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**MEMORANDUM**  
**on**  
**MUTUAL FUNDS IN BERMUDA**

**MUTUAL FUNDS**

The Companies Act, 1981 of Bermuda and the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998 regulate Mutual Funds (whether Bermuda Standard Schemes, Institutional Schemes or Bermuda Recognized Schemes).

The Regulations referred to above are designed to protect investors by providing for various levels of regulation depending upon type of scheme being utilized.

A Mutual Fund can be incorporated by registration and the following *Bermuda Monetary Authority* Regulations will apply with respect to most of the mutual fund schemes:

- (i) A local (Bermudian) bank, or a local subsidiary of a local bank, will be required to act as custodian\* and registrar and transfer agent.
- (ii) The promoters of the Mutual Fund will be required to satisfy the Authority of their investment management expertise and in the case of widely distributed public funds, the promoters must show evidence as to experience as mutual fund operators especially their administrative and advisory abilities. Detailed references and resumes will be required on the promoters and should include their financial standing, integrity and business experience with specific reference to their expertise in the mutual fund area.
- (iii) If the applicant is registered with or is a member of any self regulatory professional organization, a recognized securities association, a recognized securities exchange or is licensed or supervised by a recognized authority or other regulatory body, documentary evidence of this should be provided.

- (iv) The submission of a business plan or offering document will be required and if the Mutual Fund is widely held or listed on the Bermuda Exchange or an approved exchange, the Fund must comply with the prospectus requirements of the Companies Act, 1981.
- (v) A Bermuda incorporated management company is required to manage the Mutual Fund but this entity can sub-contract the bulk of the management function to third parties in or outside of Bermuda.
- (vi) Where a sub-custodian or sub-registrar and transfer agent is utilized the choice or selection is to remain entirely in the hands of the local custodian or registrar and transfer agent as it is ultimately responsible.
- (vii) For money funds only, subscriptions and redemptions will not be allowed more frequently than weekly. (These matters will specifically be set out in the Fund's Bye-Laws.)
- (viii) a statement of whether the applicant, proposed directors or employees of the company have been censured, disciplined by any regulatory body or convicted by a court of law.
- (ix) For commodity-based Funds, including those dealing in financial and commodity futures, the policy with regard to security based funds will also apply with the exception that co-custodians may be permitted, provided that:-
  - (a) a local custodian handles all assets of the Fund other than the commodities, the futures or the assets required as margin (this provision may be waived under certain circumstances);
  - (b) the co-custodian and the broker to be used are highlighted in the prospectus so they are seen to be co-sponsors of the Fund;
  - (c) a copy of the agreement with the co-custodian is provided;
  - (d) the promoters and co-custodians are well established entities or financial institutions with proven records;
  - (e) the brokers and traders concerned have experienced and proven records.

In the event that any one or more of the aforementioned regulations are not appropriate to a specific proposed fund, a memorandum setting forth the reasons why fulfillment of all the requirements is not possible should be lodged with the Bermuda Monetary Authority. Such memorandum may receive consideration for a waiver.

The issue and redemption of shares of a Mutual Fund that is classified as non-resident for Exchange Control purposes may be effected without specific consent under the Bermuda Exchange Control Act, 1972 and Regulations made thereunder

If there are changes to the Managers of the Fund, then Bermuda Monetary Authority approval is required.

\* The Bermuda Monetary Authority may, pursuant to an application, relax its requirement that a Bermuda custodian or management company be appointed.

### **Type of Investment Fund**

Investment Funds may be structured in a variety of ways.

- i) ***Bermuda Standard Scheme*** – The Regulations provide for certain prospectus disclosure and financial reporting requirements for Bermuda Standard Schemes. In addition, the Regulations require such a scheme to appoint an investment advisor, an independent administrator, a custodian, a registrar and an auditor. All such entities are required to be approved by the Bermuda Monetary Authority.
- ii) ***Bermuda Institutional Scheme*** – The Regulations provide for such schemes to meet the minimum investment requirement of \$100,000 per investor from sophisticated private investors or high net worth investors. The Regulations referred to above apply equally to Bermuda Institutional Schemes except that such scheme can become exempt from the requirement to appoint a Bermuda bank as a custodian.
- iii) ***Bermuda Recognized Schemes*** – A Bermuda mutual fund company (not a unit trust scheme) which has satisfied the relevant requirements laid down by the Companies Act, 1981 could be certified by the Minister of Finance of Bermuda as a UK Class Scheme. Once certified, such a fund may make its shares available within the U.K.

### **Certification as UK Class Scheme**

Upon application to the Minister of Finance, a Bermuda Mutual Fund may be certified as a United Kingdom Class Scheme where the Minister is satisfied that:

- (a) the applicant is a mutual fund within the meaning of the Companies Act;
- (b) the applicant is in compliance with the Companies Act;

- (c) the custodian or co-custodian of the mutual fund is a bank incorporated in Bermuda;
- (d) the manager of the mutual fund is a company incorporated in Bermuda (separate and apart from the custodian);
- (e) the mutual fund is fit and proper to be approved as a United Kingdom class scheme;
- (f) the Bye-Laws of the mutual fund comply with prescribed requirements established by the Minister of Finance;
- (g) the Custodian and managers of the mutual fund are, or will, upon certification, be participants in a compensation arrangement.

