

International Mutual Funds Act

SAINT LUCIA

No. 44 of 1999

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I Assent

[L.S.]

PEARLETTELOUISY,
Governor-General.

11th January, 2000.

SAINT LUCIA

No. 44 of 1999

An Act to provide for the regulation, authorisation and control of international mutual funds and the carrying on of international mutual fund business from Saint Lucia and for other related matters.

[ON PROCLAMATION]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia and by the authority of the same, as follows:

No. 44] *International Mutual Funds Act* [1999.

PART I

Preliminary

Short title and commencement

1.— (1) This Act may be cited as the International Mutual Funds Act, 1999.

(2) This Act shall come into force on a day to be prescribed by the Minister by Order published in the *Gazette*.

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Interpretation

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

"auditor" means a person who —

(a) is a member of the Institute of Chartered Accountants in Saint Lucia, or any other person who is a member of another professional accounting association and who is approved as an auditor by the Minister;

(b) is independent of the international mutual fund company or the mutual fund administrator which it is auditing;

(c) has at least five years of experience in performing audits of financial institutions or mutual funds;

"administrator" means a person who has been granted an international mutual fund administrator licence under sections 13 and 14;

"Director" means the Director of Financial Services appointed as such under section 11 of the Registered Agent and Trustee Act, 1999;

"eligible company" means —

(a) a body corporate which is incorporated or continued under the International Business Companies Act, 1999 for the purpose of carrying on international mutual fund business;

(b) having at least one director who is a resident; and

(c) whose objects or business activities are restricted to international mutual fund business.

"equity interest" means a share, a trust unit or other security or vote —

(a) that carries an entitlement to participate in the profits or gains of a company, or a unit trust, and

(b) may or may not be redeemable or repurchasable at the option of the investor before the commencement of winding-up or dissolution of the company or unit trust.

"international accounting standards" means the standards of accounting set by the International Accounting Standards Committee for use in the preparation of financial statements;

International Accounting Standards Committee" means International Accounting Standards Committee established under the International Accounting Standards Committee Agreement 1973;

"international business company" means a company incorporated under the International Business Companies Act, 1999;

"international mutual fund" means a mutual fund in respect of which a person has been granted an international mutual fund licence under section 4;

"international mutual fund business" means engaging in the business of establishing and operating or attempting to establish or operate international mutual funds, which does not involve —

(a) undertaking mutual fund business with any resident, provided that a person registered or licensed under the law in force in Saint Lucia relating to international financial services shall be presumed not to be a resident for the purposes of this definition;

(b) investing in any asset which represents a claim on any resident, except a claim resulting from a loan to an international business company registered under the International Business Companies Act, 1999, or to a company licensed under the

International Banks Act, 1999, or to an international mutual fund subject to this Act, or to an international trust registered under the International Trust Act, 1999;

"international mutual fund licence" means a licence granted under section 4;

"international mutual fund administration services" means —

(a) the management of (including the control of all or substantially all the assets of the international mutual fund) or the administration of the international mutual fund;

(b) the provision of the principal office of the international mutual fund in Saint Lucia;

(c) the provision of an operator to the international mutual fund;
or

(d) the provision of the administrative services to an international mutual fund including the accounting, valuation or reporting services;

but does not mean the provision of a registered office to a mutual fund where the usual corporate secretarial and related services are provided; or in relation to an international mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the International Business Companies Act, the Companies Act 1996, any law relating to trusts or this Act; or the provision of investment advice or management or trading execution services;

"international mutual fund administrator licence" means a licence granted under sections 13 and 14;

"investor" in respect of an international mutual fund, means the holder of record or an equity interest in the international mutual fund but does not include a promoter or international mutual fund administrator;

"licensee" means a person who has been granted international mutual fund licence under section 4;

"Minister" means the Minister responsible for International

Financial Services;

"mutual fund" means —

(a) a unit trust; or

(b) a company that issues or has equity interests, in the form of shares whether or not such are capable of redemption, the purpose in effect of which issue or holding is the pooling of investor funds with, the aim of spreading investment risk and enabling investors in a mutual fund to receive profits or gains from acquisition holding management or disposal of investments.

"offering document" in respect of a mutual fund, means a document or series of documents on the basis of which equity interests in the mutual fund are offered for sale or persons are invited to subscribe for or purchase equity interests in the mutual fund, but does not include any other notice, circular, advertisement, letter or other communication used in connection with the offer for sale of an equity interest in the mutual fund or the invitation to any person to subscribe for or purchase any equity interest in the mutual fund if before the offer or invitation is taken up or accepted the prospective investor is given an offering document containing the information prescribed by section 3 (7);

"person" includes a body corporate or an unincorporated body;

"premises" includes —

(a) land whether or not covered by buildings;

(b) any structure whether or not attached to lands; and

(c) any means of transport;

"prescribed" means prescribed in the Regulations;

"private mutual fund" means a mutual fund that is operated as an investment club, where —

(a) its equity interests are held by not more than fifteen persons and have never been offered to the public;

(b) all of its members are required to make contributions in

proportion to the shares or units each holds for the purpose of financing its operations;

"promoter" means any person who causes the preparation or distribution of an offering document in respect of a mutual fund or proposed mutual fund but does not include a professional adviser acting for or on behalf of such a person;

"record" means any means by which information may be stored;

"registered agent" has the meaning given to it under the Registered Agent and Trustee Act, 1999;

