for approval of exchange**

**58.** (1) A person that wishes to operate an organised market in or from within Anguilla, shall apply to the Commission for prior written approval under this Act.

(2) The Commission shall, in relation to an application received under subsection (1) -

- (a) grant the approval;
- (b) grant the approval subject to conditions; or
- (c) refuse the approval.

(3) An approval shall not be granted to an applicant unless the applicant has satisfied the Commission that -

- (a) the applicant is a company incorporated under the Business Companies Act;
- (b) the applicant will be able to comply with the provisions of this Act and any regulations;
- (c) the applicant will be able to comply with the requirements of the Anti-Money Laundering and Terrorist Financing Regulations;
- (d) it will not be against the public interest for the application to be approved;
- (e) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Commission considers appropriate having regard to the nature and scale of the business; and
- (f) the applicant's senior officers and managers are fit and proper persons.

(4) The Commission may, by notice in writing to an approved exchange, revoke at any time any condition attached to the approval.

(5) Where the Commission has granted approval under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the *Gazette*.

**Cancellation of approval**

**59.** (1) An approved exchange that intends to cease operating its organised market or, where it operates more than one organised market, all of its organised markets, may apply to the Commission to cancel its approval as an approved exchange.

(2) An application under subsection (1) shall be made in such form and manner, and not later than such time, as the Commission may specify.

(3) The Commission may cancel the approval of an approved exchange on the application mentioned in subsection (1), if the Commission is satisfied that the approved exchange has ceased operating its organised market or all of its organised markets, as the case may be.

**Power of Commission to revoke approval**

**60.** (1) The Commission may revoke any approval of a company as an approved exchange if -

- (a) there exists at any time a ground on which the Commission may refuse an application;
- (b) the company does not commence operating its organised market or, where it operates more than one organised market, all of its organised markets, within 12 months starting on the date on which it was approved;
- (c) the company ceases to operate its organised market or, where it operates more than one organised market, all of its organised markets;
- (d) the company contravenes -
  - (i) any condition or restriction applicable in respect of its approval,
  - (ii) any direction issued to it by the Commission under this Act, or
  - (iii) any provision of this Act;
- (e) the company operates in a manner that is, in the opinion of the Commission, contrary to the interests of the public; or
- (f) any information or document provided by the company to the Commission is false or misleading.

(2) The Commission shall not revoke under subsection (1) any approval that was granted to a company without giving the company an opportunity to be heard.

(3) For the purposes of subsection (1)(c), a company is to be treated to have ceased to operate its organised market if -

- (a) it has ceased to operate the organised market for more than 30 days, unless it has obtained the prior approval of the Commission to do so; or
  - (b) it has ceased to operate the organised market under a direction issued by the Commission.
- (4) Any revocation under subsection (1) of the approval does not operate so as to -
- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of an organised market operated by the company, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval; or
  - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (5) The Commission shall give notice in the *Gazette* of any revocation under subsection (1) of any approval of a company.

### **General obligations**

- 61.** (1) An approved exchange shall -
- (a) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;
  - (b) manage any risks associated with its business and operations prudently;
  - (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
  - (d) ensure that access for participation in its facilities is subject to criteria that -
    - (i) are fair and objective; and
    - (ii) are designed to ensure the orderly functioning of the organised market that it operates and to protect the interests of the investing public;
  - (e) maintain business rules and, where appropriate, listing rules that make satisfactory provision for -
    - (i) the organised market to be operated in a fair, orderly and transparent manner; and
    - (ii) the proper regulation and supervision of its members;
  - (f) enforce compliance with its business rules and, where appropriate, its listing rules;
  - (g) have sufficient financial, human and system resources -
    - (i) to operate a fair, orderly and transparent organised market;

- (ii) to meet contingencies or disasters; and
- (iii) to provide adequate security arrangements;
- (h) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and
- (i) ensure that it appoints or employs fit and proper persons as its senior officers and managers.

(2) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

**Obligation to notify Commission of certain matters**

**62.** (1) An approved exchange shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Commission of the circumstance -

- (a) any major or significant change in the information provided by the approved exchange in its application for approval;
- (b) any change to the type or number of organised markets it operates;
- (c) the carrying on of any business (in this section referred to as a “proscribed business”) by the approved exchange other than such business or such class of businesses prescribed by the regulations;
- (d) the acquisition by the approved exchange of a substantial shareholding in a company (in this section referred to as a “proscribed company”) that carries on any business other than such business or such class of businesses prescribed by the regulations;
- (e) the approved exchange becoming aware of any financial irregularity or other matter which in its opinion -
  - (i) may affect its ability to discharge its financial obligations, or
  - (ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;
- (f) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;
- (g) any other prescribed matter.

(2) The Commission may, at any time after receiving a notice mentioned in subsection (1), issue directions to the approved exchange -

- (a) where the notice relates to a matter mentioned in subsection (1)(c) -
  - (i) requiring it to cease carrying on the proscribed business; or
  - (ii) permitting it to carry on the proscribed business subject to such conditions or restrictions as the Commission may impose, if the Commission is of the opinion that the carrying

- on of the proscribed business subject to those conditions or restrictions is necessary; or
- (b) where the notice relates to a matter mentioned in subsection (1)(d)
- (i) requiring it to dispose of all or any part of its shareholding in the proscribed company within such time and subject to such conditions as specified in the directions, or
  - (ii) requiring it to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Commission may impose, if the Commission is of the opinion that such exercise or non-exercise of rights subject to those conditions or restrictions is necessary.