Such arrangement is approved by the Minister of Finance in which the custodian and manager are participants, providing for compensation to any member or former member of the mutual fund who has suffered loss as a result of any material breach by the custodian or the manager of the Fund of the Bye-Laws or the Companies Act.

### **Rights of Members (UK Class Scheme)**

The Companies Act allows a member or a former member of a mutual fund certified as a UK Class Scheme, under Section 156H of the Companies Act, to have a right of action against the custodian or manager of the Fund as a result of any material breach of the Bye-Laws of the Fund or the Companies Act by the custodian or manager.

### **The Companies Act, 1981**

The Companies Act, 1981 of Bermuda (“the Companies Act”) specifically regulates Mutual Funds and Part XIIA thereof defines a Mutual Fund as a company limited by shares and incorporated for the purpose of investing the moneys of its members for their mutual benefit, having the power to redeem or purchase for cancellation its shares without reducing its authorized share capital and stating in its Memorandum that it is a Mutual Fund.

A Mutual Fund, if it is so authorized by its Memorandum, shall have the power to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a member. Such powers shall be exercisable by the Directors of the Mutual Fund in accordance with the Company's Bye-Laws.

## Regulations

A Mutual Fund can be incorporated by registration and the Bermuda Monetary Authority (Collective Investment Scheme) Regulations will apply with respect to all applications:

- (i) A Bermuda bank, or a local subsidiary of a Bermuda bank, will be required to act as custodian or co-custodian of the assets of the Fund and may also act as registrar and transfer agent (the custodian requirement may be waived under certain circumstances).
- (ii) The promoters of the Mutual Fund will be required to satisfy the Authority of their investment management expertise and in the case of widely distributed funds, the promoters must show evidence as to experience as mutual fund operators especially their administrative and advisory abilities. Detailed references and resumes will be required on the promoters and should include their financial standing, integrity and business experience with specific reference to their expertise in the mutual fund area.
- (iii) The submission of a business plan or draft offering document will be required and if the Mutual Fund is widely held or listed on the Bermuda Exchange or another approved exchange, the Fund must comply with Part III of the Companies Act.
- (iv) A Bermuda incorporated management company is required to manage the Mutual Fund but this entity can sub-contract the bulk of the management function to organizations outside Bermuda.
- (v) Where a sub-custodian or sub-registrar and transfer agent is utilized the choice or selection is to remain entirely in the hands of the local custodian or registrar and transfer agent as it is ultimately responsible.
- (vi) For money funds only, subscriptions and redemptions will not be allowed more frequently than weekly. (These matters will specifically be set out in the Fund's Bye-Laws.)
- (vii) For commodity-based Funds, including those dealing in financial and commodity futures, the policy with regard to security based funds will also apply with the exception that co-custodians may be permitted, provided that:
  - (a) local custodian handles all assets of the Fund other than the commodities or the futures;

- (b) the co-custodian and the broker to be used are highlighted in the prospectus so they are seen to be co-sponsors of the Fund;
- (c) a copy of the agreement with the co-custodian is provided;
- (d) the promoters and co-custodians are strong and established financial institutions with proven records;
- (e) the brokers and traders concerned have experienced and successful records.

### **Waiver of Certain Regulations**

In the event that any one or more of the aforementioned guidelines are not appropriate to a specific proposed fund, a memorandum setting forth the reasons why fulfillment of all the requirements is not possible should be lodged with the Bermuda Monetary Authority. Such matters may receive consideration for a waiver.

### **Change of Shareholders**

The issue and redemption of shares of a Mutual Fund that is classified as non-resident for Exchange Control purposes may be affected without specific consent under the Bermuda Exchange Control Act, 1972 and Regulations made thereunder. Issues and transfers in respect of any person regarded as "resident" in Bermuda for Exchange Control purposes requires specific prior authorization under the Act.

### **Manager of Fund**

A Bermuda incorporated entity is required to manage the Fund.

If there are changes to the Managers of the Fund, then Bermuda Monetary Authority approval is required.

### **Prospectus Requirements**

A widely-held Mutual Fund that offers its shares to the public is required to comply with the Prospectus requirements under Part III of the Companies Act, 1981 or list its shares on a recognized (or appointed) Stock Exchange, thereby conforming to the provisions of Section 26(2) of the Companies Act.

If the Mutual Fund files a prospectus, it must contain particulars as set out in Section 27(1) of the Companies Act, 1981. Where the Company continuously over a period offers shares to the public, it must provide, every twelve months from the date of the

last issue, a new prospectus and whenever any of the particulars in the prospectus issued by the Company ceases in a material respect to be accurate, the Company shall give reasonable public notice of the change of such particulars.