"registered office" means —

(a) in respect of a company formed under the International

Business Companies Act, 1999, the registered office of the company for the purpose of that Act; and

(b) in the case of a trust registered under the International Trusts Act, 1999, the place shown in the file maintained by the Registrar of International Trusts as the address of the registered trustees of the trust;

"registered trustee" has the meaning given to it under the

Registered Trustee and Agent Act, 1999;

"Registrar of International Trusts" means the Registrar of International Trusts designated as such under section 5 of the International Trusts Act, 1999;

"Regulations" means Regulations made under section 44;

"resident" means —

(a) a natural person who is ordinarily resident in Saint Lucia as under the Income Tax Act, 1989;

(b) a trust company, partnership, limited partnership or other body, incorporated, established, formed or organised in Saint Lucia under the law in force in Saint Lucia, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (a) or (b) hereof, or by Saint

Lucia; and

(c) any other trust, corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in Saint Lucia under the law in force in Saint Lucia;

but does not mean a person registered or licensed under any law in force in Saint Lucia relating to international financial services;

"restricted international mutual fund administrator licence" means an international mutual fund administrator licence that contains the restrictions referred to in section 13 (2);

"unit trust" means a trust established by a trustee which, for valuable consideration, issues trust units in profits or gains arising from the acquisition holding, management or disposal of investments by the trustee of the trust, the proper law of which is the law in force in Saint Lucia or the law of any other jurisdiction.

(2) In this Act, the expression "carrying on business from within Saint Lucia" means carrying on business outside Saint Lucia from a place of business or a registered office within Saint Lucia;

(3) In this Act unless the context requires otherwise, any reference to "dollar" or "\$" shall, unless otherwise stated, be to the lawful currency of the United States of America.

(4) The Minister may recognise any jurisdiction for the purposes of this Act and shall cause a notice of the recognition to be published by an Order in the *Gazette*.

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PART II

International Mutual Funds

Requirement for international mutual fund licence

3.— (1) Subject to subsection (4) a person shall not carry on an international mutual fund business from Saint Lucia unless —

(a) that person is granted and holds a valid international mutual fund licence under this part in respect of each international mutual fund associated with its business and has a registered office in Saint Lucia;

(b) an administrator is providing international mutual fund administration services to the person in Saint Lucia;

(c) (i) that person has filed, with the Director and the Registrar in respect of the international mutual fund, a current offering document that complies with subsection (7); or

(ii) the Minister has exempted the person from the requirement in (i); and

(d) that person has a registered trustee licensed under the Registered Agent and Trustee Licensing Act 1999, if that person is a unit trust.

(2) An administrator shall ensure that a person for which the administrator is providing international mutual fund administration services under subsection (1) does not carry on or attempt to carry on an international mutual fund business from Saint Lucia contrary to subsection (1).

(3) An administrator who contravenes subsection (2) commits an offence and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for three years.

(4) A person may carry on international mutual fund business from Saint Lucia without complying with subsection (1) if the person's mutual fund is a private mutual fund.

(5) A person carrying on an international mutual fund business in relation to a private mutual fund shall register with the Director in the prescribed manner and pay the prescribed annual

registration fee to the Registrar.

(6) For the purposes of subsection (1) or (4), a person is undertaking international mutual fund business from within Saint Lucia if —

(a) is an international mutual fund incorporated or established in Saint Lucia; or

(b) it is incorporated or established outside of Saint Lucia and, its management (including the control of all or substantially all of its assets) or its administration is carried on in Saint Lucia;

(7) An offering document in respect of equity interests in an international mutual fund shall —

(a) provide full, true and plain disclosure of -

(i) the market price or value of any equity interests being offered;

(ii) particulars of the business and finances of the international mutual fund offering such equity interests; and

(iii) all facts, present or foreseeable, that significantly affect or would reasonably be expected to have a significant effect on the disclosure required in subparagraphs (i) and (ii);

(b) contain a summary of the rights of investors as provided in section 10;

(c) include the financial statements for the last five financial years of the international mutual fund and the auditor's report thereon of the international mutual fund, or for such shorter period of the funds existence;

(d) contain such other information as is necessary to enable a prospective investor in the international mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests; and

(e) be signed on behalf of all of the directors or trustees of the international mutual fund.

(8) Subsection (7) is without prejudice to any duty of disclosure

under the common law or any other law of any jurisdiction.

(9) A person shall be deemed not to have filed with the Director and Registrar a current offering document or the prescribed details in respect of a current offering document if there is a continuing offering of equity interests where any promoter or administrator of its international mutual fund —

(a) is aware of any change that materially affects any information in the offering document filed with the Director and Registrar; and

(b) has not, within twenty-one days of becoming so aware, filed with the Director and Registrar an amended offering document or amended prescribed details, to incorporate that change.

(10) A person is not complying with sub-section (1) if—

(a) it has changed its registered office;

(b) it has changed its registered trustee; or

(c) it has changed its administrator;

and it has failed to inform the Director and Registrar of the change.

(11) Notwithstanding subsection (4), a person to which that subsection applies may choose to comply with subsection (1), and if that person complies in all respects, its private mutual fund shall be deemed to be an international mutual fund as long as such a compliance continues and the provisions of this Act relating to a licensee shall, with the necessary changes, apply to that person.

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International mutual fund licence

4.— (1) A person who is an eligible company or unit trust wishing to carry on international mutual fund business from Saint Lucia may apply to the Minister for the grant of an international mutual fund licence.