#### **Obligation to manage risks prudently**

**63.** (1) Without prejudice to the generality of section 61(1)(b), an approved exchange shall ensure that the systems and controls concerning the assessment and management of risks to every organised market that the approved exchange operates are adequate and appropriate for the scale and nature of its operations.

(2) A person that contravenes subsection (1), (2) or (4) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

#### **Obligation to maintain and submit records**

**64.** (1) An approved exchange shall maintain a record of all transactions effected through its organised market in accordance with the regulations.

(2) An approved exchange shall submit to the Commission such reports in such form and manner, and at such frequency, as may be prescribed.

#### **Obligation to assist Commission**

**65.** An approved exchange shall provide such assistance to the Commission as the Commission may require for the performance of the Commission's functions and duties, including the furnishing of such returns and documents as the Commission may require for the proper administration of this Act.

#### **Approval of senior officers**

**66.** (1) An approved exchange shall not appoint a person as its senior officer or manager unless the approved exchange has obtained the prior written approval of the Commission.

(2) The Commission shall not refuse an application for approval under this section without giving the approved exchange an opportunity to be heard.

(3) The removal of a senior officer of an approved exchange due to the officer's termination, resignation or death, shall be notified to the Commission within 7 business days of the removal.

(4) A person that contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

#### **Listing, de-listing or trading of certain instruments, contracts and transactions**

**67.** An approved exchange shall, in respect of any product that is listed or permitted for trading on an organised market operated by the approved exchange, comply with requirements prescribed by the regulations.

#### **Listing of approved exchange on organised market**

**68.** The securities or securities-based derivatives contracts of an approved exchange shall not be listed for quotation on an organised market that is operated by the approved exchange or any of its related companies unless the approved exchange and the operator of the organised market have entered into such arrangements as the Commission may require -

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts, as the case may be, of the approved exchange on the organised market.

#### **Power of Commission to remove officers**

**69.** (1) Subsection (2) applies if the Commission is satisfied that an officer of an approved exchange -

- (a) has wilfully contravened, or wilfully caused the approved exchange to contravene this Act or the regulations;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act or the regulations, by the approved exchange, by a participant of the approved exchange, or by a person associated with that participant;

- (c) has failed to discharge the duties or functions of the officer's office or employment;
- (d) is an undischarged bankrupt, whether in Anguilla or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Anguilla or elsewhere, made a compromise or scheme of arrangement with the officer's creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Anguilla or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the officer had acted fraudulently or dishonestly.

(2) In any case mentioned in subsection (1), the Commission may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct the approved exchange to remove the officer from the officer's office or employment, and the approved exchange shall comply with the notice, notwithstanding anything in any other law or in the constitution or other constituent document of the approved exchange.

(3) Without prejudice to any other matter that the Commission may consider relevant, the Commission may, in determining whether an officer of an approved exchange has failed to discharge the duties or functions of the officer's office or employment for the purposes of subsection (1)(c), have regard to such criteria as may be prescribed.

(4) The Commission shall not direct an approved exchange to remove an officer from the officer's office or employment without giving the approved exchange an opportunity to be heard.

#### **Power of Commission in organised market**

**70.** (1) Where the Commission is of the opinion that it is necessary to prohibit trading in -

- (a) particular securities of, or made available by, a business entity;
- (b) particular securities-based derivatives contracts of, or made available by, a business entity; or
- (c) particular units in a collective investment scheme,

on an organised market of an approved exchange -

- (i) in order to protect persons buying or selling the securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be; or
- (ii) in the interests of the public,

the Commission may give notice in writing to the approved exchange stating that it is of that opinion and setting out the reasons for its opinion.

(2) If, after the receipt of the notice given under subsection (1), the approved exchange fails to take any action in relation to the particular securities, securities-based derivatives contracts, or units in a collective investment scheme, as the case may be, on that organised market and the Commission continues to be of the opinion that it is necessary to prohibit trading in the particular securities, securities-based derivatives contracts, or units in a collective investment scheme, as the case may be, on that organised market so as to achieve the objectives under subsection (1)(i) or (ii), the Commission may, by notice in writing to the approved exchange

- (a) prohibit trading in the particular securities, securities-based derivatives contracts, or units in a collective investment scheme, as the case may be, on that organised market for such period not exceeding 14 days, as specified in the notice; and
- (b) impose conditions or restrictions on the approved exchange, as specified in the notice.

(3) The Commission may, at any time, by notice in writing, add to, vary or revoke any condition or restriction mentioned in subsection (2)(b).

(4) An approved exchange on which a condition or restriction is imposed under subsection (2)(b) or (3) shall satisfy that condition or restriction.

