

# A GUIDE TO THE BAHAMAS SMART FUND





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## DISCLAIMER

The contents of this Guide are intended to be only an aid to understanding the Bahamas environment for Private Trust Companies. The contents do not in any way constitute legal advice to any person for payment or otherwise, and the Bahamas Financial Services Board, its members and its directors do not and will not in any way accept responsibility or liability for any loss or damage caused by or arising from reliance on the information contained herein. Persons reading this Guide are reminded that where a decision is to be made which depends for its correctness on the effect of the new legislative provisions discussed herein or on any other legislation or common law rules, professional advice should be sought from a firm of qualified legal professionals.

# THE BAHAMAS SMART FUND

The SMART Fund programme was designed to provide industry with a new Private Wealth Management tool with the flexibility to find application within areas not traditionally associated with investment fund administration. The primary facility offered by the SMART Fund concept is an open architecture which allows practitioners to design innovative structures, akin at times to special purpose vehicles, without reference to inflexible regulatory criteria predefined in legislation.

Officially known as the Specific Mandate Alternative Regulatory Test Fund, the SMART fund is an innovative and dynamic asset management product designed to marry the flexibility needed by promoters with the regulatory responsibilities required by authorities within a risk-based supervisory environment.

Local Regulators have accepted that asset management arrangements which cater to a limited number of professional investors should enjoy a supervisory approach which is tailored to the limited risks associated with this type of private arrangement. To this end SMART funds have the following attractive features:

- No requirement for a traditional lengthy Offering Document, merely a Term Sheet.
- The licence may be issued by the Fund Administrator under a delegated authority of the Securities Commission of The Bahamas, allowing for a well defined set up and licensing period.
- With the prior approval of all investors the fund may waive the requirement for an annual audit.

The unique aspect of the SMART fund programme, however, is that the legislation does not predefine the requirements for licensing, however, promoters have the opportunity to approach the Securities Commission with innovative concepts for which the Commission will design a specific type of investment fund licence.

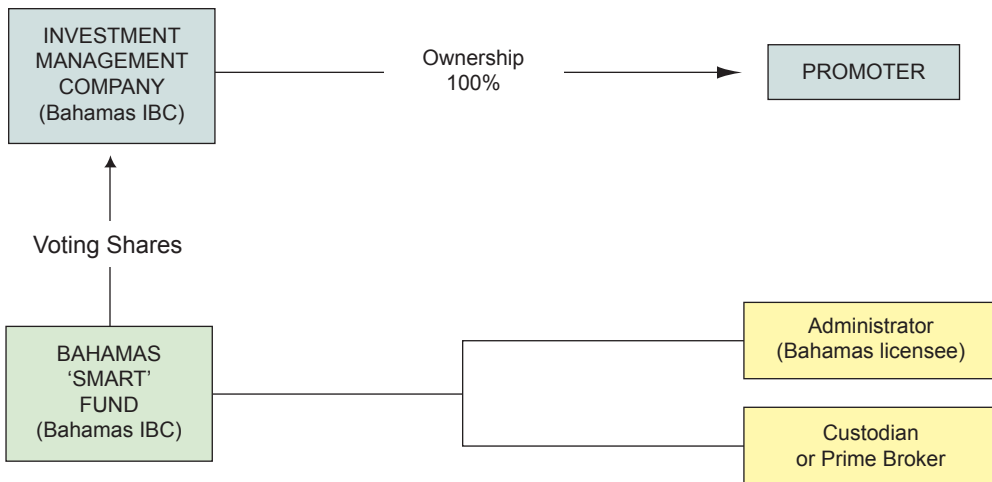
This open architecture always envisaged that increasing understanding and acceptance of the SMART fund idea would result in an increasing number of SMART fund models (defined by means of Templates) and this has been the case with six quite distinct templates currently on offer. The rest of this guide looks at two of these funds and gives some guidance as to their structure and use.

# EXAMPLE SMART FUND MODEL TWO

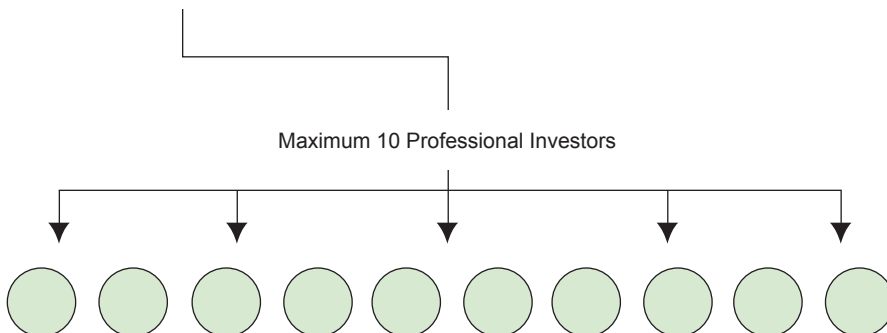
## INCUBATOR HEDGE FUND

### Scenario:

Client wishes to set up a Hedge fund but is not ready to solicit funds from the General Public and does not therefore want to incur the expense associated with setting up a Professional Fund. With a limit of ten investors, who qualify as 'Professional' and a majority of whom have the power to remove the Operators, the incubator fund allows a fast track, inexpensive licensing process.