(2) An application under subsection (1) for an international mutual fund licence shall contain the information as set

prescribed and shall be accompanied by _

(a) the current offering document or, if one has not been finally settled, the latest draft of the offering document together with a synopsis of that document;

(b) details necessary to satisfy the Minister that the person applying under subsection (1) complies or will be complying with section 3;

(c) details necessary to satisfy the Minister in accordance with subsection (3);

(d) the prescribed application fee; and

(e) any such documents or additional information as the Minister may reasonably require for the purpose of determining the application.

(3) The Minister may grant an international mutual fund licence if the person applying under subsection (1) satisfies the Minister that —

(a) each promoter is of sound reputation;

(b) the administration of the international mutual fund will be undertaken by persons who-

(i) have sufficient expertise to administer the international mutual fund; and

(iii) are of sound reputation; and

(c) the international mutual fund business and any offer of equity interests in the mutual fund will be carried out in accordance with this Act.

(4) Nothing in this section is to be taken as prohibiting the Minister from granting an international mutual fund licence to take effect on the incorporation of an international mutual fund.

(5) The Minister may grant an international mutual fund licence subject to such conditions as the Minister considers appropriate and where the Minister refuses to grant an international mutual fund licence, the Minister shall not be bound to assign any reasons for the Minister's refusal, which shall not be subject to

appeal or review in Court.

(6) An administrator shall ensure that in carrying on or attempting to carry on business from within Saint Lucia, the licensee for which it is providing international mutual fund administration services complies with any conditions contained in the international mutual fund licence.

(7) An administrator who contravenes subsection (6) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

(8) A licensee shall ensure that when carrying on or attempting to carry on business from Saint Lucia, it complies with any conditions contained in the licence.

(9) A licensee which contravenes subsection (8) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

(10) The Minister may, on the written application of a licensee, waive, vary or revoke any condition contained in the international mutual fund licence.

(11) A person shall not, in connection with an application for an international mutual fund licence, supply to the Minister information that the person knows or should reasonably know is false or misleading.

(12) A person who contravenes subsection (11) commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars, or to imprisonment for a term not exceeding three years or both.

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Name of international mutual fund

5.— (1) The Minister may refuse to grant an international mutual fund licence to a person in a name that —

(a) is identical with that of any company, firm, business or other entity, or which so nearly resembles the name of the company, firm, business or entity as to be likely to deceive;

(b) is likely to suggest, falsely, the patronage of or connection with some person, or authority, whether in Saint Lucia or

elsewhere; or

(c) is likely to suggest, falsely, that the person's international mutual fund has a special status in relation to or derived from the Government.

(2) If, in the Minister's opinion, a licensee is carrying on, or attempting to carry on business from Saint Lucia in a name that the Minister would have refused by virtue of subsection (1), the Minister may direct the licensee to change its name to a name approved by the Minister.

(3) An administrator shall ensure that the licensee complies with a direction given to it in accordance with subsection (2).

(4) An administrator who contravenes subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars plus one thousand dollars in respect of each day during which the licensee fails to comply with the direction.

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Failure to comply with section 3

6. A person who is required to comply with section 3 and is carrying on or attempting to carry on international mutual fund business from Saint Lucia without so complying commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars or to imprisonment of three years.

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Offering document

7. A licensee shall not offer equity interests in its international mutual fund for sale unless prior to such offer it publishes in writing an offering document signed by or on behalf of all of the directors of the licensee offering the international mutual fund, approving the contents of the offering document, and provides a copy of offering document to each prospective investor and files a copy of the document with the Director and Registrar.

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Certificate from attorney

8.— (1) The Director shall not accept for filing under section 3

(1) a copy of an offering document unless it is accompanied by a certificate from an attorney-at-law and the administrator who is providing the licensee with international mutual fund administration services certifying that it complies with the requirements of section 3 (7).

(2) If all or any part of the offering document is not in the English language, the Director shall require that an English translation of the offering document or that part of the offering document verified in a manner satisfactory to the Director, be filed along with the offering document with the Director and Registrar.

(3) Where in an offering document, any of the disclosures required under section 3 (7) ceases to be accurate, the administrator providing international mutual fund administration services to the licensee shall publish an amendment thereto giving accurate disclosures and provide a copy thereof to each of its investors and to the Director and Registrar.

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Rights of investors

9.— (1) If a licensee publishes an offering document or any amendment thereto that contains misrepresentation relating to any of the disclosures required under subsection 3(7), an investor who purchased any equity interests pursuant to such offering document or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) An investor 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 licensee and any person who was aware of the misrepresentation, signed the offering document or amendment thereto and consented to or caused it to be published or filed.

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

—

(a) an untrue or misleading statement of any of the disclosures required under subsection 3 (7); or

(b) an omission to disclose any of the disclosures required under subsection 3 (7).

(4) A person shall not be liable under this section if that person proves that the investor purchased the equity interests offered by the offering document or amendment thereto with knowledge of the misrepresentation.

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

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Limitation of action

10.— (1) Notwithstanding any provision of law to the contrary, any action pursuant to section 9 (2) may not be commenced after

—

(a) one hundred and eighty days from the day that the plaintiff first had knowledge of the misrepresentation; or

(b) one year from the date of the purchase transaction that gave rise to the cause of action;

whichever is earlier.

(2) In any action under section 9 (2), the amount recoverable shall not exceed the price at which the equity interests were purchased or subscribed, including any fees or other charges paid by the plaintiff.