(5) Where the Commission gives a notice to an approved exchange under subsection (2), the Commission shall at the same time send a copy of the notice to -

- (a) in the case of securities, the business entity;
- (b) in the case of securities-based derivatives contracts, the business entity; or
- (c) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,

together with a statement setting out the reasons for the giving of the notice.

(6) An approved exchange that permits trading in securities, securities-based derivatives contracts, or units in a collective investment scheme, on the organised market of the approved exchange in contravention of a notice given under subsection (2) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

### **Emergency powers of Commission**

**71.** (1) Where the Commission has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Commission may by notice direct in writing an approved exchange to take such action as the Commission considers necessary to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange.

(2) Without prejudice to subsection (1), the actions which the Commission may direct an approved exchange to take include -

- (a) terminating or suspending trading on the organised market operated by the approved exchange;
- (b) confining trading to liquidation of positions in capital markets products;
- (c) ordering the liquidation of any position or all positions or the reduction in any position or all positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in capital markets products or any class of capital markets products;
- (i) requiring margins or additional margins for any capital markets products; and
- (j) modifying or suspending any of the business rules, or listing rules, as the case may be, of the approved exchange.

(3) Where an approved exchange fails to comply with any direction of the Commission under subsection (1) within such time as is specified by the Commission, the Commission may -

- (a) set margin levels in any capital markets products or class of capital markets products to cater for the emergency;
- (b) set limits that may apply to positions acquired in good faith by any person prior to the date of the notice issued by the Commission; or
- (c) take other action to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange.

(4) In this section, “emergency” means any threatened or actual market manipulation or cornering, and includes -

- (a) any act of any government affecting any commodity or financial instrument;

- (b) any major market disturbance that prevents an organised market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or
- (c) any undesirable situation or practice that, in the opinion of the Commission, constitutes an emergency.

(5) The Commission may modify any action taken by an approved exchange under subsection (1), including the setting aside of that action.

(6) An approved exchange that fails to comply with a direction issued under subsection (1) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

## PART 6

### DIGITAL PAYMENT TOKEN SERVICES

#### Regulation of digital payment token services

- 72.** (1) A person shall not -
- (a) invest in cryptocurrencies, digital payment tokens or other digital assets;
  - (b) use digital assets as a means of effecting subscriptions into and redemptions out of a professional fund; or
  - (c) carry on any other digital payment token service,

in or from within Anguilla, unless the person is an approved professional fund.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

(3) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with any digital payment token service carried on by that person in contravention of subsection (1).

#### Application for approval to carry on digital payment token services

- 73.** (1) A professional fund that wishes to -
- (a) invest in cryptocurrencies, digital payment tokens and other digital assets;
  - (b) use digital assets as a means of effecting subscriptions into and redemptions out of the professional fund; or
  - (c) carry on any other digital payment token service,

in or from within Anguilla, shall apply in writing to the Commission for the prior written approval of the Commission to carry on digital payment token services.

(2) The Commission shall, in relation to an application received under subsection (1) -

- (a) grant the approval;
- (b) grant the approval subject to conditions; or
- (c) refuse the approval.

(3) An approval shall not be granted to an applicant unless the applicant has satisfied the Commission that -

- (a) the applicant is a professional fund;
- (b) the applicant will be able to comply with the provisions of this Act and any regulations;
- (c) the applicant will be able to comply with the requirements of the Anti-Money Laundering and Terrorist Financing Regulations;
- (d) it will not be against the public interest, including the need to protect investors, for the application to be approved;
- (e) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Commission considers appropriate having regard to the nature and scale of the digital payment token service concerned; and
- (f) the applicant's senior officers and managers are fit and proper persons.

(4) The Commission may, by notice in writing to an approved professional fund, revoke at any time any condition attached to the approval.

(5) Where the Commission has granted approval under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the *Gazette*.

#### **Prohibition against solicitation**

**74.** (1) A person other than an approved professional fund, whether in Anguilla or elsewhere, shall not, whether by that person or through any other person in Anguilla or elsewhere -

- (a) offer to provide, or issue any advertisement containing any offer to provide, to the public in Anguilla or any section of the public in Anguilla, any digital payment token service, whether in Anguilla or elsewhere; or
- (b) make an offer or invitation, or issue any advertisement containing any offer or invitation, to the public in Anguilla or any section of the public in Anguilla, to enter into any agreement relating to the

provision by any person of any digital payment token service, whether in Anguilla or elsewhere.

(2) A person in Anguilla (whether or not an approved professional fund) shall not, on behalf of a person outside Anguilla that is not an approved professional fund -

- (a) offer to provide, or issue any advertisement containing any offer to provide, to the public in Anguilla or any section of the public in Anguilla, any digital payment token service, whether in Anguilla or elsewhere; or
- (b) make an offer or invitation, or issue any advertisement containing any offer or invitation, to the public in Anguilla or any section of the public in Anguilla, to enter into any agreement relating to the provision by any person of any digital payment token service, whether in Anguilla or elsewhere.

(3) A person that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

(4) For the purposes of subsections (1) and (2), in determining whether an offer, invitation or advertisement is made or issued to the public in Anguilla or any section of the public in Anguilla, a person shall have regard to such considerations as may be prescribed.

