

# Fact Sheet

## Key Highlights of the ICON Act

An investment condominium is established under the Investment Condominium Act, 2014. It is a contractual relationship between one or more participants who have pooled assets for the purposes of operating as an investment fund, and an investment condominium must be licensed as an investment fund under the Investment Funds Act. It may be formed to operate as an open-ended fund (in which participants can call for redemption of their interests) or a closed ended fund (in which they may not).

The ICON has no legal personality but, when represented by its administrator, is able to hold assets in its own name, enter into agreements and sue or be sued in its own name.

### How is an investment condominium established?

When one or more initial participants execute its governing regulations, the investment condominium's administrator issues a certificate of establishment which is submitted to the Registrar General and the investment condominium's name is entered on the register. The investment condominium must be licensed as an investment fund by a licensor (the Securities Commission of The Bahamas or an unrestricted investment fund administrator) within ninety days of establishment unless an extension to this period is approved by the Securities Commission.

### What are the governing regulations?

The governing regulations set out the terms under which the investment condominium will operate. There are specific contents prescribed by law, which include the following:

- Its name;
- The name and address of its administrator;
- Its duration (which may be limited or unlimited);
- The number of participation interests it can issue and the currency in which the interests will be issued;
- Whether it will issue classes or series of participation interests, who is authorized to determine the number of classes/series and what the powers, rights and preferences of such interests are;
- How the administrator will handle its administration and whether it will have a governing administrator and a general administrator;
- Audit provisions (which are subject to the Investment Funds Act);

- How the governing regulations may be amended;
- The liability of the participants in the investment condominium, including how it is limited (if at all);
- Provisions for valuation of the investment condominium's assets;
- Provisions for termination of the investment condominium; and
- Any other provisions required under the Investment Funds Act.

The governing regulations are not required to be filed with the Registrar General, and therefore are not a public document.

### **How does the investment condominium act?**

An investment condominium, having no legal personality, is represented by its administrator. The administrator, acting on its behalf, executes all letters, contracts, agreements, deeds and documents for the investment condominium. The administrator also has the power to do all other acts and things which are necessary or conducive to the investment condominium's activities. As a general rule, the administrator's acts bind the investment condominium.

### **What are the obligations of an investment condominium's administrator?**

The administrator's obligations depend on the role it fills for the investment condominium. An investment condominium is required to have a general administrator and an operating administrator, and these roles may be filled by a single entity or by two separate entities.

A governing administrator is deemed to be the investment condominium's operator for purposes of the Investment Funds Act, and has all the powers and duties of an operator for this purpose. A governing administrator must be either: (i) an administrator licensed by the Securities Commission (restricted or unrestricted); (ii) a licensee under the Financial and Corporate Service Providers Act; (iii) a licensee under the Securities Industry Act; (iv) a bank or trust company licensed by the Central Bank; or (v) a foreign entity licensed by or registered with a regulatory body with functions and powers equivalent to the Securities Commission or Central Bank. The governing administrator is therefore akin to a general partner, director or trustee of the equivalent entity licensed as an investment fund. The general administrator, by contrast, must be an administrator licensed by the Securities Commission (restricted or unrestricted) and acts as the investment condominium's administrator for purposes of the Investment Funds Act.

If the administrator incurs any debts or obligations in conducting the investment condominium's business, they are obligations or debts of the investment condominium and not the administrator personally.

**How does an investment condominium operate?**

An investment condominium may have an unlimited number of participants, but the minimum number is one.

Participation interests may but need not carry voting rights, and such rights are as specified in the governing regulations. Participation interests are personal property, and enforceable by the participants as a chose in action.

Books and records must be kept by the administrator, and include a register of participation interests as well as reliable accounting records retained for a minimum five year period.

Annual meetings of the participants must be called by the investment condominium's administrator, and such meetings may be held in The Bahamas or elsewhere.

Publicly available information on an investment condominium is generally limited to the information contained in its certificate of establishment, which sets out its name, the name of its administrator(s), the date of establishment, a statement that it shall be licensed as a fund and the address in The Bahamas at which the investment condominium can be served.

**Can an investment condominium make distributions?**

An investment condominium may not make or declare dividends or other distributions to its participants. Participants therefore recoup their investment only upon redemption of their participation interests, which may take place in whole or in part on the terms set out in the governing regulations.

**Is an investment condominium liable for local taxes?**

An investment condominium is not liable for estate, inheritance, succession, gift or stamp taxes, provided that its participation interests are held (directly or indirectly) only by persons deemed 'non-resident' for exchange control purposes and that the investment condominium does not own (directly or indirectly) real property situate in The Bahamas. It is intended that investment condominiums meeting these conditions will also be exempted from VAT, once implemented.

**Can an existing entity be converted to a condominium?**

Existing entities may become ICON Funds, and the conversion can be achieved without a termination event triggering a capital gain or other adverse tax consequence. Bahamian entities as well as entities presently established under the laws of other jurisdictions are able to convert into an investment condominium and be licensed as an investment fund. Therefore, it is possible:

- to convert a Bahamian trust, exempted limited partnership or company to an investment condominium;
- to accommodate the re-domiciliation of an investment fund established elsewhere to The Bahamas and to permit its conversion to a condominium once successfully redomiciled; and
- to allow for unbroken continuity of the fund, while changing the character of the legal structure that underpins it.

Note that equivalent entities established under the laws of another jurisdiction must take advantage of existing continuation procedures in the International Business Companies Act or the Exempted Limited Partnership Act, or utilize the power to change governing law contained in the trust instrument.

### **How is a condominium wound up?**

An investment condominium may be dissolved either voluntarily on the terms contained in the governing regulations, or compulsorily by the court. Voluntary dissolution is permitted where the investment condominium is solvent; involuntary dissolution is required where the investment condominium is insolvent, the participants so request or the regulator so petitions, or where the court believes it just and equitable that it be so dissolved.