



Procedure

Assessing Controller Costs

1. Statement of Objectives

To set out and describe the criteria the Authority will consider when assessing and approving a controller's costs, which will occur only where a person has been appointed to assume control pursuant to the Mutual Funds Law (2003 Revision).

2. Introduction

The Authority has powers under the regulatory laws to appoint a person to assume control of the affairs of a regulated entity. A person appointed as a controller is entitled to be paid for services performed in the carrying out of the role of controller, including expenses incurred for that purpose. Such fees and expenses are payable by the regulated person (licensee or registered person, as the case may be). While there are no express provision for the Authority to approve the controller's fees and costs, the Authority will do so where requested by a controller in keeping with the guidance set out in this procedure. This approach is consistent with the Authority's principal functions to regulate and supervise financial business under the Monetary Authority Law (2003 Revision) and the regulatory laws and its duty to promote and enhance market confidence, investor protection and the reputation of the Cayman Islands as a financial centre.

The Authority's role in assessing and approving controller's costs will be limited to the regulated mutual funds and mutual fund administrators, as under the regulatory laws (other than the Mutual Funds Law (2003 Revision) a controller



currently has access to the court pursuant to Section 18 of the Bankruptcy Law (1997 Revision) and in that context can seek the court's direction on this issue.

The Authority will assess and approve costs at the request of a controller only where information is provided in a form consistent with this procedure. In the event that there is a significant dispute about the extent of costs claimed by the controller, the parties may submit the costs to an independent expert agreed by both parties. Where an independent expert's opinion is sought and received, pursuant to agreement between the parties, it is expected that the expert's opinion would be binding on all parties.

3. The Powers and Duties of the Controller

Generally, the controller appointed under the Mutual Funds Law (2003 Revision) has the following powers and duties:

- 3.1 Assume control of a regulated mutual fund/mutual fund administrator;
- 3.2 Possess all the powers necessary, to the exclusion of any operator/any other person (other than a liquidator or receiver) to administer the affairs of the regulated mutual fund/mutual fund administrator in the best interests of the investors and creditors of the mutual fund/mutual fund administrator and the funds administered, as the case may be.
- 3.3 Prepare and furnish a report to the Authority regarding the affairs of the regulated mutual fund/mutual fund administrator and make recommendations as to the action to be taken. The report should be furnished as soon as possible, but no later than three months from the date of the appointment. An interim report to be furnished earlier may be sought;

4. The Procedure



4.1 General Principles for the Assessment of Controller's Costs

- 4.1.1 The overriding principle is that a controller should receive costs that are reasonably incurred by him in conducting the controllership in an economical, expeditious and proper manner;
- 4.1.2 A letter of arrangement setting out the terms of appointment and conditions of controller should be provided in writing by the Authority, and the person to be appointed as controller should confirm in writing his willingness to act in accordance with these terms and conditions before he is appointed. A standard letter setting out the terms of appointment appears at Schedule 1;
- 4.1.3 The controller will submit his costs and disbursements to the Authority for approval in accordance with the procedures set out below;
- 4.1.4 Reasonable travelling and hotel expenses incurred shall be recoverable. Time spent travelling should be charged at one half, unless time is spent working on the engagement while travelling. In cases where travelling to a foreign jurisdiction, the Authority will consider whether the work could be performed as effectively by less expensive persons from that jurisdiction. If this is the case, such costs in whole or in part may not be recoverable.
- 4.1.5 Investigative and other work done by the controller may not be recoverable if it is outside the scope of the letter of arrangement.

4.2 Structure of a Bill of Costs

- 4.2.1 A bill of costs submitted for approval by the Authority should distinguish between the controller's fees and disbursements;
- 4.2.2 A bill of costs may be drawn up in CI\$ or US\$ (referred to as "the currency of the bill"). Costs incurred in any other currency must be translated into



the currency of the bill at the exchange rate ruling on the date of the bill.
The CI\$/US\$ exchange ratio is fixed at 0.82;

- 4.2.3 The bill should include an overview or summary of the principal activities undertaken during the course of the controllership period sufficient to enable the Authority to gain a proper understanding of it without necessarily having to read the letter of appointment, reports or other documentation or correspondence;
- 4.2.4 A summary of total hours worked and total costs for each staff member should be provided. Time records must be recorded to a minimum of 1/10th of an hour;
- 4.2.5 In addition, the work done and disbursements incurred should be itemized;
- 4.2.6 The staff employed should be identified sufficiently to enable the Authority to determine the appropriate hourly rate(s) for work performed by each of them;
- 4.2.7 Each item of work should be described. The number of hours worked on each item by each staff member should be stated, together with applicable hourly rates;
- 4.2.8 The bill should be completed consistent with the templates that form part of the letter of appointment.
- 4.2.9 The bill of costs must contain a declaration signed by the controller to the effect that:
- (a) The bill is accurate and complete; and,
 - (b) The amount sought in the bill does not exceed the controller's incurred costs.