(5) A person whose business is to publish, or to arrange for the publication, of advertisements does not commit an offence under subsection (1) or (2) if the person proves that -

- (a) the person received the advertisement for publication in the ordinary course of the person's business;
- (b) the matters contained in the advertisement were not, wholly or in part, devised or selected by the person; and
- (c) the person did not know and had no reason for believing that the publication of the advertisement would constitute an offence.

## PART 7

### SECURITIES EXCHANGES

#### **Regulation of securities exchanges**

**75.** (1) A person shall not carry on or purport to carry on a securities exchange in or from within Anguilla, unless the person -

- (a) holds a securities exchange licence; or

- (b) carries on the securities exchange using a currency other than the Eastern Caribbean currency.

(2) For the purposes of subsection (1), a person may be considered to purport to carry on a securities exchange where that person -

- (a) uses one or more words which connote securities exchange business, either in English or in any other language, in the description or title under which that person carries on business;
- (b) makes a representation in a document or in any other manner that that person is carrying on a securities exchange; or
- (c) otherwise holds that person out as carrying on a securities exchange.

(3) A person that carries on or purports to carry on a securities exchange without being the holder of a securities exchange licence commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both, and in the case of a continuing offence, to a fine of \$100,000 for each day during which the offence continues.

(4) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with a securities exchange carried on by that person in contravention of subsection (1).

#### **Application for a securities exchange licence**

**76.** (1) A person that wishes to carry on a securities exchange shall apply in writing to the Commission for the grant of a licence under this Part.

(2) An application under subsection (1) shall be made in such form and manner as the Commission may specify and shall be accompanied by the prescribed application fee.

(3) The Commission shall, in relation to an application received under subsection (1) -

- (a) grant the securities exchange licence;
- (b) grant the securities exchange licence subject to conditions; or
- (c) refuse the securities exchange licence.

(4) A securities exchange licence shall specify that the licensee is permitted to carry on a securities exchange.

(5) An application under this section shall include such information and shall be accompanied by such fee as may be prescribed.

(6) A securities exchange licence shall not be granted to an applicant unless the applicant has satisfied the Commission that -

- (a) the applicant will be able to comply with the provisions of this Act and the regulations;
- (b) the applicant will be able to comply with the requirements of the Anti-Money Laundering and Terrorist Financing Regulations;
- (c) it will not be against the public interest for the application to be approved;
- (d) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Commission considers appropriate having regard to the nature and scale of the security exchange concerned; and
- (e) the applicant's senior officers and managers are fit and proper persons.

(7) The conditions which the Commission may impose on a licensee may include conditions limiting the nature and scope of the securities exchange which may be carried on by the licensee.

(8) The Commission may, by notice in writing to a licensee, revoke at any time any condition attached to the securities exchange licence.

(9) Where the Commission has granted a securities exchange licence under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the *Gazette*.

(10) Where the Commission refuses a securities exchange licence under this section, it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

(11) A person licensed under this Part is not required to be licensed under the -

- (a) Insurance Act; or
- (b) Trades, Businesses, Occupations and Professions Licensing Act,

in respect of the carrying on of a securities exchange.

#### **Securities Exchange licence fees**

**77.** (1) Every person to whom a licence under this Part is first granted shall at the date of such grant pay the prescribed fee.

(2) The holder of the licence shall, on or before the 15th January in each year, pay the prescribed renewal fee.

(3) A licence in respect of which the prescribed renewal fee remains unpaid for 3 full months after the 15th January in any year shall lapse immediately but if,

within a period of one month after the date of lapse, the person who held the licence prior to its lapse pays -

- (a) the prescribed renewal fee;
- (b) the surcharges due under subsection (2); and
- (c) an administration fee of 10% of the prescribed renewal fee,

the licence may be renewed for the period from the 1st January to the 31st December, inclusive, of the year in question.

(4) A holder of a licence under this Part shall inform the Commission of any changes made relating to any of the information furnished in accordance with section 76(5) within 21 days after any such change has occurred.

## PART 8

### GENERAL

#### **Duties of the Commission**

- 78.** (1) The Commission has the duty to regulate -
- (a) persons holding a licence, or registered, under Part 2;
  - (b) approved exchanges under Part 5;
  - (c) approved digital payment token services under Part 6;
  - (d) persons holding a licence under Part 7;
  - (e) registered public funds;
  - (f) registered private funds;
  - (g) registered professional funds;
  - (h) recognised foreign funds;
  - (i) licensed investment managers; and
  - (j) licensed fund administrators;

and, in and for the discharge of that duty, the Commission has the powers conferred upon it by this Act.

(2) The Commission has the authority to issue directions and policy guidelines for the purposes of this Act and the regulations..

(3) The Commission may, upon request by any person to whom this Act applies and the payment of such fee as may be prescribed, issue to such person a certificate of compliance in such form as the Commission thinks fit.

(4) The Commission or any of its employees shall not knowingly have any financial interest in any person mentioned in subsection (1)(a) to (j).

