

ANGUILLA – MUTUAL FUNDS ACT 2004

Policy Guidance No. 1 of 2005

Qualified fund administrator/intermediary status

Introduction

This policy guidance sets out a strategy for addressing the fast tracking of private and professional funds, which are required to be recognized under the Mutual Funds Act 2004 (“the Act”) with the view towards establishing Anguilla as a jurisdiction of choice in the offshore mutual funds industry.

Policy

The Financial Services Commission (“the Commission”) has decided to create a status known as a qualified fund administrator/intermediary to make more efficient the recognition regime under the Act.

What is a qualified fund administrator/intermediary?

A qualified fund administrator/intermediary is a fund administrator or an intermediary who has been granted this status by the Commission or who would qualify for such status if they applied for it. However, only applicants who have applied will be formally granted this status. The status will allow the administrator/intermediary to form private and professional mutual funds under the Act, but without the need to obtain approval of the specific funds in question by the Commission prior to the commencement of operations of these funds.

How will this work in practice?

In effect, the qualified fund administrator/intermediary will have the right to incorporate funds with the Companies Registry, through the Commission, and will be allowed to commence operation of them prior to the Commission reviewing their applications. The qualified fund administrator/intermediary will pay the requisite fund recognition fee, as detailed in the Mutual Fund Regulations 2004 (“the Regulations”) and submit the information stated below in paragraphs (i) through to (v) in the form of a letter to the Commission at the same time that it requests the formation of the fund to the Companies Registries.

- i) The name and type of the fund i.e. whether it is a private, professional or public fund.
- ii) The type of entity used to constitute the fund i.e. whether a company, partnership, unit trust or cell account.

- iii) Details of the directors, general partners, trustee of the fund as applicable.
- iv) Details of the custodian and investment manager of the fund, who should be located in a recognized jurisdiction.
- v) Confirmation that the requisite due diligence on the parties involved in the fund has been done in line with the due diligence procedures established under the AML Regulations and Guidance Notes and other requirements detailed under the Act.

The qualified fund administrator/intermediary must send to the Commission within 30 days of the formation of the fund the actual application forms for each fund formed for review and approval by the Commission and for its filing purposes. Such application forms are to be found in the Regulations.

Who can become a qualified fund administrator/intermediary?

To be granted this status the applicant must meet the following criteria.

- a) The applicant must hold a fund administrator licence under the Act except as discussed in paragraph (d) below. In addition, the fund administrator must be licensed in a recognized jurisdiction as defined by the Commission under section 1(3) of the Act. Recognized jurisdictions are detailed in Policy Guidance No. 2 of 2005
- b) The applicant must have qualified, experienced and adequate staff resources to include experienced accountancy knowledge as defined under the Act in reference to the term “auditor.” The applicant must have a sufficient number of qualified Chartered Accountants (or their equivalent) on staff. The qualifications and experience of the applicant will be assessed by the Commission and supporting information must be provided by the applicant to support these claims.
- c) The applicant must have under its administration a significant number of funds and fund assets. This must be evidenced in writing by the licensing body in the recognized jurisdiction discussed in (a) above.
- d) Where the applicant is a lawyer or a law firm, as evidenced by membership in an appropriate legal body such as a Bar Association or Law Society, or a financial institution/service provider and has a proven track record and experience in the area of forming mutual funds, then said lawyer, law firm or financial institution/service provider may qualify irrespective of the criteria set out in paragraphs (b) through to (c). However, for each fund formed, the lawyer, law firm or financial institution/service provider must appoint a fund administrator in a

recognized jurisdiction who has been granted this status or who would qualify for such status if an application were made.

Review of qualified fund administrator/intermediary status

Applicants granted this status must be cognizant of the fact that the status will be under constant review. This will be done through periodic review of the performance of the qualified fund administrator/intermediary.

The Commission reserves the right to withdraw this qualified fund administrator/intermediary status at anytime if the qualified fund administrator/intermediary fails to apply the requisite standards of due diligence and professionalism in assessing applications when forming funds. On withdrawal of the status, the fund administrator/intermediary will be required to submit each application individually for prior approval by the Commission.

Fees

The fee applicable to the granting of the status of qualified fund administrator/intermediary will be US\$2,000. For each year that the status is in effect the annual fee will be US\$2,000 payable by the 31st January in accordance with Section 25 of the Act. The penalty regime for late payment of fees set out in the Regulations 2004 will apply where late payment is made.

Further information

Details of the Act and the Regulations and other Policy Guidance Notes can be found on the Commission's website or directly from the Commission. Full details are on the Commission's website: www.fsc.org.ai

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