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Annual fee for licensee

11.— (1) A licensee shall pay the prescribed annual licence fee on, or before the 15th day of January in each year.

(2) If an annual fee referred to in subsection (1) or section 3 (5) is not paid on or before the 15th day of January in each year, there is payable by the licensee an additional fee equal to that annual fee for each month or part of a month during which the

annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(3) The Minister may, for reasonable cause, waive any additional fee imposed by virtue of subsection (2).

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PART III

International Mutual Fund Administration

Administrator

12.— (1) A person shall not act or carry on business as an international mutual fund administrator unless that person is granted and holds a valid international mutual fund administrator licence under this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars, or to imprisonment for a term not exceeding three years or to both.

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Types of administrator licences

13.— (1) Subject to subsection (2), an international mutual fund administrator licence authorises the holder of the international mutual fund administrator licence to act or carry on a business as an administrator in respect of an unlimited number of international mutual funds or licensees.

(2) An international mutual fund administrator licence may authorise the person to whom its granted to act or carry on business as an administrator solely in respect of international mutual funds specified from time to time in the international mutual fund administrator licence to be known as a restricted international mutual fund administrator licence.

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Application and grant of administrator licence

14.— (1) A person who is an international business company incorporated for that purpose may apply for an international mutual fund administrator licence to the Minister in the prescribed form and an application made under this subsection shall be accompanied by such information that the Minister requires to determine the application and the prescribed application fee.

(2) The Minister shall not grant an international mutual fund

administrator licence until the Minister is satisfied —

(a) that the person making up the application has sufficient expertise to administer an international mutual fund, is of sound reputation and will administer an international mutual fund in the best interests of its investors according to any law applicable to the international mutual fund;

(b) subject to subsection 3 that person has a net worth of at least one hundred thousand dollars or the equivalent in another currency; and

(c) that person is an international business company acting in compliance with the International Business Act;

(3) The Minister may waive compliance with subsection (2) (b) if the Minister is otherwise satisfied as to the financial viability of the person making the application.

(4) An administrator shall not change its registered office and its registered agent without first giving the Director notice of its intention to do so.

(5) An administrator who contravenes subsection (4) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

(6) The Minister may grant an international mutual fund

administrator licence subject to such conditions as the Minister considers appropriate.

(7) An administrator shall, when carrying on or attempting to carry on business, comply with any conditions contained in its international mutual fund administrator licence.

(8) An administrator who contravenes subsection (7) commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars or to three years imprisonment.

(9) A person shall not, in connection with an application for an international mutual fund administrator licence, supply to the Minister information which that person knows or should reasonably know is false or misleading.

(10) A person who contravenes subsection (9) commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars or to three years imprisonment.

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Restriction on issue

15.— (1) An administrator shall not issue shares or a person owning or having an interest in shares in the administrator shall not transfer or otherwise dispose of or deal in those shares or that interest, unless —

(a) the Minister has given his or her approval to the issue, transfer, disposal or dealing; or

(b) the Minister has, in respect of the company, waived the obligation to obtain that approval;

and any conditions of the approval or waiver are complied with.

(2) A person who contravenes subsection (1) commits an offence, and is liable on conviction to a fine to one hundred thousand dollars.

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Annual fee for administrator

16.— (1) An administrator shall, on or before the 15th day of January in each year, pay the prescribed annual licence fee.

(2) If an annual fee referred to in subsection (3) or (4) is not paid on or before the 15th day of January in each year, there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(3) The Minister may, for reasonable cause, waive any additional fee imposed under subsection (5).

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Direction to increase capital value

17.— (1) If the Minister is satisfied that there is reasonable cause to do so or the net worth of an administrator is less than any

amount set in section 14 (2) (b), the Minister may direct the administrator to provide such guarantees or other financial support as the Minister thinks fit.

(2) An administrator shall comply with a direction given under subsection (1).

(3) An administrator who contravenes subsection (2) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

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Reputation of promoter

18.— (1) An administrator shall not provide administration services to a licensee unless it has satisfied itself that each promoter of the licensee is of sound reputation.

(2) An administrator who contravenes subsection (1) commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars.

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Notice

19.— (1) If an administrator knows or has reason to believe that a licensee for which it is providing international mutual fund administration service —

(a) is or is likely to become unable to meet its obligations as they fall due;

(b) is carrying on business otherwise than in accordance with this Act or any other law in force in Saint Lucia; or

(c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the licensee;

the administrator shall immediately give the Director written notice of its knowledge or belief giving its reason for that knowledge or belief.

(2) An administrator who contravenes subsection (1) commits an offence and is liable on conviction to a fine of two hundred and

fifty thousand dollars.

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Name of administrator

20.— (1) The Minister may refuse to grant an international mutual fund administrator licence authorising a person to carry on business as an administrator in a name that —

(a) is identical with that of any company, firm, business or other entity, or which so nearly resembles the name of such company, firm, business or entity as to be likely to deceive;

(b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether in Saint Lucia or in another jurisdiction; or

(c) is likely to suggest, falsely, that the administrator has a special status in relation to or derived from the Government or the Crown.

(2) If, subsequent to granting an international mutual fund administrator licence, the Minister finds that the administrator is authorised to carry on business as an administrator in or from Saint Lucia in a name which, in the Minister's opinion, the Minister would have refused by virtue of subsection (1), the Minister may direct the administrator to change that name to a name approved by the Minister.

(3) An administrator shall comply with a direction given to it in accordance with subsection (2).