#### **Registers of the Commission**

- 79.** (1) The Commission shall keep and maintain separate registers for -
- (a) persons holding a licence, or registered, under Part 2;

- (b) approved exchanges under Part 5;
- (c) approved digital payment token services under Part 6;
- (d) persons holding a licence under Part 7;
- (e) registered public funds;
- (f) registered private funds;
- (g) registered professional funds;
- (h) recognised foreign funds;
- (i) licensed investment managers; and
- (j) licensed fund administrators.

(2) The Registers shall show in respect of each of the persons mentioned in subsection (1) -

- (a) the person's name;
- (b) the address of the person's place of business and its address for service in Anguilla;
- (c) the name and address of another person resident in Anguilla who is authorised to represent the person and to accept service on its behalf;
- (d) the address of any place or places of business that the person may have outside Anguilla;
- (e) the date of licensing, registration, recognition or approval; and
- (f) the status of the licence, registration, recognition or approval and, if revoked or cancelled, the date of revocation or cancellation.

(3) The Registers may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility that -

- (a) records or stores information in magnetic or electronic form; and
- (b) permits the information to be inspected and reproduced in legible and useable form.

(4) The Registers shall be open to public inspection during ordinary office hours on payment of such inspection fee as may be prescribed .

### **Applications**

**80.** (1) Where the prior written approval of the Commission is required in respect of any matter under this Act, an application for approval shall be made to the Commission in such form and manner as the Commission may specify and shall be accompanied by the prescribed application fee.

(2) Where the Commission grants the application for prior written approval, it shall, as soon as reasonably possible after the grant, publish notification of the grant in the *Gazette*.

(3) Where the Commission refuses the application for prior written approval, it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

(4) In addition to any other requirement under this Act, every application for licensing, registration, approval or recognition made under this Act shall be accompanied by a notice of -

- (a) the address of the applicant's place of business and its address for service in Anguilla;
- (b) the name and address of a person resident in Anguilla who is authorised to represent the applicant and to accept service on its behalf; and
- (c) the address of any place or places of business that the applicant may have outside Anguilla.

(5) If any information contained in any of the notices required to accompany the application pursuant to subsection (4) is altered at any time thereafter, the applicant, upon being -

- (a) a licensed, or registered, securities investment business;
- (b) a registered public fund, private fund or professional fund;
- (c) a recognised foreign fund;
- (d) an approved exchange;
- (e) an approved digital payment token service; or
- (f) a licensed securities exchange,

shall give in writing to the Commission particulars of the alteration within 21 days after the alteration is made.

#### **Form and conditions of certificates and licences**

**81.** (1) A certificate of registration or recognition or a licence may be granted subject to terms, conditions, restrictions or limitations as the Commission sees fit to specify therein.

(2) A certificate of registration or recognition or a licence shall -

- (a) be in such form as may be directed by the Commission;
- (b) be admitted in all courts as *prima facie* evidence of the facts stated therein; and
- (c) remain in force until it is cancelled.

#### **Annual fees**

**82.** (1) Where, under the provisions of this Act -

- (a) a securities investment business is granted a licence or registered;

- (b) a public, private or professional fund is granted registration;
- (c) a foreign fund is granted recognition;
- (d) an exchange is granted approval;
- (e) a digital payment token service is granted approval; or
- (f) a securities exchange is granted a licence,

there shall be payable for the year in which such licence, registration or recognition is granted, such fees as may be prescribed.

(2) On or before the 15th day of January every year following the year in which a licence, registration, recognition or approval is granted, there shall be payable the annual fee and any penalties for late payment of the fee.

(3) An unpaid annual fee and the penalties may be sued for by the Commission by action as a civil debt to be recoverable summarily.

#### **Restriction on the use of certain words**

**83.** (1) Except with the written consent of the Commission, no person shall -

- (a) use or continue to use the words “fund”, “mutual fund” or “unit trust” 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 Anguilla; 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) A person, other than an approved exchange, shall not take or use, or have attached to or exhibited at any place -

- (a) the title or description “securities exchange”, “stock exchange”, “futures exchange” or “derivatives exchange” in any language; or
- (b) any title or description that resembles a title or description referred to in paragraph (a).

#### **Exemption from Stamp Act**

**84.** (1) No company which is licensed under this Act is subject to the provisions of the Stamp Act.

(2) Notwithstanding any statutory provision or rule of law to the contrary -

- (a) a public, private or professional fund that is registered under this Act; and
- (b) an investor in any such registered public, private or professional fund who is not ordinarily resident or domiciled in Anguilla,

are in all respects exempt from all stamp duty.

### Offences and penalties

85. (1) A person who -
- (a) wilfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Act or the regulations, or in any prospectus issued in respect of a mutual fund;
  - (b) wilfully makes any statement or gives any information required for the purposes of this Act or the regulations that the person knows to be false or misleading; or
  - (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or the regulations,

commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a period of one month or to both.

(2) A person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided commits an offence against this Act or the regulations, as the case may be, and is liable on summary conviction -

- (a) in the case of a body corporate or unincorporated, or a trust, to a fine of \$1,000,000; and
- (b) in the case of an individual, to a fine of \$50,000 or to imprisonment for a period of one month or to both.