4.2.10 Wherever possible, copies of the bills should be served in the form of both a hard copy and electronically.

4.3 Procedure for Obtaining Approval from the Authority

4.3.1 On a review of the bill of costs, the Authority will make appropriate inquiries in order to satisfy itself that the cost claims are reasonable;

4.3.2 The Authority will assess each item in the bill of costs and determine what amount, if any, shall be allowed in respect of it;

4.3.3 To the extent that the Authority requires further information, clarification or disagrees with the bill of costs, it shall first write to the Controller and receive their comments;

4.3.4 Where there is still disagreement as to the controller's costs, the Authority and Controller will use its best efforts to resolve the issues, including if appropriate, a meeting;

4.3.5 The Authority may employ the services of a person with expertise or experience in the Cayman Islands or elsewhere to assist in reviewing and assessing the bill of costs and disbursements. The costs of employing an expert will be at the expense of the regulated mutual fund/mutual fund administrator;

4.3.6 The Authority will make its best efforts to consider a bill of costs as soon as possible. In the event that there is a significant dispute about the extent of costs claimed, by the controller, the parties may submit the costs to an independent expert agreed by both parties. Where an independent expert's opinion is sought and received, pursuant to agreement between the parties, it is expected that the expert's opinion would be binding on all parties. The costs of employing an expert will be at the expense of the regulated mutual fund/mutual fund administrator.



Schedule 1

Proposed Form of Controller Appointment Letter

[Date]

[Proposed Controller]

IN THE MATTER OF [REGULATED MUTUAL FUND OR MUTUAL FUND ADMINISTRATOR]

APPOINTMENT OF CONTROLLER – MUTUAL FUNDS LAW (2003 REVISION)

Dear [Proposed Controller]

We are writing to enquire as to whether you would be prepared to act as Controller in the above matter of which the Cayman Islands Monetary Authority (the “Authority”) has conduct under the provisions of the Mutual Funds Law (2003 Revision) (“the Law”).

It is being recommended that a Controller be appointed, pursuant to Section 30(3)(e)/31(3)(e) of the Law, to assume control of the affairs of [entity] (the “Fund” or the “Licensee”), arising from the following contraventions of the Law:

[specify the contraventions of the Law]

As a condition of being recommended by the Authority your consent to adhere to a standard practice is requested, the provisions of which appear below. The Authority requests that you agree to: –

1. REPORT FINDINGS

Pursuant to Section 30(9)(b)/31(8)(b) of the Law, you shall from time to time at your discretion and in any case within three months of the date of your appointment or of the extension of your appointment (as the case may be), prepare and furnish a report to the Authority of the affairs of the Fund/Licensee and your



recommendations thereon. Notwithstanding the above, an interim report shall be furnished within [Number] days from the date of your appointment.

2. YOUR POWERS

Pursuant to Section 30(7)/31(6) of the Law, you have all the powers necessary, to the exclusion of any operator/any other person (other than a liquidator or receiver) to administer the affairs of the Fund/Licensee in the best interests of the investors and creditors of the Fund/Licensee and funds administered, as the case may be, including, but not limited to (as applicable):

- a) Assume control of, collect and get all property or assets of whatever nature to which the Fund/Licensee is or appears to be entitled;
- b) Safeguard the interests of investors and creditors/funds administered and to provide an inventory of assets and liabilities as necessary;
- c) Take possession or make copies of the books, records and other documents pertaining to the affairs of the Fund/Licensee to enable a proper accounting of the current financial position of the Fund/Licensee;
- d) Investigate the legal implications of any litigation faced by the Fund/Licensee;
- e) With the prior approval of the Cayman Islands Monetary Authority, appoint an agent to do any business in which you are unable to yourselves or which can more conveniently be done by an agent;
- f) Enter into discussions and negotiations with any person in [country] or elsewhere as necessary to arrive at a prompt and orderly resolution of the Fund/Licensee's financial problems;
- g) Promptly refer all matters of a legal or supervisory nature to the Cayman Islands Monetary Authority.



3. REMUNERATION

Your costs in this matter will be at the expense of the Fund/Licensee. With respect to time incurred, you will be entitled to remuneration at standard market rates. Other costs will be recoverable from the controllership to the extent that such costs are clearly identifiable and directly applicable to the your duties and obligations as a controller.

Reasonable travelling and hotel expenses incurred shall be recoverable. Time spent travelling should be charged at one half, unless time is spent working on the engagement while travelling. In cases where travelling to a foreign jurisdiction, the controller should consider whether the work could be performed as effectively by less expensive persons from that jurisdiction. If this is the case, such costs in whole or in part will not be recoverable.

Investigative and other work done by the controller may not be recoverable if it is outside the scope of the letter of arrangement.

