



FINANCIAL SERVICES AUTHORITY ST. VINCENT AND THE GRENADINES

HOW TO SET UP A MUTUAL FUND IN ST. VINCENT & THE GRENADINES

POLICY STATEMENT

St. Vincent and the Grenadines (SVG) welcomes mutual fund business conducted by professionals with integrity. As regulators, we allow for a great degree of flexibility in terms of the investment portfolio or risk-return profile, provided that there is full disclosure of risk in the Prospectus/Offering Memorandum. We also closely scrutinize the Fund structure to ensure that the risk of fraud on investors or money laundering is minimized.

In particular, we pay close attention to the integrity of the Ultimate Beneficial Owners, Shareholders and Directors of the Mutual Fund Manager in addition to the Fund's. We also closely examine the Directors of the Fund Administrator. There is no restriction on the location of the Custodian Bank, provided that the Financial Services Authority (the Authority) is satisfied that this Bank is reputable and regulated.

In order to do our part to minimize the risk of fraud on investors, the Authority reviews every application on a *case by case* basis to ensure that proper checks are in place in order to minimize risks. The core issue which is examined is the **need for at least one independent entity in the entire fund scheme which allows for meaningful oversight**. In short, there must be independent oversight of the individual who is responsible for the calculation of the Net Asset Value (NAV) and the Net Asset Value Per Share (NAVPS), in order to ensure that those calculations are not falsified.

One of the mechanisms for ensuring proper checks and balances is to ensure that the same individuals are not Directors or Shareholders of the Fund, Fund Manager and Fund Administrator. At least one of these three main persons must have clear independence as well as meaningful powers.¹ Additionally, it is preferable to have different Directors for the Fund and Fund Manager. However, in cases where the Fund Administrator is independent and has the power to calculate the NAV and NAVPS, only then may the Fund and the Fund Manager have the same Directors. In the event that the Fund Administrator is independent, but does not have any meaningful powers, the Authority has the right to determine that the Administrator is not an effective independent check. As such, notwithstanding the fact that the Administrator is an

¹ For example, the Fund Administrator is required to be completely independent when the Directors of the Fund Manager and Fund are the same.

independent party, the Authority may ask that the Fund Manager and Fund to not have the same directors.

The Authority operates on a case by case basis with the core principle of working to ensure a degree of accountability that will allow for reducing, as far as possible the risk of fraud on the investors. In so doing, the Authority will often review the proposed contracts between the relevant parties to the Fund scheme to verify the existing level of independence/accountability.

It is also desirable for the **Custodian Bank** to be independent from the voting shareholders of the Mutual Fund.

ESTABLISHING A MUTUAL FUND

To facilitate the timely processing of mutual fund applications, the following guidance is given, along with a Checklist of documents and information which the Authority requires. The following list is intended to provide a general outline of the steps which should be taken when establishing a Mutual Fund in SVG:-

- **Conceptual design** - The Promoter should design, plan and outline the goals and structure of the proposed fund, incorporating the investor and investment combination they wish to target. The initial plan should ultimately form the basis for the Prospectus/Offering Memorandum.
- **Seek advice** - Accounting, legal and taxation advice should be sought both locally and in the countries where investments will be made to ensure securities legislation is not isolated. Fund Managers should suggest to prospective investors that they seek advice of competent individuals such as tax, legal, financial advisors and auditors in their place of residence or citizenship prior to investing in the fund.
- **Incorporate an SVG International Business Company** - The constitutional documents need not be complex. There can be two classes of shares, one being non-participating, voting shares, one or more of which would be held by the Fund Manager. The second class can be participating, non-voting, redeemable shares for issue to fund participants. Bearer Shares are not permissible for this particular business venture².
- **Submit an application to register the Mutual Fund** – The Mutual Fund Act, Chapter 154 of the Revised Laws of St. Vincent and the Grenadines 2009 ('the Act'), governs the application procedure. A Registered Agent can assist with this process.
- **Select Service Providers** - Contracts between the Mutual Fund and the Service Providers should be drafted and executed. Provisions can be included which would terminate the contracts in the event that the minimum subscription proceeds are not received.

² While IBCs may issue bearer shares in accordance with section 30 of the International Business Companies (Amendment and Consolidation) Act, Chapter 149 of the Revised Laws of St. Vincent and the Grenadines 2009, those IBCs which intend to conduct Mutual Fund business are not authorized to issue the said share class.

- **Finalize and Print the Prospectus/Offering Memorandum** - The Prospectus/Offering Memorandum ensures that potential investors understand the nature of the Mutual Fund. The Prospectus/Offering Memorandum should outline the features and details of the Fund and its proposed investments, including the associated risks, conflicts of interest and the minimum level of subscription required to 'launch' the Fund. It must be signed by the Directors and submitted to the Authority.
- **Commence selling and distribution** - Initial subscription proceeds should be held in an interest bearing escrow account until the necessary minimum amount has been achieved.
- **Launch the Fund** – Once the Fund has been Registered or Licensed by the Authority and the minimum subscription proceeds have been received and transferred into the Fund's bank accounts, operations can begin.

Application Checklists

The Checklists below are for the registration of Mutual Funds (Public, Private and Accredited) and the licensing of Mutual Fund Managers and/or Administrators. These lists are not exhaustive. The Authority may request further documentation or explanation on submitted documents. These Checklists are intended to assist in minimizing the processing time of applications and at the same time, facilitate the proper regulation of the relevant entities.

