

SAINT LUCIA
GUIDANCE NOTES

INTERNATIONAL MUTUAL FUNDS ACT 1999
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Prepared by
Director of International Financial Services, extant
1st January, 2001

PREAMBLE

The Director of International Financial Services is empowered under the above Act to request from licencees, and their Administrators such information as he/she thinks fit for regulating the international financial services industry in St. Lucia.

The powers/duties of the Director are, *inter alia*, set out in **Sections 25 and 30 of the International Mutual Funds Act.**

This publication has been prepared by the Financial Services Supervision Unit (FSSU) of the St. Lucia Ministry of International Financial Services to provide registered agents and trustees and their clients with guidance into the level of detail with which they are required to comply in the conduct of their business in the area of international mutual funds and their administration from within St. Lucia. is intended to cover some of the principal issues contained in the Act and Regulations and give service

providers, their clients and their client's auditors an understanding of the minimum expectations of the FSSU.

For all legal purposes the reader should refer to the official texts of the Act and the Regulations, and must not depend on this Guide as a substitute for either. Appropriate advice on more technical and detailed questions may be obtained from registered agents/trustees and qualified members of the legal profession.

Further inquiries may be addressed to the office of the Director, Financial Services Supervision Unit, 1 Bridge Street, Castries, St. Lucia. Tel: 1(758) 453 1713, Fax: (1 758) 451 7655.

A. THE APPLICATION PROCESS: THE FUND

1. Procedural Steps

A company cannot engage in the business of international mutual funds from within St. Lucia without first obtaining the requisite licence. As a precursor to its licence application, an Applicant which is a prospective IBC must first seek consent from the Minister under section 5(3) of the IBC Act.

Existing international mutual funds companies incorporated in another jurisdiction wishing to redomicile (to St. Lucia) for the purposes of engaging in international Mutual Funds must seek a provisional registration under section 85 of the IBC Act. In the case of a St. Lucia “non-fund” company wishing to engage in international mutual funds, ministerial consent must be obtained to enable it to adopt mutual fund-specific objects clauses.

Where application is being made by a unit trust, such trust will not be registered by the Registrar unless a certificate is issued by the Minister, authorising the Registrar to register the trust.

In practical terms, Applicants would submit the ‘Consent’ application simultaneously with the “draft” substantive application. The prescribed application fee made payable to the **Accountant General** should also be enclosed.

1.1 **Application for Ministerial Consent to incorporate**

This application for Ministerial consent is necessary to enable due diligence to be carried out on the promoters of the entity. This application should be made on the form enclosed at Appendix 1 and should include as a minimum, the following in respect of each promoter.

- (1) Name (showing any previous name and all aliases).
- (ii) Date and place of birth.
- (iii) Current Address and supporting utility bill.
- (iv) Data pages (including photograph) of all passport(s) duly
notarised.
- (5) Social Security Number.
- (vi) Drivers licence.
- (vii) Curriculum Vitae.
- (viii) A Banker's reference, accountant's reference and lawyer's
reference.

If Ministerial approval is granted to (i) incorporate a new company or (ii) amend the objects clauses of an existing company or (iii) approve a unit trust for the purposes of engaging in international mutual fund business, a certificate in the form of Appendix 3 will be issued to the Registered Agent for presentation to the Registrar authorising the Registrar, to effect the transaction as appropriate.

1.2 **Tentative application**

The documents to be included in the application are set out in section 3(7), section 4 and section 8 of the Act; together with any further documents required by this Guide. On a strict construction of the Act, an eligible Company must first be incorporated (or continued) in order to apply for a licence. In the interest of commercial efficacy however, a tentative application would be made at the same time as the application for consent to incorporate, and **each** mutual fund would be founded upon a **separate** IBC or unit trust as the case may be.

1.2.1 **Format of Tentative application**

All applications should be submitted in neatly tabulated files. The sequence of tabulations should be based on the sequence and format of the Regulations, e.g. all the required information in Part 4 of the Regulations should be under Tab 4; and more specifically, the items listed under “Unit Trust” should be under Tab 4.1, etc. etc.

There is some direct positive correlation between the neatness of the presentations and the period of time during which the Applicant could expect a reply from the FSSU. Applications which are submitted in an unprofessional manner could expect to be placed at the end of the queue.

In conformity with the Regulations all applications should include a detailed Offering Document, Business Plan and accompanying projections (see under the section headed “Business Plan”).

2. The Business Plan

At the minimum, and without prejudice to the contents of the Regulations, the Business Plan should contain the following:

- A chart setting out the *dramatis personae*, i.e. the custodian, investment manager, administrators, sales/marketing agents, promoters, etc.

- Full financial projections covering at least three (3) years. These should indicate:
 - Cash flows to be generated from the fund’s own assets;
 - the amounts of funds under management;
 - that the fund is financially viable.