### Regulations

86. (1) The Governor may make regulations for giving effect to the provisions of this Act and specifically -
- (a) prescribing anything required to be prescribed and anything permitted by this Act to be contained in regulations;
  - (b) prescribing forms to be used;
  - (c) prescribing any returns to be made;
  - (d) exempting any person or class of persons or business or class of business or type of fund from any provision of this Act;
  - (e) prescribing any fees or levies payable and due dates;
  - (f) specifying standards for the form and content of advertising or promotion;
  - (g) specifying standards for dealings with investors and investors' assets, including the holding on trust of investors' assets;
  - (h) establishing financial requirements and specifying standards for financial conduct and record keeping and reporting; and

- (i) specifying disclosure requirements in respect of the amount, value or arrangements for the payment or provision of commissions or other inducements.
- (2) Without limiting subsection (1), the Governor may make regulations -
- (a) specifying the nature and extent of any insurance arrangements required of regulated persons; and
  - (b) specifying or providing for -
    - (i) systems and controls, including internal controls, to be maintained by regulated persons,
    - (ii) policies and procedures to be maintained by regulated persons with respect to the assessment and management of risk,
    - (iii) principles and rules of corporate governance to be adhered to by regulated persons,
    - (iv) the duties and responsibilities of the directors of a regulated person,
    - (v) prudential requirements applicable to regulated persons, and
    - (vi) business conduct rules to be followed by regulated persons.
- (3) Without limiting the foregoing provisions of this section, the Governor may make regulations in relation to mutual funds -
- (a) providing for the establishment, operation and supervision of mutual funds;
  - (b) providing for -
    - (i) applications for the registration or recognition of mutual funds,
    - (ii) the designation of categories and subcategories of mutual funds,
    - (iii) the management, control and administration of mutual funds, including the appointment and duties of a fund's functionaries,
    - (iv) the custodial arrangements to be put in place with respect to mutual funds,
    - (v) the circumstances in which an offer document is required to be issued and distributed by a private or professional fund, the form and content of offer documents and other requirements relating to offer documents,
    - (vi) the reporting of information and the submission of documents to the Commission, including periodic returns, and the verification of the information or documents, and returns to be submitted to the Commission by and in respect of funds,
    - (vii) the issue and redemption of fund interests,

- (viii) the rights of investors,
  - (ix) title to, and the transfer of, fund property,
  - (x) conflicts of interest in relation to the operation and management of funds,
  - (xi) the segregation of fund property,
  - (xii) the income of a fund,
  - (xiii) meetings of investors,
  - (xiv) names that may, or shall not, be used by a fund,
  - (xv) the retention of records by funds and functionaries, and
  - (xvi) the preparation and audit of the financial statements of a fund;
- (c) specifying requirements and restrictions with respect to
    - (i) the constitutional documents of a mutual fund,
    - (ii) investments and borrowing,
    - (iii) pricing and dealing,
    - (iv) the suspension and termination by a mutual fund of its operation or business,
    - (v) the valuation of assets and liabilities, and
    - (vi) payments made, and benefits provided, to the functionaries of a mutual fund; and
  - (d) making provision with respect to recognised foreign funds, including as to -
    - (i) the submission to the Commission and the publication of such particulars as regards recognised foreign funds as may be prescribed,
    - (ii) the notifications to be provided to the Commission with respect to recognised foreign funds, including as to the amendment of the constituting instruments of a recognised foreign fund and changes of the functionaries of a recognised foreign fund, and
    - (iii) the maintenance in Anguilla of deposits and property by and with respect to recognised foreign funds.

(4) Without limiting the foregoing provisions of this section, the Governor may make regulations for the purposes of Part 5, including regulations -

- (a) relating to the approval of approved exchanges;
- (b) relating to the listing, de-listing or trading of any product on any organised market operated by an approved exchange;
- (c) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating an organised market, whether or not the person is approved as an approved exchange;
- (d) specifying measures to manage any risks assumed by an approved exchange.

- (e) for ensuring the fair, orderly and transparent operation of organised markets operated by approved exchanges; and
- (f) for ensuring the integrity and stability of the capital markets or the financial system.

(5) Regulations made under this section may -

- (a) make different provision in relation to different persons, circumstances or cases;
- (b) enable transitional, consequential, incidental or supplementary provisions; and
- (c) prescribe offences against the regulations and prescribe a fine not exceeding \$1,000,000, a term of imprisonment not exceeding 2 years, or both, in respect of any offence.

### **Repeal of Mutual Funds Act**

**87.** The Mutual Funds Act is repealed.

### **Transitional**

**88.** (1) Any investment manager or fund administrator who, immediately before the coming into force of this Act, is carrying on any business or engaged in any activity in relation to which the investment manager or fund administrator is required to be licensed under this Act shall, within 6 months of the coming into force of this Act -

- (a) comply with the provisions of this Act; or
- (b) submit an application under the provisions of this Act, for determination by the Commission as to whether the relevant licence is to be issued.

(2) Any mutual fund which, immediately before the coming into force of this Act, is carrying on its business or managing or administering its affairs in or from within Anguilla shall, within 6 months of the coming into force of this Act -

- (a) comply with the provisions of this Act; or
- (b) submit an application under the provisions of this Act, for determination by the Commission as to whether the mutual fund may carry on its business or manage or administer its affairs in accordance with the provisions of this Act.

