

FAST TRACK
SUPPORT
RESULTS
FLEXIBLE
ADVANCED
CONSISTENT
NIMBLE
PROGRESSIVE
INGENUITY
ACHIEVEMENT
ACTIVE
MANAGEMENT
VISION
MARKET
STREAMLINED
STRATEGY
EXCELLENT
STRUCTURED
ICONIC
SMART

Bahamas Investment Funds: **Innovation Nation**



EFFICIENT
ALTERNATIVE
TURNKEY
ORGANISED
TRUSTED

INNOVATIVE

FAST TRACK
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NIMBLE

MODERN
SOPHISTICATED
POSITIVE
GROWTH
RESPONSIVE
ATTRACT
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STRATEGIC

HYBRID
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Bahamas Investment Funds: Innovation Nation

Nimbleness and innovativeness are embedded in the DNA of The Bahamas; one might say that this is a direct consequence of the country's sovereignty. Independent since 1973, The Bahamas has been able to “chart its own course” in the development of legislation and policies which aid the development of the investment funds sector.

Innovation is carefully planned and based on an inherent understanding of the business environment and needs of our clients and yours. These are not knee-jerk reactions to market or political conditions but measured responses that build on the trust and confidence that The Bahamas has earned.

This agility is clearly evident in The Bahamas' evolving investment funds sector which is attracting the attention of fund managers and investors around the world and has added a new dimension to the jurisdiction's wealth management and advisory capability. In the last five years The Bahamas has seen upwards of 60% growth in the number of investment fund registrations attributed to many factors including the growing recognition and popularity of the investment fund vehicles known as the SMART® Fund and Professional Fund.



REGULATED ...

While The Bahamas has a long history in the funds business it was The Investment Funds Act 2003 (“the Act”) that positioned The Bahamas at the cutting edge of modern investment fund administration. The Bahamas is home to more licenced investment funds than many of the leading hedge funds centres, and has no class of investment funds which is exempt from licencing or registration. This is in keeping with what we see as a trend toward having asset allocation and management vehicles that are firmly within the regulatory scope, giving comfort to institutional and individual investors.

QUICK TO MARKET ...

The Bahamas has a framework that enables efficient processing of licence applications. Unrestricted Fund Administrators licenced in The Bahamas have been given delegated authority to issue licences to funds they administer with a time period within which to file those documents with the Securities Commission. The Securities Commission of The Bahamas is a member of the International Organization of Securities Commissions (IOSCO) and The Bahamas is a signatory “A” jurisdiction signalling the highest standards in regulation.

A great attribute of Bahamas investment funds is that their streamlined set up does not, by any means, diminish their robustness as properly organised and duly regulated investment funds.



FLEXIBLE ...

While all investment funds have mandated disclosures (like subscription and redemption policy, method of NAV calculation and valuation of assets) there are no regulatory or legislative constraints on the choice of strategy for a fund or consequently on the nature of investments it can hold.

The Act recognises four classes of Funds: Standard, Professional, Recognised Foreign and SMART Fund.

The **Standard Fund** anticipates an offering to the general public, and is a highly regulated, modern investment vehicle designed to operate as a retail collective investment scheme.

The **Professional Fund** is designed for institutional and sophisticated investors, and may be licenced by an Unrestricted Administrator (or directly by the Securities Commission) thereby enabling faster time to launch.

The **Recognised Foreign Fund** is an investment fund licenced or registered in a prescribed jurisdiction that wishes to register in The Bahamas to accommodate the selling of its interests from or within The Bahamas.

The **SMART Fund** is an investment fund that may be licenced under one of seven different SMART Fund templates. Each template was designed to meet a unique business case and the regulatory requirements for licencing are appropriately adjusted to meet the risk associated with the template.

The Clear Choice for Professional Funds

Professional funds are designed to be quick to market, flexible and robust investment vehicles for institutional or sophisticated investors meeting minimum net worth qualifying requirements. Professional funds must be audited annually and must appoint a licenced investment fund administrator. Professional Funds are also required to have a full offering memorandum with all of the mandated statutory disclosures, including the names of key parties to the fund, investment objective and policy, subscription and redemption policies, etc.

Professional Fund investors may be one or more of any of the following:

- (i) a bank or trust company licenced by the Central Bank of The Bahamas or licenced in a prescribed jurisdiction,
- (ii) any registered broker-dealer or firm registered as a securities investment advisor by the Commission and which maintains a minimum of \$120,000 of regulatory capital or registered in a prescribed jurisdiction,
- (iii) any insurance company licenced under the laws of The Bahamas or licenced in a prescribed jurisdiction,
- (iv) any investment fund licenced or registered under the IFA or regulated in a prescribed jurisdiction,
- (v) any natural person whose individual net worth or joint net worth with the person's spouse exceeds one million dollars,
- (vi) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year,

(vii) any trust with total assets in excess of five million dollars, or

(viii) any entity in which all of the equity owners satisfies one of the above requirements.