- A clearly defined list of intended investors (in the case of applicants seeking registration of a private fund;

- Cogent evidence that the sales/marketing manager, investment manager and custodian all have the requisite licences in their respective home countries.

Service providers and their clients are reminded that the Act lays down the minimum requirements and that the FSSU (through the Minister and the Director) has the power to request additional injections of capital in light of the requirements of the Applicant's business plan.

3. **Offering Document.**

Without prejudice to the generality of Section 3(7) of the Act, the Offering Document should contain the following:

1. A **detailed** section setting out the **objectives** of the Fund.
2. A detailed explanation of the mechanism by which NAV is to be calculated.
3. Explanation of the mechanism by which units are to be purchased and redeemed, and the days on which such redemption will be effected.
4. Front-end fees payable by investors.
5. Rear-end fees payable by investors.
6. Other initial or periodic charges and fees payable by investors.

7. Custodian/Trustee charges (indicate whether or not to be borne by the Fund).
8. Investment Adviser charges (indicate whether or not to be borne by the Fund).
9. Other fees to be paid by the Fund manager (e.g. administrator's fees, sales/marketing fees, etc.)
10. Other charges to be borne by the Fund.
11. Any geographical/nationality restrictions on sale or offering of shares/units. To whom is it intended to market the fund (e.g. general public, institutions, sophisticated investors, etc)?
12. Minimum subscription amounts.
13. Any limits on the number of investors.
14. How the investors are to be made aware of the prices of units in the Fund.
15. Any special peculiarities of the fund?
16. Any other relevant information, e.g. taxation effects.

In particular, in respect of fees and charges to be borne by the Fund (see e.g. Section 3(7) of the Act), the following fees should be explicitly shown, **custodian fees, investment manager's fees, administrators fees, sales commissions, etc.**

The following documents, where they apply, are to be included by way of Appendices to the Application:

- a. Trust Deed;
- b. Other Constitutional Documents of the Fund vehicle;
- c. Management Agreement;
- d. Custodian Agreement;
- e. Administration Agreement;
- f. Delegation Agreement;
- g. Investment Adviser's Agreement;
- h. Registrar's Agreement;
- i. Sub-Custodian Agreement;
- j. Investment Management.

4. **Certificate from Attorney**

The attorney's certificate required under section 8, should attest that the Offering Document complies with section 3(7) of the Act.

5. **The Financial Projections**

The projected financial statements should supplement the Business Plan (though the Act suggests these should be in the Offering Document) and should cover a period of at least 3 years.

The projection for each of these years should round off with a

Statement of the expected Net Asset Value (NAV) of the Fund.

The projections should clearly show that the Applicant and the Fund will remain solvent at all times. The following summary information which is needed for statistical/monitoring purposes, should also be provided in respect of each year, and once the Fund becomes operational should be included in the Annual Report.

- (a) Changes in Net Asset Value over the period;
- (b) Changes in Net Asset Value per Unit Outstanding;
- (c) The annual rate of return on the Fund;
- (d) The average annual compound rate of return on the Fund;
- (e) Some suitable and reliable measure of the Fund's volatility.
- (f) Some suitable measure of the management expense ratio of the Fund;
- (g) Some suitable and reliable measure of the extent to which the Fund is diversified;
- (h) Some suitable and reliable measure of the extent of the Fund's liquidity.

6. **Meetings**

While Applicants and their registered agents are not by law mandated to attend meetings with the Director and his staff these may become necessary from time to time. Face to face meetings could help to

clarify outstanding issues and questions. Any request (by either side) for a meeting would be made only after FSSU staff has had time to study the Applicant's written application submission in detail.

B. THE APPLICATION PROCESS: THE ADMINISTRATOR

1. Procedural Steps

Prospective Administrators do not require ministerial consent prior to incorporation as an IBC. However, Applicants need to be able to meet the requirements set out in Section 14 of the Act, i.e. at the minimum, they need to be able to satisfy the requirements as to competence and net worth set out in that section.

Promoters of the Administrator could expect to be put through the same due diligence procedures as promoters of a Fund. Accordingly the documents required under Section A1.1 of this Guide should be provided in respect of these promoters.

The (full) substantive application should be presented in compliance with Section A1.2.1 of this Guide.

2. The Business Plan

Each Applicant for a licence as Administrator should have a serious prospect of having at least one Fund under administration, and documentary evidence to that effect should be provided.

The application should also give a **date** by which the Administrator expects to have the Fund under its administration. Where the Administrator has no Funds under its control at the time its licence comes up for renewal, a renewal will be **refused**.

The Administrator should demonstrate some experience in the administration of mutual funds. Alternatively, it should have a relationship (verifiable by cogent evidence) with an overseas person with such experience, provided that this person will in the meantime provide training to the Applicant's St. Lucia personnel.