(4) An administrator who contravenes subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars, and to one thousand dollars in respect of each day during which the administrator fails to comply with the direction.

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Misrepresentation by administrator

21.— (1) A person other than an administrator shall not represent in any way that the person is carrying on or attempting to carry on business in or from Saint Lucia as an administrator.

(2) A person who contravenes subsection (1) commits an offence

and is liable on conviction to a fine of two hundred and fifty thousand dollars, or to imprisonment for a term not exceeding five years or to both.

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Notification

22.— (1) Unless an administrator is exempted from such a requirement by the Minister, a person shall not act as a director or manager for the administrator without prior written notification being given to the Minister.

(2) A director or senior officer of an administrator may not continue to act as such —

(a) if he or she becomes bankrupt or is convicted of an offence involving dishonesty; or

(b) the Minister revokes the appointment.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

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Number of directors

23.— (1) An administrator shall at no time have less than two directors, all of whom are natural persons and one of whom shall be a resident.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

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PART IV

Supervision and Enforcement

Audited accounts for licensee

24.— (1) A licensee shall have its accounts audited annually or at such other times as the Minister may require by an auditor appointed by the licensee who shall conduct the audit in accordance with international accounting standards.

(2) The audited accounts of the licensee shall be forwarded to the Minister within three months of the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Minister.

(3) Where a licensee changes its auditor, it shall immediately advise the Director of the change and as to the reason for the change and the Director shall record the change accordingly.

(4) A licensee which contravenes subsections (1) to (3) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

(5) The administrator of a licensee shall ensure that the licensee complies with subsections (1) and (2).

(6) An administrator which contravenes subsection (5) commits an offence and is liable on conviction to a fine of twenty thousand dollars.

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Duties of Director relating to licensee

25. The Director shall —

(a) examine, from time to time as the Director thinks necessary, the business and affairs of any licensee for the purpose of satisfying himself or herself that this Act is being complied with and that its international mutual fund is in sound financial position and, shall report to the Minister the results of every such examination;

(b) when required by the Minister, assist in the investigation of any offence which the Director has reasonable grounds to believe has or may have been committed by a licensee or by any

of its directors or officers in their capacity as such;

(c) examine returns, certificates and audited annual accounts of the licensee and to report on them to the Minister ; and

(d) examine and make recommendations to the Minister with respect to applications for licences under this Act.

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Access to information relating to licensee

26.— (1) In the performance of the Director's duties under this Act and to verify compliance with the provisions of this Act by a licensee, the Director is entitled at all reasonable times to —

(a) have access at the registered office or the office of the registered trustee of the licensee to such books, records, vouchers, documents, cash, securities and other information of an international mutual fund as may be specified by the Director;

(b) require the directors, trustees, managers or auditor of a licensee to provide information and explanations of the condition and affairs of its international mutual funds;

(c) request any information from a licensee in respect of an international mutual fund, either from time to time or on a regular basis; and

(d) request from any person information or expert advice relevant to the duties of the Director.

(2) The Director, with the approval of the Minister, may, in writing, authorise any other person to assist the Director in the performance of the Director's functions under the Act;

(3) A person who fails to comply with any requirement under subsection (1) by the Director or by any person authorized under subsection (2), commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years.

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Information for breach of section 3

27.— (1) If the Director has reasonable grounds for believing a

person is carrying on or attempting to carry on an international mutual fund business in or from Saint Lucia in contravention of section 3(1), the Director may instruct that person to give to the Director such information or explanation as the Director may reasonably require to enable the Director to carry out his or her duty under this Act.

(2) A person who fails to comply with an instruction given to the person in accordance with subsection (1) commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Director information or an explanation that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of two hundred thousand dollars.

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Unregulated mutual funds

28. If it appears to the Director that a licensee is carrying on or attempting to carry on business in or from Saint Lucia, and is doing so in breach of section 3, the Director may apply to the Court for such orders as the Director thinks fit to preserve the assets of the investors in the licensee, and the Court may grant such orders.

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Audited accounts for administrator

29.— (1) An administrator shall have its accounts audited annually or at such other times as the Minister may require by an auditor appointed by the administrator who shall conduct the audit in accordance with international accounting standards.

(2) The administrator shall forward its audited accounts to the Minister within three months of the end of the financial year of the administrator, unless prior written approval for an extension has been granted by the Minister.

(3) When an administrator changes its auditor, it shall

immediately advise the Director of the change and as to the reason for the change, and the Director shall record that change accordingly.

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Duties of Director relating to administrator

30. The Director shall —

(a) examine, from time to time as the Director thinks necessary, the business and affairs of any administrator for the purpose of satisfying himself or herself that this Act is being complied with and that the administrator is in a sound financial position and, shall report to the Minister the results of every such examination;

(b) when required by the Minister, assist in the investigation of any offence against any law in force in Saint Lucia which the Director has reasonable grounds to believe has or may have been committed by an administrator or by any of its directors or officers in their capacity as such;

(c) examine returns, certificates and audited annual accounts of the administrator and to report on them to the Minister; and

(d) to examine and make recommendations to the Minister with respect to applications for licences under this Act.