Fast Track Professional Funds

Speed to market is a factor that was recognised several years ago by the SCB when its published guidelines provided direction for the fast tracking process of applications for Professional Funds that target accredited or high net worth investors only. Under this process the SCB guarantees approval of these categories of investment funds within 72 hours of receipt of a complete application and complement the fast tracking process that already existed for Unrestricted Fund Administrators (UFAs) to licence Professional Funds as well as SMART Funds.



The Smart Idea Behind SMART Funds

Providing financial services to a sophisticated international clientele requires a sophisticated legislative approach. In introducing the SMART Fund concept, the Securities Commission of The Bahamas was mindful of the need for flexibility to adequately cater to the evolving needs of the global marketplace.

SMART is an acronym which stands for:

SPECIFIC MANDATE Each template is designed with a specific object or purpose in mind

ALTERNATIVE REGULATORY The regulatory profile is adjusted to the risk profile of the fund

TEST FUND Promoters have the opportunity to create a template, to have that template approved by the Commission and adopted as a new template for wide use

The Bahamas SMART Fund concept caters to the modern dynamic market. It is an innovative, progressive and flexible product to attract new investment funds and re-organise existing funds to better suit the needs of clients. SMART Funds enjoy a supervisory environment appropriate for the limited number of investors and specific nature of the fund and does not suffer the 'broad brush' regulatory approach.

SMART Funds allow The Bahamas to create country-specific, market-specific and client-specific structured products that are fully transparent and cross-border compliant. There are several features that all SMART Funds have in common:

- 1 Investors may unanimously waive the audit in favour of filing semi-annual performance reports. This may be utilised for any number of reasons, including managing the ongoing cost of the fund. Alternatively, the illiquid nature of the fund's assets may be such that it is appropriate to delay audit e.g. in the case of a private equity fund an annual audit might be unnecessary because the positions are determined only on the happening of a liquidity event. Finally, in the case of a classic master feeder structure, a decision may be taken to consolidate the audit onshore.
- 2 Investors may adopt a streamlined term-sheet with appropriate disclosures.
- 3 Most have a maximum number of investors, whether that be 5, 10 or 50.

The Bahamas SMART Fund is a shining example of the jurisdiction's reputation for ingenuity, providing industry participants with the means to provide clients with innovative, progressive and flexible structuring solutions via a regulated vehicle, domiciled in a premier international financial centre.

According to the Securities Commission of The Bahamas (SCB), the number of active SMART Funds has more than doubled in the past five years. The number and type of SMART Funds remain an open opportunity, effectively creating a mechanism for promoters to approach the regulator for approval of a specific business case and for that fund, if approved, to be allocated a risk based licencing and supervisory regime tailored for its use. This template then is able to be utilised by other funds, fitting the parameters and requirements of the template.



There are now seven distinct risk-adjusted SMART Fund templates or models:

SFM001 An Investment Fund where the promoter is a financial institution and the investors in the Investment Fund are also customers of the financial institution and party to a Discretionary Management Agreement with the financial institution.

SFM002 An Investment Fund that has no more than ten investors who hold equity interests in the Investment Fund who meet the criteria of an “Eligible Investor” in a Professional Fund and the majority of whom have the power to appoint and remove the operators of the Investment Fund. The fund may be licenced and launched on the same day through an Unrestricted Fund Administrator or have a 72-hour response through the SCB.

SFM003 An Investment Fund that has no more than 15 investors holding equity interest in the Investment Fund, the majority of whom have the power to appoint or remove the operators of the Investment Fund.

SFM004 An Investment Fund with a maximum of five investors operating as a private investment company. It may be used as a credible, licenced holding vehicle.

SFM005 An Investment Fund with a maximum of five investors holding equity interests and operating as a private investment structure for individuals/families. Each investor must be a person to whom a Professional Fund may be offered, permitting same day launch by a

unrestricted fund administrator or 72-hour response through the Securities Commission of The Bahamas.

SFM006 A special purpose vehicle designed to hold the illiquid or “hard-to-value” assets of another Bahamas investment fund which offers a significantly lighter administrative and cost effective environment for the assets whilst respecting the ownership rights of the investors and creditors (if any) of the original fund.

SFM007 An Investment Fund that may be offered, on a private placement basis, to up to 50 “super-qualified investors” who must each make a minimum initial subscription of US\$500,000. This SFM has been designed for use mainly by institutional investors, such as pension funds, funds of funds and master-feeder structures; however natural persons and private entities are also eligible investors. Due to the very significant minimum investment amount per investor, the SFM007 has a reduced structural risk profile and counter parties may benefit from maximum flexibility with respect to appointment and domicile of service providers.