The Business Plan should include projections for at least the next 3 years, and should include details of how the Applicant proposes to establish and prove the statutory minimum net worth of US\$100,000.

C. THE MONITORING PROCESS: THE FUND

Licenses will be monitored and regulated through:

- a. The provision of $\frac{1}{2}$ **yearly and yearly returns**,
- b. Undergoing the annual statutory audit;
- c. The notification (to the FSSU) of changes in material particulars;
- d. The maintenance of proper books and records in St. Lucia.

1. Half Yearly and Annual Returns

In addition to being subject to periodic on-site inspection by the staff of the Financial Services Supervision Unit, licenses are required to provide at six monthly intervals (from the commencement of operations), information as required by the forms set out in Appendix

In particular, licenses are required to provide information pertaining to:

- Net asset value calculations;
- Amount of funds under management;
- Units redeemed or cancelled and the terms up which effected;
- Evidence that the Annual Report has been distributed to all investors of the Fund.

In addition, a representative sample of copies of statements distributed to investors must be provided to the FSSU.

Where licensees feel that their performance or the information pertaining thereto, require explanation, such explanation should be provided on the return forms.

2. The Annual Statutory Audit

The need for an annual audit is specified in section 24 of the Act, while the obligations of auditors are laid down in section 39(1). The annual audit is the main monitoring tool upon which the FSSU will rely. As a result, auditors of licensees are required to report to the Minister and not just to their shareholders. Auditors should note for the avoidance of doubt:

- a. that the Minister will place reliance on the audit report in determining whether or not to renew a licensee's licence;
- b. that their audit should (where appropriate) be guided by and differentiate between assets of the licensee and assets of the underlying IBC or unit trust.

Auditors should make themselves aware of their obligations under Section 39, and the criminal sanctions which flow from its contravention.

3. Notification of Changes

Licensees and their registered agents should inform the Minister and the Director, of changes in material particulars and the **written reasons** pertaining thereto in the case of each of the following:

- a. where there has been any change in the *dramatis personae*, i.e. custodian, trustees, investment manager, etc.
- b. where there has been a change in the senior management personnel of the licensee;
- c. where there is proposed to be a change in the shareholders of the underlying IBC;
- d. where there has been a change in any of the licensee's professional advisers.

Where the licensee seeks to offer Funds of a different type or in jurisdictions other than those included in its original business plan a new/revised business plan (and accompanying projections) and Offering Document must be submitted.

4. Books and Records

Every licensee is expected to maintain permanently at its principal office in St. Lucia such books of accounts and records of its business and financial affairs -

- (a) as will show adequately the nature and extent of its business carried on from within St. Lucia; and
- (b) as will enable the Minister or Director, at any time as provided in law to conduct a proper examination of the licensee's affairs, to ascertain with reasonable accuracy its financial position, and to verify that it is then in compliance with the law and these Guidelines.

4.1 Books to be Kept.

The books and records to be kept by every licensee at its principal office in St. Lucia is likely to include:

- (a) financial statements for the current year and the preceding three years for its business as carried on from within St . Lucia.
- (b) a register of the licensee's directors, officers and managers, showing their names and addresses;

- (c) minutes of all the licensee's general meetings, meetings of its board of directors, and meetings of committees of its board of directors.
- (d) general and subsidiary ledgers and general journals;
- (e) an up-to-date list of all the licensee's agents, (managers, administrators, custodians, etc); and
- (f) any other registers or records as may be specifically required in writing by the Minister from time to time.

4.2 Construction.

The above does not require the licensee to keep at its place of business in Saint Lucia the originals of the books and records described and it shall be sufficient if the licensee maintains access to such books and records in an electronic medium, the accuracy of which can be certified by a director or principal officer of the licensee upon request by the Minister or the Director.

5. Recognised Stock Exchanges

For purposes of these Guidelines, the following are designated as “approved stock exchanges”.

Alberta Stock Network

American Stock Exchange

Australian Stock Exchange

Geneva Stock Exchange

Hong Kong Stock Exchange

London Stock Exchange (or any other EU Stock Exchange)

Mexico Stock Exchange

Montreal Stock Exchange

National Association Securities Dealers Automated

Quotation System (NASDAQ)

New York Stock Exchange

The Philadelphia Stock Exchange

Tokyo Stock Exchange

Toronto Stock Exchange

Vancouver Stock exchange

Vienna Stock Exchange

4. **THE MONITORING PROCESS:- THE ADMINISTRATOR**

Administrators are required under Section 29 to undergo an annual audit.

Mutual Fund Administrators will need to need to satisfy/notify the FSSU:

- (a) that it has an adequate complement of staff to deal with the frequency of NAV calculations;
- (b) by providing a list of funds under administration, and the NAV for each of these funds;
- (c) each time the administrator takes on a new fund.

