

# HOW TO SET UP A MUTUAL FUND IN SVG

## POLICY STATEMENT

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. However, we 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 owners and directors of the Fund Manager and to the Directors of the Fund. We also closely examine the Directors of the Fund Administrator. There is no restriction on the location of the Custodian Bank, provided that the Authority is satisfied that this bank is reputable.

In order to do our part to minimize risk of fraud on investors the Authority looks at every application on a *case by case* basis to ensure that proper checks are in place that would minimize risk. The core issue that is examined is the **need to see at least one independent entity in the entire fund scheme that allows for meaningful oversight**. In short, whoever is calculating the NAV and the NAVPS, there must be independent oversight of that person in order to ensure that these are not falsified.

**One of the mechanisms for ensuring proper checks and balances is to ensure that the same parties are not directors of the Fund, Fund Manager and Fund Administrator. At least one of these three main players must have independence as well as meaningful powers.** It is preferable to have different directors for the Fund and Fund Manger. However, in cases where the Administrator is independent and has the power to calculate the NAV and NAVPS, then the Fund and Fund Manger may have the same directors. However, where the 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 independent party, the Authority may ask that the Fund Manager and Fund not have the same directors. In short, **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 a reduction in the risk of fraud on the investors**. In so doing, the Authority will often ask to look at proposed contracts between the relevant parties to the Fund scheme.

It is also desirable that the **Custodian Bank** 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 guide has been given along with a checklist of documents and information that 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
- 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 violated. Fund managers should suggest fund participants seek tax advice in their place of residence or citizenship.
- Incorporate an SVG international business company - The constitutional documents need not be complex. There could 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 could be participating, non-voting, redeemable shares for issue to fund participants.
- Submit application to register mutual fund – The Mutual Fund Act, 1997 and the Mutual Funds Regulation, 1999 governs the application procedure. A Registered Agent assists with this process.
- Select service providers - Contracts between the fund and the service providers, should be drafted and executed. Provisions can be included which would terminate the contracts in the event the minimum subscription proceeds are not received.
- Finalise and print the prospectus - The prospectus ensures that potential investors understand the nature of the fund. The prospectus 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 subscriptions 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 minimum subscription proceeds have been received, they can be transferred into the fund’s bank accounts and operations can begin.

### **Application Checklist**

The checklists below are for the registration of Mutual Funds (public, private and accredited) and the licensing of mutual fund managers and administrators. Bear in mind these lists are not exhaustive and the Authority may request further documentation or expansion on submitted documents. However, these lists should assist in minimizing the processing time and ensuring the proper regulation of the entities.

### **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
- Application fee
- Due diligence fee
- The Offering Memorandum. The Authority is particularly interested in the disclosure of the following items:
  - The directors
  - The owners/shareholders
  - Conflicts of Interest
  - Investment risk to the investor
  - Information regarding redemptions
- If shareholders are a company, previous 2 years audited financial statements
- Personal Questionnaire forms of Directors and Shareholders
- Curriculum Vitae of Principals
- Certified true copies of certificates of professional qualifications
- Police Records
- For each director and shareholder; 1 character reference letter and 1 bank reference letter
- Group Family Tree
- Estimated Budget, Profit and Loss Statement and Balance Sheet – Pro Forma Statements
- Business and marketing plan – the distribution channels that will be used to sell shares in the mutual fund
- 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 letter from the Auditor of record
- Contract between the Company and the Administrator
- Contract between the Company and the Fund Manager
- State the Custodian of the fund
- State the Broker for the fund
- State the banker of record
- Once the Mutual Fund has been registered, the following should be submitted within one month:
  - Contract between the Company and the Custodian
  - Contract between the Company and the Broker
  - All sub-contractual service agreements
  - Professional indemnity insurance if sought
- Certified true copies of all certificates/licenses that are required by other jurisdictions in which the Mutual Fund is doing business.

### **Trust Funds**

If it is a trust fund, we will also need the following:

- The trust deed

- Name of the real trustees
- 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 financial and human resources required to conduct the relevant business
- If shareholders are a company, previous 2 years audited financial statements
- Personal Questionnaire forms of Directors and Shareholders
- Curriculum Vitae of Principals
- Certified true copies of certificates of professional qualifications
- Police Records
- References of good financial standing of the shareholders
- For each director and shareholder; 2 character references, 2 business references and 2 banker references
- Group Family Tree
- Estimated Budget, Profit and Loss Statement and Balance Sheet – Pro Forma Statements
- Business and marketing plan
- Notices as per Section 26 of the Act
- Acceptance letter from the Auditor of record
- State the banker of record
- Once the Manager or Administrator has been licensed, the following should be submitted:
  - All sub-contractual service agreements
  - Professional indemnity insurance if sought
- Certified true copies of all certificates/licenses that are required by other jurisdictions in which the Mutual Fund is doing business.

**Please note: That if the documents requested above are originally in a foreign language, a notarized English translation must be submitted. All translations must be done by a qualified translator. Also, all contracts must be dated and signed by the directors of the fund.**

**Dated December 3, 2004**