The directors of the SFM007 Fund may choose the appointment and location of the fund administrator, similar to the appointment of any other service provider. Such dynamics are crucial because these decisions tend to be driven by many factors, including the fund’s investment strategy, investor profile, cost, time zone, etc. In addition, the administrative functions may be expressly contracted by the SFM007 to any reputable service provider in any approved jurisdiction on an “as needed basis”. Any functions not so delegated remain the responsibility of the directors.

AVAILABLE STRUCTURES FOR INVESTMENT FUNDS

Investment funds may be structured as any one of the following:

International Business Company “IBC”

An IBC is a corporate vehicle that may be licenced as an investment fund. IBCs are incredibly flexible and there is no requirement for a local director in The Bahamas.

Segregated Accounts Company “SAC”

An IBC registered as a segregated accounts company which may operate segregated accounts. Segregated accounts allow assets and liabilities to be linked to separate accounts and the issue of shares may be linked to such segregated account. This ensures that there is no cross-contamination between segregated accounts such that if one account is operating at a loss, it does not affect another and any gains realised from an account are also only available to account owners of the account that the assets and liabilities are linked to.

Exempted Limited Partnership “ELP”

An ELP is registered by one or more General Partners and Limited Partners with the intention to offer limited partnership interests to investors.

Unit Trust

A unit trust is established by a Trust Deed and administered by a Trustee with units offered to investors. A unit trust has no legal personality.

Investment Condominium “ICON”

An agreement between one or more participants to pool assets for the purposes of operating as an investment fund. An ICON does not possess legal personality though its administrator is empowered to represent it in all contracts, signing these in the name of the ICON. The ICON is deemed to own its assets and property.



The Bahamas Investment Condominium: A True ICON

While the number of SMART Funds on the register grows, The Bahamas has taken the lessons learned from the success of this product and applied the same innovative approach in creating and introducing the Bahamas Investment Condominium (“the ICON”) – to meet the specific needs of Brazilian investment managers and advisors, as well as Latin American managers more broadly.

It would not be overreaching to estimate that a large number of the existing funds licenced in The Bahamas originated – especially using SFMs – to accommodate Brazilian funds, fund managers, investors and strategies.

Under Brazil’s civil code the condominium is the formalization of the concept of joint ownership and administration of property (in all forms) between co-owners within an unincorporated entity. The condominium is not a legal entity separate and apart from co-owners and the administrator is empowered to act on behalf of and represent it in all matters.

The Bahamas ICON provides an alternative arrangement for investment funds that is inherently familiar to those in Brazil and indeed those in countries which have similar civil law constructs. It was this commitment to building products that benefit from cultural and legal familiarity that saw The Bahamas introduce foundations law in 2004; the ICON is an extension of this effort.

The ICON is defined as a contractual relationship subsisting between one or more investors (called participants), under which the investors agree to pool assets for the purposes of investing those assets as a collective. The structure is then licenced and fully regulated as an investment fund – as is done today using existing vehicles such as the International Business Company, the Exempted Limited Partnership, and the Unit Trust.

The ICON is simply a new structuring vehicle that can be licenced as a SMART FUND, Professional Fund or Standard Fund in The Bahamas. It is not a company, not a partnership, and not a trust. It is a pooling mechanism and operating instrument for investment funds.

The ICON shares many features with the Brazilian condominium: the ICON possesses no distinct legal personality save that for the purposes of the legislation it is able to own assets in its name; enter into agreements in its name; and sue and be sued in its name. The lack of legal personality is addressed by the appointment of an administrator that is empowered to transact in its name, and represent and bind the ICON.

Aside from familiarity the Bahamas ICON has several advantages over a company, trust or partnership.

- 1** It centralises “governance” and not just “administration” within a regulated entity to achieve international best practices of investment fund governance and operation. The governing administrator and general administrator of an ICON are regulated, whether in The Bahamas or an equivalent jurisdiction.
- 2** The ICON can be simply established in a much more streamlined way than a corporate vehicle.
- 3** There is flexibility. It’s possible to set up an ICON where investors are called on to contribute in the case of negative net equity, before the fund can be deemed insolvent. It’s also possible to establish an ICON where the liability of the investors is limited.