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Access to information relating to administrator

31.— (1) In the performance of the Director's duties under this Act and to verify compliance with the provisions of this Act by an administrator, the Director is entitled at all reasonable times

—

(a) to have access at the administrator's registered office to such books, records, vouchers, documents, cash securities and other information of the administrator and of the international mutual funds administered by the administrator as may be specified by the Director;

(b) to require the directors, officers and auditor of an administrator to provide information and explanations of the condition and affairs of the administrator and of any licensee for which it is providing international mutual fund administrative

services;

(c) to request any information from a licensee, either from time to time or on a regular basis; and

(d) to request from any person information or expert advice relevant to the duties of the Director.

(2) The Director, with the approval of the Minister, may, in writing, authorize any other person to assist the Director in the performance of his or her functions under the Act.

(3) A person who fails to comply with any requirement under subsection (1) by the Director or by any person authorised under subsection (2), commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years.

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Information for breach of section 12

32.— (1) If the Director has reasonable grounds for believing a person is acting or carrying on business as an administrator in contravention of section 12, the Director may instruct that person to give in respect of alleged contravention of section 12 to the Director such information or explanation as the Director may reasonably require to enable the Director to carry out his or her duty under this Act.

(2) A person who fails to comply with an instruction given to that person under subsection (1) commits an offence and is liable on conviction to a fine of two hundred thousand dollars.

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Director information or an explanation that the person knows or should reasonably know is false or misleading.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of two hundred thousand dollars.

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Unlicensed persons

33. If it appears to the Director that a person is acting or carrying on business as an administrator and is doing so in breach of section 12, the Director may apply to the Court for an order as that Director thinks fit to preserve the assets of the investors in any licensee being administered by that person, and the Court may grant the order.

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Directives by Minister

34. In the performance of his or her duty under this Act the Director shall be guided by the policy directives of the Minister.

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Power of Minister over licensee

35.— (1) Where the Minister is of the opinion that a licensee is or appears likely to become unable to meet its obligations as they fall due is carrying on business in a manner detrimental to its investors is winding up its business voluntarily or in a manner that is prejudicial to its investors or creditors has contravened this Act or has failed to comply with a condition of its licence, the Minister may —

(a) revoke the international mutual fund licence held by the licensee;

(b) impose conditions, or further conditions, upon the licensee and may amend or revoke any such condition;

(c) require the substitution of any director, trustee or manager of the licensee, or an administrator who is providing international mutual funds administration services to the licensee;

(d) at the expense of the licensee appoint a person to advise the licensee on the proper conduct of its affairs or the affairs of any international mutual funds established by it and to report to the Minister thereon within three months of the date of that person's appointment;

(e) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, with the necessary changes, have all the powers of a person appointed as a receiver or manager of a business appointed under the International

Business Companies Act, 1999; or

(f) require such action to be taken by the licensee as the Minister considers necessary.

(2) A licensee may, within seven days of a decision made under paragraph (a) of subsection (1), apply to the Minister for a reconsideration of the Minister's decision.

(3) A person appointed under paragraph (d) or (e) of subsection (1) or whose appointment has been extended under subsection (4), shall from time to time at that person's discretion and in any case within three months of the date of that person's appointment or of the extension of that person's appointment, prepare and furnish a report to the Minister of the affairs of the licensee and of that person's recommendations.

(4) On receipt of a report under subsection (3), the Minister may—

(a) revoke the appointment of the person appointed under paragraphs (d) or (e) of subsection (1);

(b) extend the period of the person's appointment;

(c) subject to such conditions as the Minister may impose, allow the licensee to reorganize its affairs or the affairs of its international mutual funds in a manner approved by the Minister; or

(d) revoke the international mutual fund licence held by the licensee and apply to the Court for an order that the licensee be wound up by that Court.

(5) Notwithstanding any provisions in this Act, the Minister may revoke a licence if a licensee —

(a) has ceased to carry on international mutual fund business; or

(b) goes into liquidation or is wound up or otherwise dissolved.

(6) Where the Minister revokes an international mutual fund licence under paragraph (a) of subsection (1), paragraph (d) of subsection (4) or under subsection (5), the Minister shall cause notice of the revocation to be published in the *Gazette* and may cause the notice to be published (whether within Saint Lucia or

in another jurisdiction), in such newspaper or other publication as the Minister may consider necessary in the circumstances.

(7) The Minister may, in any case in which a licensee is being wound-up voluntarily, apply to the Court if the Minister considers that the winding-up is not being conducted in the best interests of the investors or other creditors, and the Court shall make such order as it shall consider appropriate.

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Power of Minister over administrator

36.— (1) Where the Minister is of the opinion that an administrator is or appears likely to become unable to meet the administrator's obligations as they fall due, is carrying on business in a manner detrimental to the investors of the international mutual funds that the administrator administers, is winding up the administrator's business voluntarily or in a manner that is prejudicial to the investors or the administrator's creditors, has contravened this Act or has failed to comply with a condition of the international mutual fund administrator licence, the Minister may —

- (a) revoke the international mutual fund administrator licence;
- (b) impose conditions, or further conditions, upon the international mutual fund administrator licence and may amend or revoke any such condition;
- (c) require the substitution of any director or officer of the administrator;
- (d) at the expense of the administrator, appoint a person to advise the administrator on the proper conduct of the administrator's affairs and to report to the Minister within three months of the date of the person's appointment;
- (e) at the expense of the administrator, appoint a person to assume control of the administrator's affairs who shall with the necessary changes have all the powers of a person appointed as receiver or manager of a business appointed under the International Business Companies Act 1999; or
- (f) require such action to be taken by the administrator as the Minister considers necessary.