1. Public and Private or Accredited Mutual Fund

The following items should be submitted when registering a Mutual Fund:

- The Articles of Incorporation and By-Laws of the Company;
- Application to register the Mutual Fund;
- If the shareholder is a Company, previous 2 years audited financial statements;
- Personal Questionnaire forms of Directors and Shareholders;
- Curriculum Vitae of Directors;
- Certified true copies of certificates of professional qualifications;
- Police Records (issued within the last three months);
- For each director and shareholder; a character reference letter and a bank reference letter;
- Offering Memorandum/Prospectus*;
- Business Plan;**
- Application Fee; and
- Due diligence Fee.

*In relation to information in the **Prospectus/Offering Memorandum**, the Authority is particularly interested in the disclosure of the following items:

- The Directors;
- The Ultimate Beneficial Owners/Shareholders;
- Investment Objectives;
- Conflicts of Interest;
- Investment Risks to investors;
- AML/CFT Policy Statement; and
- Information regarding Redemptions.

****Information to be included in the Business Plan is as follows³:**

- Group Family Tree and Organizational Structure;
- Estimated Profit and Loss Statement and Balance Sheet for a period of three (3) years;
- Marketing Plan – how the fund is going to be marketed to grow and the distribution channels that will be used to sell shares in the Mutual Fund;
- Detailed Investment Objectives and Strategy;
- Proposed customer base; and
- Anti-Money laundering policies and provisions.

All Assumptions made relative to the Business Plan are to be indicated.

In relation to the **Investment Objectives**, the Authority requires the following⁴:

- General information on or a synopsis of the investment objectives should be included in the Prospectus/Offering Memorandum; and
- Detailed information as to the investment objectives should be provided in the Business Plan.

Additional Information to accompany the Application:

- Notices as per Section 26 of the Act i.e. address of place of business and service in SVG, and of any other place of business outside SVG, name and address of resident representative in SVG;
- Acceptance letters from Directors;
- Acceptance letter from Legal Advisor;
- Available background information on and Acceptance letter from the Auditor;
- Contract between the Company and the Administrator;
- Contract between the Company and the Fund Manager;
- Name and description of the proposed Custodian of the Mutual Fund;
- Name and description of the Broker for the Mutual Fund; and
- Name and description the banker of records.

Once the Mutual Fund has been registered, the following should be submitted within one month of registration:

- Contract between the Company and the Custodian;
- Contract between the Company and the Broker;
- All sub-contractual service agreements;
- Professional indemnity insurance;

³ Guidance as to what information should be addressed in the business plan is provided in order to improve the quality of information submitted to the Authority.

⁴ Investment objectives should be sufficiently detailed to the Authority so as to provide a firm appreciation of same. Often too sparse information is provided.

- Contract between the Company and the Promoter; and
- Certified true copies of all certificates/licenses that are required by other jurisdictions in which the Mutual Fund is doing business.

Trust Funds

When a Trust Fund is seeking registration as a Mutual Fund, the following is required in addition to the information noted above:

- The Trust Deed;
- Name of the real Trustees; and
- Name of the real Settlor.

Mutual Fund Manager of Administrator

The following items should be submitted when applying to be a licensed Mutual Fund Manager or Administrator:

- The Articles of Incorporation and By-Laws of the Company;
- The Application;
- Application Fee;
- Due diligence Fee;
- Proof of current financial resources of shareholders e.g. Net worth statements;
- If shareholders are a Company, 2 years audited financial statements;
- Personal Questionnaire forms of Directors and Shareholders;
- Curriculum Vitae of Principals;
- Certified true copies of certificates of professional qualifications;
- Current Police Records;
- Notices as per Section 26 of the Act;
- State the Banker of the records;
- Acceptance Letters from Directors;
- Letter of Acceptance from the Auditor;
- For each director and shareholder; 2 character references, 2 business references and 2 banker references;
- Business Plan.

Information to be included in the **Business Plan** is as follows:

- Group Family Tree and Organizational Structure;
- Estimated Budget for a period of three (3) years, Profit and Loss Statement and Balance Sheet – Pro Forma Statements;
- Marketing Plan – the distribution channels that will be used to sell shares in the Mutual Fund;
- Detailed Investment Objectives;
- Proposed Customer Base;
- Anti-Money Laundering Policies and Provisions; and
- The Human Resources required to conduct the relevant business.

All Assumptions made relative to the Business Plan are to be indicated.

When the Manager or Administrator has been granted a licence, the following should be submitted:

- All sub-contractual service agreements; and
- Professional Indemnity Insurance

NB: All documents which are in a foreign language should be accompanied by a notarized English translation. The English translation should be completed by a qualified translator.

Additionally, all relevant Contracts should be dated and signed by the Directors of the Fund and original copies should be submitted to the Authority.

As indicated, the Authority reserves the right to request further documentation or explanation with respect to any application.

PROVISO: Failure to disclose relevant information or provision of false, misleading or inaccurate information at the application stage may have serious consequences for the applicant and will result in a significant delay to the authorization process. It may also call into question the applicant's suitability.

***The entire Application process is estimated at 4 to 6 weeks, dependent upon the receipt of all requisite information and documentation.**

Revised by the Financial Services Authority, July 30th, 2015.