(3) Where a mutual fund fails to comply with subsection (2), it shall pay a non-compliance penalty of \$5,000 for each month or part thereof during which it fails to comply with that subsection up to a period of 12 months.

(4) If after the period of 12 months prescribed under subsection (3) a mutual fund fails to comply with the provisions of this Act, it commits an offence and may be proceeded against under section 85(2).

(5) Where a mutual fund is proceeded against under section 85(2), it shall, in addition to any penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).

**Citation**

**89.** This Act may be cited as the Securities and Investment Funds Act, 2022.

2nd Draft, For Consultation Purposes Only

## OBJECTS AND REASONS

*(The objects and reasons do not form part of the Bill)*

The Bill for consideration is the Securities and Investment Funds Bill.

The Securities Act currently in force in Anguilla governs most domestic and offshore securities business and securities that are traded on the Eastern Caribbean Securities Exchange, all of which activities are regulated by the EC Securities Regulatory Commission (not by the Anguilla Financial Services Commission (“AFSC”). That Act also covers collective investment schemes (as defined). The Mutual Funds Act covers investment funds in Anguilla, whether private or public, onshore or offshore, which funds and related service providers are regulated by the AFSC.

Statistics suggest that the alternative investment funds (“AIF”) industry has tripled in assets under management during the last decade globally and growth is likely to continue once the global economy has recovered from the pandemic. Offshore AIF are a major contributor to the economies of various jurisdictions, but this has resulted in an increase of the regulatory burden on fund managers.

The purpose of this Bill is to offer a simpler regime to cater to Alternative Investment Funds and other investment business services providers, thereby maintaining effective regulation of offshore securities and investment business while setting out a clearer path towards a more competitive regime for investment funds in Anguilla.

Part 1 of the Bill provides for preliminary matters, including the interpretation (**clause 1**) and the meaning of key terms used in the Bill (**clauses 2 to 10**).

Provision is made in Part 2 of the Bill (clauses 11 to 19) for the regulation of securities investment business. **Clause 11** seeks to prohibit a person from carrying on securities investment business in or from within Anguilla, unless that person is exempted or holds a licence or registration under Part 2. **Clause 12** sets out the criteria for the grant of a licence and provides that a licensee does not require a licence under the Insurance Act or the Trades, Businesses, Occupations and Professions Licensing Act, in respect of the carrying on of securities investment business. **Clause 13** makes provision in respect of the fees that may be imposed for the grant of a licence.

**Clauses 14 to 19** create offences in respect of trading in listed securities and insider dealing. **Clause 14** makes it an offence to do anything which is calculated to create a false appearance of active trading in listed securities.

**Clause 15** creates the offence of insider dealing. Various defences are provided in respect of this offence (**clause 16**) as well as provisions relating to its territorial scope (**clause 17**). The term “dealing in listed securities” is defined in **clause 18** and **clause 19** prescribes the penalties that may be imposed for commission of the offences relating to trading in listed securities and insider dealing.

Part 3 of the Bill (clauses 20 to 43) seeks to further regulate Mutual Funds. **Clause 20** would prohibit a person from carrying on business as a mutual fund in or from within Anguilla, unless the mutual fund is a public fund, a professional fund, a private fund or a recognised foreign fund; however, **clauses 22 and 23** provide exemptions to this general prohibition. **Clause 21** prescribes the circumstances in which a mutual fund may be promoted.

**Clauses 24 to 34** deal with public funds. **Clause 24** sets out the criteria for the grant of registration of any company, partnership or unit trust, as a public fund. Once registered, the public fund would be prevented from selling interests in the fund to investors resident in Anguilla (**clause 25**) and prevented from inviting the public to purchase its fund interests, unless the invitation is in a prospectus (**clauses 26 and 27**).

**Clauses 28, 29 and 30** contain provisions governing the form and content of a prospectus, enabling its registration by the AFSC and requiring a public fund to make its prospectus available to its investors free of charge. **Clause 31** seeks to enable the amendment of a prospectus and **clause 32** would make provision for cases where a public fund issues a prospectus that contains a misrepresentation.

**Clause 33** would prohibit the appointment of a person as a director of a public fund without the prior written approval of the AFSC and, by virtue of **clause 34**, a registered public fund which carries on business outside Anguilla would be required, annually, to file with the AFSC a certificate of compliance from the authority that is responsible for its regulation and supervision.

**Clauses 35 and 36** seek to deal with Private and Professional Funds. **Clause 35** sets out the criteria for the grant of registration of a private fund or a professional fund, as a mutual fund. Once registered, the mutual fund would be subject to certain restrictions under **clause 36** - for example, a private fund could not issue fund interests that would result in the fund having more than 99 investors.