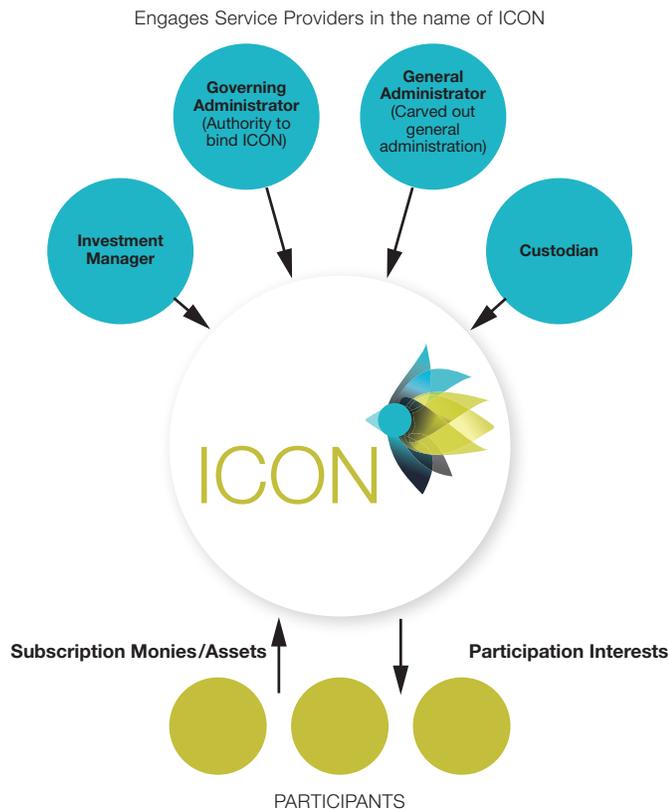
While the ICON was conceived initially for the Brazilian market and was only launched in the Fall of 2014, its hybrid nature – that of a partnership and unit trust – already is being seen as an interesting and compliant alternative for structures in other jurisdictions. In principle, it is similar to collective investment schemes in Europe in



which investors through a contractual agreement agree to invest jointly.

The ICON demonstrates The Bahamas' keen understanding of the regulatory environment and the needs of the clients it services. In the current climate, success for an IFC depends on a host of factors but certainly one of them is the ability to develop market-responsive, compliant and innovative products. The ICON follows in the tradition of the Bahamas Executive Entity in being the first of its kind in the common law world ... and that is iconic indeed.

The ICON with Governing and General Administrator



RESPONSIVE REGULATION

Regulation of the securities industry is structured to protect the interests of those who do business with financial institutions licenced in The Bahamas, and to ensure The Bahamas' business environment continues to meet the highest international standards.

The Securities Commission of The Bahamas (SCB) was established in 1995. As part of its endeavour to keep abreast in an ever-changing global regulatory environment, and to ensure a Bahamian contribution in improving the efficiency and conduct of international markets, the SCB became a member of the International Organization of Securities Commissions (IOSCO) and the Council of Securities Regulators (COSRA) in 1996 and 1997 respectively.

The Bahamas' growing attraction as a funds centre received a further boost in 2013 when it achieved Signatory A status under the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the MMoU) of the International Organisation of Securities Commissions (IOSCO). Being a signatory to the MMoU is a statement of a jurisdiction's commitment with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of the relevant while maintaining a regulatory framework that is appropriately responsive and vigilant for funds and clients investing in them.

FLEXIBLE FUND ADMINISTRATION

In this regard, a dual licencing regime exists in The Bahamas. The SCB is authorised to licence all classes of funds and Unrestricted Fund Administrators (UFA) are authorised to licence funds offered only to accredited investors. A restricted fund administrator cannot licence but only administer funds. Irrespective of who licences the fund, the fund must operate in a manner that is consistent with its constitutive documents and adherence to Bahamian law, specifically the Investment Funds Act and anti-money laundering legislation.

What distinguishes The Bahamas from other jurisdictions is the latitude provided to administrators who at the same time must meet and maintain certain licencing and governance requirements.

This combination of SCB or administrator oversight, depending on the fund, creates a high degree of flexibility for fund administration in The Bahamas while providing an appropriate level of corporate governance for the growing but increasingly complex funds industry.

An Unrestricted Fund Administrator (UFA) in The Bahamas has several advantages within its regulatory scope. It can, for example, complete the necessary due diligence review of fund parties and coordinate with onshore and offshore parties for the completion of the offering memorandum and constitutive documents. The UFA can also certify fund compliance within Bahamian law and licence the fund under its own internal authorization procedures.

These capabilities provide the UFA with competitive advantages within a regulated environment. For example, it can market a fund within 24 hours of company incorporation and the completion of licencing procedures; and can also administer funds domiciled in recognised jurisdictions from The Bahamas without any further licencing procedures other than a filing notification with SCB.

Market responsiveness within a proper regulatory environment is the philosophy that is followed in The Bahamas, and will continue to be the driving force for development and growth of the Bahamian funds sector.

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