A bill of costs submitted for approval by the Authority should distinguish between the controller's fees and disbursements, drawn up in CI\$ or US\$. Costs incurred in any other currency must be translated into the currency of the bill at the exchange rate ruling on the date of the bill. The CI\$/US\$ exchange ratio is fixed at 0.82.

The bill should include an overview or summary of the principal activities undertaken during the course of the controllership period sufficient to enable the Authority to gain a proper understanding of it without necessarily having to read the terms of appointment and conditions of controller, reports or other documentation or correspondence. The number of hours worked on each item by each staff member should be stated, together with applicable hourly rates. A summary of total hours worked (recorded to a minimum of 1/10th of an hour) and total costs for each staff member should be provided. In addition, the work done and disbursements incurred should be itemized and set out. The staff employed should be identified sufficiently to enable the Authority to determine that the appropriate hourly rate(s) have been applied for work done by each of them. Each item of work should be described. The bill



should be completed consistent with the templates that form part of the letter of arrangement.

Where the controller applies for approval from the Authority, the Authority will require that the controller file a declaration, which supports a conclusion that the fees charged are fair and reasonable.

The Authority will make its best efforts to review a bill of costs as soon as possible. In the event that there is a significant dispute about the extent of costs claimed, by the controller, the parties may submit the costs to an independent expert agreed by both parties. The expert's opinion will be binding on all parties. The costs of employing an expert will be at the expense of the Fund/Licensee.

You will be entitled to withdraw 80% of the bill of costs, subject to allowing the Authority to raise any objections it may have in this regard within five business days of receiving the bill.

4. SECURITY BOND

The Authority will not require a security bond or an affidavit of fitness providing you have provided a copy of your annual submission to the Grand Court (pursuant to practice direction No. 1/2003) that such insurance coverage is in place or that you supply written assurance that you have the necessary insurance in place, together with a copy of such insurance, to cover any eventuality that may occur during the period of your appointment.

5. CONFIDENTIALITY

- (a) You will undertake to abide and procure that any of your employees, servants and agents abide by the provisions of:
- (i) The Confidential Relationships (Preservation) Law (1995 Revision);
 - (ii) The Proceeds of Criminal Conduct Law (2001 Revision), in particular section 24; and,
 - (iii) The Monetary Authority Law (2003 Revision) and in particular section 49.



(b) You will keep secret and not disclose and shall procure that your employees, servants and/or agents keep secret and do not disclose any information of a confidential nature obtained by you by reason of the appointment except information which is in the public domain otherwise than by failure by yourself to comply with the requirement to retain confidentiality aforesaid.

(c) The duty described in paragraph 5(b) to keep secret and prohibiting the disclosure of confidential information shall not apply to disclosure of such information to an employee, servant and/or agent who needs to be in possession of that information to enable yourself as Controller to discharge and fulfill your duties and provided always that such disclosure is made in confidence and is subject to a duty of confidence which is enforceable in law.

(d) You will ensure that all your employees, servants and/or agents so far as appropriate, are aware of, and comply with the requirements in paragraphs 5(a) and (b) and in any instance of a threatened or actual breach of confidence mentioned in paragraphs 5(b) and (c) you will at your own cost apply for appropriate civil process, relief and remedy, to protect the confidentiality of the information or restrict its further dissemination and disclosure and, shall inform and keep fully informed the Authority of any such instances and of the proceedings and their progress.

(e) The duty of confidentiality shall not end with the conclusion of the appointment.

(f) Further, in paragraph 5(b) "information of a confidential nature obtained by you by reason of the appointment" includes information coming to the knowledge of yourself or your employees, servant, agents and/or sub-contractors prior to your formal appointment as Controller, by virtue of any dealings with the Authority.

6. SIMULTANEOUS ACTION TO THE GRAND COURT

Pursuant to Section 30(4)/31(4) of the Law, the Authority may apply to the Grand Court of the Cayman Islands for an order to take such other action as it considers



necessary to protect the interests of investors in, and creditors of, the Fund/Licensee and funds administered by the Licensee and, subsequently, take any other action provided for in Section 30(3)/31(3) of the Law.

7. VARIATION OF STANDARD PROVISIONS

The Authority must approve in writing any variation to these provisions.

8. FAILURE TO COMPLY

In the case where a Controller fails to comply with an obligation under the Law, or in the Authority's opinion, is not carrying out his obligations in respect of the relevant Fund/Licensee satisfactorily, the Authority may revoke the appointment and appoint some other person in his place.

9. DISCHARGE

Upon concluding the controllership you will inform the Authority and, apply to the Authority for discharge of the appointment under Section 30(11)/31(10) of the Law.

Finally I will require from you a letter confirming that you accept the terms of this proposed appointment.

Yours sincerely,

Managing Director
Cayman Islands Monetary Authority