(2) An administrator may, within, seven days of the decision, apply to the Minister for a reconsideration of the Minister's decision to revoke a licence under paragraph (a) of subsection (1).

(3) A person appointed under paragraph (d) or (e) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (4), shall from time to time at that person's discretion and in any case within three months of the date of that person's appointment or of the extension of the person's appointment, prepare and furnish a report to the Minister of the affairs of the administrator and of the person's recommendations.

(4) On receipt of a report under subsection (3), the Minister may—

(a) revoke the appointment of the person appointed under paragraph (d) or (e) of subsection (1);

(b) extend the period of that person's appointment;

(c) subject to such conditions as the Minister may impose, allow the administrator to reorganize his or her affairs in a manner approved by the Minister; or

(d) revoke the international mutual fund administrator licence and apply to the Court for an order that the administrator be wound- up forthwith by that Court in which case the provisions of the International Business Companies Act, 1999, relating to the winding-up of a company by that Court shall with the necessary changes apply.

(5) Notwithstanding any provisions herein, the Minister may revoke a licence if an administrator _—

(a) has ceased to carry on the business of an international mutual fund administration; or

(b) goes into liquidation or is wound up or otherwise dissolved.

(6) Where the Minister revokes a licence under paragraph (a) of subsection (1), paragraph (d) of subsection (4) or under subsection (5), the Minister shall cause notice of such revocation to be published in the *Gazette*, and may cause the notice to be published (whether in Saint Lucia or elsewhere), in such newspaper or other publication as the Minister may consider

necessary in the circumstances.

(7) The Minister may, in any case in which an administrator is being wound up voluntarily, apply to the Court if the Minister considers that the winding up is not being conducted in the best interest of the administrator's creditors, and the Court shall make such order as it shall consider appropriate.

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PART V

Miscellaneous Provisions

Secrecy

37.— (1) Subject to subsections (2) and (3), no information shall be disclosed relating to —

(a) any application made to the Director for a licence under this Act;

(b) the affairs of a licensee; or

(c) the affairs of an administrator;

that the Minister or a person acting under the authority of the Minister has acquired in the course of their duties under this Act.

(2) Subsection (1) does not apply to a disclosure by the Director

—

(a) necessary for the effective regulation of a licensee or an administrator;

(b) when lawfully required or permitted to do so by a court of competent jurisdiction in Saint Lucia;

(c) permitted under this Act;

(d) permitted under any other law in force in Saint Lucia; or

(e) in respect of the affairs of a licensee or an administrator with the authority of the licensee or an administrator which has been voluntarily given.

(3) Subject to subsection (4), the Minister may disclose to another regulatory authority outside Saint Lucia, information concerning the affairs of a licensee or an administrator where —

(a) the other regulatory authority permits reciprocal disclosure;

(b) the disclosure pertains to actions of the licensee in violation of any law with respect to the failure to a licensee or an administrator to comply with generally accepted principles

relating to international mutual fund business.

(4) Nothing in subsection (3) authorises the Director to make a disclosure referred to in that subsection unless the Director is satisfied that the intended recipient regulatory authority is subject to adequate legal restrictions on further disclosures which may include the provision of an under-taking of confidentiality.

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Appeal

38.— (1) An appeal lies to the Court from any decision of the Minister revoking an international mutual fund licence or an international mutual fund administrator licence.

(2) An appeal against the decision of the Minister shall be on motion.

(3) A person making an appeal under this section shall, within twenty-one days after the day on which the Minister has given his or her decision, serve a notice in writing signed by the person or the person's attorney-at-law or the Minister of the person's intention to appeal and of the general ground of his or her appeal.

(4) A person aggrieved by a decision of the Minister may, upon notice to the Minister, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the Court upon hearing of such an application may extend the time presented by this section as it deems fit.

(5) The Minister shall, subject to section (6), upon receiving the notice of appeal, transmit to the Registrar of the Court without delay, a copy of the decision and all papers relating to the appeal.

(6) The Minister is not compelled to disclose any information pursuant to subsection (5) if the Minister is satisfied that it would be contrary to the public interest.

(7) The Registrar of the Court shall set an appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(8) At the hearing of an appeal, the appellant shall before going

into the case, state all grounds of appeal on which the appellant intends to rely and shall not, unless by leave of the Court, go into any matters not raised by any statements.

(9) The Court may adjourn the hearing of an appeal and may, upon the hearing confirm, reverse, or modify the decision of the Minister or remit the matter with the opinion of the Court to the Minister.

(10) An appeal against a decision of the Minister shall not have the effect of suspending the execution of such decision.

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Obligation of auditors

39.— (1) If an auditor, in the course of carrying out an audit of the accounts of a licensee becomes aware or has reason to believe that the licensee is —

(a) or is likely to become unable to meet its obligations as they fall due;

(b) carrying on, or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors; or

(c) carrying on or attempting to carry on without keeping any or sufficient accounting records to allow its accounts to be properly audited;

the auditor shall immediately give the Director written notice of the auditor's knowledge or belief giving the auditors reason for that knowledge or belief.

(2) An auditor who contravenes subsection (1) commits an offence and is liable on conviction to a fine of forty thousand dollars.

(3) If an auditor, in the course of carrying out an audit of the accounts of an administrator, becomes aware of or has reason to believe the administrator is—

(a) or is likely to become unable to meet the administrator's obligations as they fall due;

(b) carrying on or attempting to carry on business or winding up

its international mutual fund administration services business in a manner that is prejudicial to investors in any licensee it is providing international mutual fund administration services or to its creditors or the creditors of any such licensee; or

(c) carrying on or attempting to carry on business without keeping any or with keeping insufficient accounting records to allow its accounts to be properly audited;

the auditor shall immediately give the Director written notice of the auditor's knowledge or belief giving the auditor's reason for that knowledge or belief.