**Clause 37** deals with Foreign Funds and sets out the criteria for recognition of those funds.

**Clauses 38 to 43** contain provisions that are of general application to mutual funds. **Clause 38** would empower a custodian to accept, and use, digital payment tokens as a means of payment for the provision of goods or services. The operation of a

custodian in investment business traditionally speaks to the custody of a fund's assets; however, by virtue of **clause 38**, these assets could be fiat currency, commodities, cryptocurrencies and other digital assets that are held in a manner that ensures safe-keeping of the assets. As such, custodians could also utilize digital assets wallets to effect safe-keeping and use smart contracts to effect other transactions that occur in the normal course of business.

Where the fund is formed as a company, the fund must maintain a registered office in Anguilla (**clause 39**) and where the fund is formed as a limited partnership, at least one general partner must be a company incorporated in Anguilla, a partnership formed in Anguilla or an individual resident in Anguilla (**clause 40**).

**Clause 41** seeks to provide that, where a fund is formed as a unit trust, there would be no restriction on distributions to unitholders; and, where an entity is incorporated as a variable capital company, the variable capital company may be formed as a fund with a variable capital structure and ability to pay dividends out of capital (**clause 42**).

**Clause 43** details the various categories in which a fund may be registered. Depending on the type of registration, the fund would be authorised to carry on various categories of business, for example, investment management services.

Part 4 of the Bill (clauses 44 to 56) contains provisions that are of general application to "regulated persons", namely -

- (a) persons holding a licence, or registered, under Part 2;
- (b) persons approved under Part 5;
- (c) professional funds approved under Part 6;
- (d) persons holding a licence under Part 7;
- (e) registered public funds;
- (f) registered private funds; and
- (g) registered professional funds.

**Clause 44** seeks to prescribe the requirements relating to the appointment of a depository and would prevent a regulated person from being appointed as a depository.

By virtue of **clause 45**, shares in a company which is a regulated person could not be disposed of, without the AFSC's approval. Various other restrictions would apply to a regulated person: the use of certain names (**clause 46**), the separation of a regulated person's funds and its client's funds (**clause 47**), a prohibition on the issue of bearer shares (**clause 48**), a requirement for the AFSC's approval of the alteration of senior officers (**clause 49**), a prohibition on the issue of misleading advertisements (**clause 50**), a requirement to maintain records and financial

statements (**clauses 51 and 53**), and the submission of a compliance report to the AFSC (**clause 52**).

**Clause 54** seeks to specify an auditor's duty when auditing a regulated person while **clauses 55 and 56** would prescribe the AFSC's duties in relation to a regulated person.

Part 5 (clauses 57 to 71) seeks to regulate Organised Markets. **Clause 57** would prohibit a person from operating an organised market in or from within Anguilla, unless the person is an approved exchange. **Clause 58** sets out the criteria for the grant of approval. The approval may also be cancelled (**clause 59**) or revoked (**clause 60**).

**Clauses 61 to 67** would prescribe the obligations of an approved exchange, and these include a duty to ensure that every organised market it operates is a fair, orderly and transparent organised market. The approved exchange is also required to maintain a record of all its transactions.

**Clause 68** seeks to prohibit securities-based derivatives contracts of an approved exchange from being listed for quotation on an organised market that is operated by the approved exchange, unless the approved exchange and the operator of the organised market have entered into arrangements specified by the AFSC for dealing with possible conflicts of interest that may arise from the listing. **Clauses 69 to 71** would confer on the AFSC various powers exercisable in relation to approved exchanges, including emergency powers when necessary for the protection of investors.

Part 6 (clauses 72 to 74) seeks to regulate Digital Payment Token Services. **Clause 72** would prohibit a person from investing in cryptocurrencies, digital payment tokens or other digital assets or carrying on any other digital payment token service in or from within Anguilla, unless the person is an approved professional fund. Essentially, any element of the operation of a professional fund would be open to the conduct of business without barriers to the use of technologies that are appropriate, as long as there is due consideration in respect of risks that should be mitigated.

**Clause 73** sets out the criteria for the grant of approval to the fund.

**Clause 74** seeks to prohibit persons other than approved professional funds, from offering to provide to the public in Anguilla, any digital payment token service, whether in Anguilla or elsewhere.

Part 7 (clauses 75 to 77) seeks to regulate Securities Exchanges. **Clause 75** would prohibit a person from carrying on a securities exchange in or from within

Anguilla, unless the person holds a securities exchange licence or carries on the securities exchange using a currency other than the Eastern Caribbean currency.

**Clause 76** sets out the criteria for the grant of a securities exchange licence, and **clause 77** makes provision for the payment of a licence fee.

Part 8 (clauses 78 to 89) contains general provisions. **Clauses 78 to 81** would impose duties on the AFSC, including a duty to maintain Registers relating to licensees and persons approved or registered under the legislation. **Clause 82** seeks to make provision in relation to fees payable under the legislation.

**Clause 83** restricts the use of words such as “stock exchange” while **clause 84** confers on specified entities exemption from the payment of stamp duty.

**Clause 85** creates general offences and penalties for contravention of the legislation and **clause 86** sets out the power of the Governor to implement regulations for the administration of the legislation.

**Clause 87** seeks to repeal the Mutual Funds Act and **clause 88** contains transitional provisions.

**Clause 89** provides the short title of the Bill.

*Speaker*

Passed by the House of Assembly this      day of      , 2022

*Clerk of the House of Assembly*

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