1. **Notification of Changes**

In addition, administrators and their registered agents should inform the Minister and the Director of changes in material particulars and reasons pertaining thereto in the case of each of the following:

- a. where there has been a change in the senior personnel of the administrator;
- b. where there is proposed to be a change in the shareholders of the administrator;
- c. where there has been a change in the auditors of the

- administrator;
- d. where the net worth of the administrator becomes capable of falling below the statutory minimum of \$100,000 or where a guarantee (or other form of financial assistance) has been provided in favour of the administrator (e.g. under Section 17, where there has been a material deterioration in the financial condition of the “surety”).

2. **Measurement of Performance**

Administrators are required to provide the following on an annual basis:

- a. Some suitable and reliable measure of the extent to which the entity is capitalised, in particular, indicating whether the net worth of the entity is less than 40% of its liabilities.
- b. Some suitable and reliable measure of the entity’s investments in real estate, its affiliates and subsidiaries as a % of the entity’s assets.
- c. Some suitable and reliable measure of the entity’s assets as a % of its current liabilities.

- d. Some suitable and reliable measure of the entity's return on equity, i.e. net income divided by the average of current and prior year equity.

- e. Some suitable and reliable measure of the quality and performance of the entity's assets.

APPENDIX 1

International Mutual Funds Act 1999

APPLICATION FOR MINISTERIAL CONSENT TO INCORPORATE AN
INTERNATIONAL MUTUAL FUND PURSUANT TO
SECTION 5(3) IBC ACT 1999

1. Proposed Name of : IBC: Unit Trust

2. Please provide in respect of each promoter of the entity the following details for due diligence purposes.

- (i) Name (showing any previous name and all aliases).
- (ii) Date and place of birth.
- (iii) Current Address and supporting utility bill.
- (iv) Data pages of passport duly notarised.
- (v) Social Security Number.
- (vi) Driver's licence.
- (vii) Curriculum Vitae.
- (viii) A Banker's reference, accountant's reference and lawyer's reference.

NOTE: “Promoter” includes shareholder, director, trustees, officers or any person acting as such regardless of how described.

3. Please say how the entity will be capitalised and provide an undertaking supported by sworn affidavit to provide any security deposit required by law.

4. Please state name/address of the entity’s:

(a) Proposed Auditor

(b) Proposed Attorney

(c) Proposed local director (if applicable).

(d) Registered Agent/Registered Trustee

5. We/I request the consent of the Minister to incorporate/register a prospective or International Business Company/Unit Trust for the purposes of engaging in international mutual funds business under Section 5(3) of the International Business Companies Act 1999 such company being described in this application.

Signed _____

Registered Agent

Date: _____

APPENDIX 2

INTERNATIONAL MUTUAL FUNDS ACT 1999

PUBLIC FUNDS: PERIODIC RETURN OF PERFORMANCE

	6 months ended _____	Previous 6 months ended _____
Name of Mutual Fund:	\$ _____	\$ _____
IBC/Unit Trust Reg. No:		
Financial Year to:		
1. Funds under management: Value		
At start of the period.		
At close of the period.		
2. Net Asset Value per unit:		
At start of the period		
At close of the period.		
3. Units redeemed during the period.		
4. Measures of Performance:		
Annual Compound rate of return of the Fund.		
(i) Capital		
(ii) Revenue		
Expense ratio		
Liquidity ratio		
Acid test ratio		
Some measure (with explanation) of how well diversified is the fund.		
Some measure (with explanation) of the volatility of Funds' return.		

APPENDIX 3

**APPLICATION PURSUANT TO SECTION 5 OR SECTION 9
INTERNATIONAL BUSINESS COMPANIES ACT 1999**

CONSENT GRANTED THIS _____ DAY OF _____, 20__.

TO THE PROMOTERS OF _____

DELETE (A), (B) OR (C) AS APPROPRIATE.

TO INCORPORATE THE PROPOSED ENTITY AS AN INTERNATIONAL BUSINESS
COMPANY, or

(B) TO AMEND THE OBJECTS CLAUSE OF AN EXISTING COMPANY;

(3) TO REGISTER A UNIT TRUST.

For the purposes of providing international mutual fund business.

THIS CONSENT IS VOID IF AN APPLICATION FOR A LICENCE IS NOT MADE WITHIN
90 DAYS OF THE DATE THIS CONSENT IS GRANTED.

ANY MATERIAL CHANGE IN THE PARTICULARS SET OUT IN THIS APPLICATION
MAY, IN THE DISCRETION OF THE MINISTER VOID THIS CONSENT.

MINISTER OF INTERNATIONAL
FINANCIAL SERVICES