(4) An auditor who contravenes subsection (3) commits an offence and is liable on conviction to a fine of fifty thousand dollars.

(5) A reference in this section to an auditor carrying out an audit of the accounts of a licensee or an administrator includes an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit or whose contract to carry out or complete the audit was otherwise terminated.

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Offences triable on indictment

40. An offence under this Act is triable on indictment only.

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Indemnity

41. Liability shall not be incurred by the Government and a court proceeding shall not be brought against the Government, any agent of the Government, the Director or any person acting under the authority of the Minister or the Director for any act done or omitted to be done in good faith —

(a) in the performance or intended performance of any function or duty; or

(b) in the exercise or intended exercise of any power, under this Act.

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Exemption from compliance with Trade Licensing Act

42.— (1) International mutual fund administration services may be carried on by an administrator without reference to the Trade Licensing Act, 1985.

(2) International mutual fund business may be carried on by a licensee without reference to the Trade Licensing Act, 1985.

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Exemption from other enactments

43. Notwithstanding any law to the contrary —

(a) a licensee; and

(b) an investor in a licensee who is not ordinarily resident in Saint Lucia;

are in all respects exempt from any and all of the provisions of the Income Tax Act, 1989, the Stamp Duty Ordinance Cap. 219.

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Regulations

44. The Minister may make Regulations —

(a) to prescribe anything that may be prescribed under this Act;

(b) to control the form and content of advertising by a licensee or an administrator;

(c) to prevent the use of an international mutual fund to obliterate the tracing of the proceeds of crime and to deal with any such proceeds held in the international mutual fund;

(d) to set, waive or vary any fees payable under this Act; and

(e) generally for carrying this Act into effect.

Passed in the House of Assembly this 30th day of November, 1999.

MATTHEW ROBERTS,

Speaker of the House of Assembly.

Passed in the Senate this 22nd day of December, 1999.

E. JANE BOURNE,
President of the Senate.

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CASTRIES
2000

No. 44] *International Mutual Funds Act* [1999.

SCHEDULE
APPLICATION FOR AN
INTERNATIONAL MUTUAL FUND LICENCE

1.Applicant

State name and address of the international mutual fund company.

2.Constitution

(1) State the legal form of the proposed international mutual fund.

(2) State the name of the country or jurisdiction where the proposed international mutual fund is to be distributed.

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3.Officers/Directors/Promoters

(a) State the name, address, place of birth and citizenship of each officer and director of the international mutual fund company and of each promoter of the proposed international mutual fund.

(b) State educational and professional qualifications of each person named in sub paragraph (a).

(c) Give details of business, occupation, or employment of each person named in sub paragraph (a).

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4.International Mutual Fund Administrator

(a) State the name, address, place of birth and citizenship of the individuals, or the officers and directors of the international mutual fund administrator, providing international mutual fund administration services to the proposed international mutual fund.

(b) State educational and professional qualifications of each person named in sub paragraph (a).

(c) Give details of business, occupation, or employment of each person named in sub paragraph (a) .

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5.Reference

Give two personal references, a bank reference and a police clearance certificate for each person mentioned in paragraphs 3 and 4 above.

6.Functionaries

State name, addresses and business activities of each of the international mutual fund company's investment advisors and custodians.

7.Prior Registration

State if the international mutual fund company is now or has ever been registered, licensed, recognised or authorised under any law or regulations relating to mutual funds, collective investment schemes, collective investment funds or securities in any country or jurisdiction.

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8.Refusal or Disciplinary Measure

Has the international mutual fund company, any of the directors or officers of the international mutual fund company or any administrator, investment advisor, custodian or promoter ever been —

(a) refused an application for registration, licence, recognition or authorisation; or

(b) suspended, or had a registration, licence, recognition or authorisation revoked;
by any authority, in any country or jurisdiction? Give details and reasons.

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9.Civil Proceedings

Has a judgement been rendered or is any suit, action or proceeding pending against any officer, director, promoter or administrator of the international mutual fund, or any of its functionaries in civil proceedings in any Court or tribunal in any country or jurisdiction

which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation, or similar conduct? Give details .

10.Offences

Has any officer, director, promoter or administrator of the international mutual fund company or of any of its functionaries been or is being charged, indicted or convicted in any jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft? Give details.

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11.Bankruptcy

Has any officer, director, promoter or administrator of the international mutual fund company or of any of its functionaries been —

(a) declared bankrupt or been party to bankruptcy, or insolvency proceedings;

(b) subject to proceedings relating to winding-up, dissolution or creditor's arrangement; or

(c) subject to proceedings relating to receivership or creditor's compromise; in any country or jurisdiction? Give details.

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AFFIDAVIT

I,.....

In my capacity as (director or officer) acting for and on behalf of the applicant mutual fund company,

Do depose and say that I have read and understood the questions in this application form and hereby certify under Oath that the foregoing answers and statements are true, correct and complete to the best of my knowledge, information and belief and that I have made a conscientious effort to ensure that this is the case.

Sworn before me _____

(Name and Signature of Deponent)

COMMISSIONER OF OATHS

at the City of _____ this _____ day of

_____ 19_____ .

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