### **Permit License**

If Mutual Funds sell their shares locally, this may constitute carrying on business in Bermuda and may require a Permit and /or a licence under the Companies Act

### **Government Fees**

An exempted mutual fund is liable to an annual Government fee which is based upon its assessable capital (see Schedule of Fees attached hereto as *Annexure 'A'*).

### **Tax Exemption**

The Fund would normally apply for an undertaking from the Minister of Finance in Bermuda pursuant to the provisions of the Exempted Undertakings Tax Protection Act, 1966 of Bermuda which exempts the Fund and its shareholders, other than shareholders ordinarily resident in Bermuda, from any Bermuda taxes computed on profits, income or any capital assets, gain or appreciation, of any tax in the nature of estate duty or inheritance tax until 28th March, 2016. No withholding taxes are deducted from dividends paid by the Company to its own shareholders under Bermuda law.

Stamp duty is no longer payable by exempted companies. The Memorandum of Association, Memorandum of Increase Capital and Transfer of Shares in an exempted Mutual Fund are exempt from stamp duty.

*Annexure 'A'*

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**SCHEDULE OF FEES AND EXPENSES FOR THE INCORPORATION  
AND CORPORATE ADMINISTRATION OF AN  
EXEMPTED MUTUAL FUND COMPANY**

Note: LYNDA MILLIGAN-WHYTE & ASSOCIATES, Barristers & Attorneys, provides legal services in relation to the incorporation of a Bermuda company. Richmond Corporate Services Ltd., an affiliate of the said law firm provides corporate administration services after the company has been incorporated.

<b>A. INCORPORATION FEES AND EXPENSES:</b>	<u>BD\$</u>
1. Law Firm professional fee for incorporation only (minimum fee):	5,000.00* <sup>1</sup>
2. Corporate equipment (approximately):	350.00
3. Advertising costs (approximately)	125.00
4. Minimum annual Government fee based upon \$12,000 capital. This fee is calculated on a graduated scale applied to the company's assessable capital. Where incorporation takes place on or after 1st September in any year, then only half of this fee is payable for that year:	1,780.00* <sup>2</sup>
4. Application fee for permit to incorporate:	215.00
5. Filing fee for Memorandum of Association:	64.00
6. Application fee for Tax Exemption Undertaking	<u>132.00</u>
	<b>\$7,666.00</b>

Additional expenses may be incurred in respect of courier service, faxes, long distance telephone calls, etc.

A minimum initial retainer of \$7,666.00 is required to incorporate an exempted mutual fund company. The retainer will be larger if the firm anticipates that the costs (professional fee and expenses) will exceed the minimum initial retainer. Further retainers may be required during the course of the engagement.

## **B. PROFESSIONAL FEES:**

Additional fees for time spent in relation to drafting Offering Documents or constituent documents etc. for the Fund need to be discussed on a case-by-case basis.

Where LYNDA MILLIGAN-WHYTE & ASSOCIATES provides legal services to a company, the costs thereof are invoiced separately. Attorney's fees will be charged at rates ranging between \$300 and \$500 per hour.

## **C. ANNUAL ADMINISTRATION FEES AND EXPENSES:**

1. Richmond Corporate Services Ltd.'s annual fee for the provision of a registered office, directors, resident representative and/or secretarial services (minimum subject to amount of work involved) payable annually:	3,635.00* <sup>3</sup>
2. Annual Government fee - payable in January of each year;	<u>1,780.00</u> * <sup>2</sup>
	<b>\$5,415.00</b>

Additional expenses may be incurred in respect of auditors' and accountants' fees, courier service, faxes, long distance telephone calls, etc.

### **NOTES:**

\*<sup>1</sup> This fee charged by the Law Firm for incorporation of a company is based on time spent by attorneys and support staff in incorporating the company. Attorneys are charged out at hourly rates ranging between \$300 and \$500. Support staff (incorporations administrators and paralegals) are charged out at rates ranging between \$110 and \$165 per hour. Notwithstanding the above, the minimum fee charged for incorporation is \$5,000.00 and all time spent in excess of the minimum will be billed.

\*<sup>2</sup> Government Fee Schedule – Graduated Scale

The annual Government fee is shown opposite the assessable capital (authorised share capital, plus any share premium account) set out below:

Assessable CapitalAnnual Government Fee

(i)	\$0 - \$12,000	\$ 1,780.00
(ii)	\$12,001 - \$120,000	\$ 3,635.00
(iii)	\$120,001 - \$1,200,000	\$ 5,610.00
(iv)	\$1,200,001 - \$12,000,000	\$ 7,475.00
(v)	\$12,000,001 - \$100,000,000	\$ 9,345.00
(vi)	\$100,000,001 - \$500,000,000	\$16,695.00
(vii)	\$500,000,001 or more	\$27,825.00

\*3

This fee charged by Richmond Corporate Services Ltd. for the provision of corporate administration services is based on time spent by corporate administrators and other support staff. Corporate administrators and paralegals are charged out at the rate of \$165 per hour. Notwithstanding the above, the minimum fee charged annually for corporate administration services is \$3,635.00.