Participating Redeemable Preference Shares  
*(With power to remove the Directors of the Fund)*



## NOTES:

The main limitation to this structure is that there cannot be more than ten investors who must qualify as Professional. Moreover a simple majority of the investors must have the power to remove the Directors of the Fund. This is not the same as having full voting control as the voting shares are typically issued into the name of the Investment Management Company which will be owned by the Promoter (the client) but merely an additional power associated with the Investor shares.

The Fund does not require an Offering Document just a term sheet and subscription agreement. If all investors agree in advance, the Fund does not require an annual audit.

An Unrestricted Fund Administrator has the authority to issue the licence without prior reference to the Regulator.

The fund is designed to allow for an inexpensive and rapid set up. The Fund may operate for a number years and accrue performance data. At some point in the future the Promoter may decide to upgrade the license to become a full Professional Fund. At this point new, more extensive documentation is required as defined within the Act and Regulations, an auditor must be appointed etc, however the fund can continue to operate during the re-licensing process.

The promoter is under no obligation, however, to ever convert to any other class of Fund.

This Fund may have an ISIN Code and Bloomberg page.

### **Other potential uses.**

- To provide a credible but inexpensive vehicle to take a position in a single investment which is only expected to have a limited life. For example a group of sophisticated investors may decide to pool resources to make a single application for a new issue.
- To act as a trading and investment vehicle for a small group of related persons, perhaps within a larger corporate structure, with the flexibility to allow investors to redeem and reinvest without the formalities associated with the transfer of shares of a private company.

# EXAMPLE TERM SHEET

## 1) NAME:

The 'Example' Fund Ltd.

## 2) DATE ESTABLISHED:

'Date'

## 3) STRUCTURE OF FUND:

The Fund is set up as a Bahamas International Business Company with an authorised capital of USD 150,000,000. The Fund will operate as an Open Ended Investment Fund and register as a SMART Fund 002 as defined within the Investment Funds Act and Regulations 2003.

## 4) NAME AND ADDRESS OF OPERATORS:

Two directors have been appointed:

'Name'	'Address'
'Name'	'Address'

## 5) NATURE OF EQUITY INTERESTS:

The Authorised Share Capital is divided into two classes of shares: 1,000 Voting Non-Participating Shares of par value USD 1.00 each (The Management Shares) and 149,999,000 Participating Non-Voting Shares of par value USD 1.00 each (The Investor Shares). Only Investor Shares are being offered for sale at an Initial Offer Price of USD 100.00 per share. Minimum subscription: USD 'Any amount'.

## 6) INVESTMENT OBJECTIVE AND POLICY:

The Fund seeks to increase its Net Asset Value by investing primarily in stocks, and by reducing risk through lower volatility of results whilst increasing return over the typical rate from an investment with comparable risk. The Fund may also invest in bonds, options, commodities, futures contracts, money market instruments, other investment funds and structured products in order to achieve its objectives.

## 7) DEALING POLICY:

A Net Asset Value calculation will be made monthly and shares will be available for sale and repurchase on a monthly basis starting at the end of the Initial Offer period ending on 'Date', and then monthly thereafter. The minimum initial subscription that will be accepted from a new investor will be USD 'any amount'. Additional subscriptions may be accepted with a minimum of USD 'any amount' per transaction. The minimum redemption will be USD 'any amount'.

8) DISTRIBUTION POLICY:

No income distributions will be made.

9) RELATED PARTIES:

Administrator: 'Name & Address'

Investment Manager: 'Name & Address'

Custodian: 'Name & Address'

10) AUDIT FORMALITIES:

It is not intended that audited financial statements will be prepared. Applicants for Investor shares will be asked to waive the annual audit requirement.

11) FEES AND EXPENSES:

**Administration Fee:** USD '*Amount*' per annum calculated monthly and paid quarterly in arrears.

**Investment Management:** '*Amount*' % Net Assets under management calculated monthly and paid quarterly in arrears.

**Performance Fee:** '*Amount*' % of net profit calculated monthly and paid annually in arrears. A High Water Mark will be applied and no performance fee will be paid until the Net Asset Value price of the fund exceeds the price at which the previous performance fee was paid.

**Directors Fees:** USD '*Amount*' per annum

**Set Up Fee:** Set up fees totaling USD '*Amount*' will be paid by the Fund, amortised over 36 months.

12) TERMINATION:

The Fund does not have a fixed termination date but the company may be wound up by the Management Shareholders or Directors per Section '*Number*' of the Articles of Association.

The Fund will apply to be licensed as a SMART Fund 002 pursuant to the Investment Funds Act 2003, operating as a fund which:

- is limited to having no more than ten investors who hold equity interests in the fund,
- whose investors are persons to whom a professional fund may be offered, and
- where a majority of the investors who hold equity interests in the fund have the power to appoint and remove the operators of the fund.

Dated '*Date*'

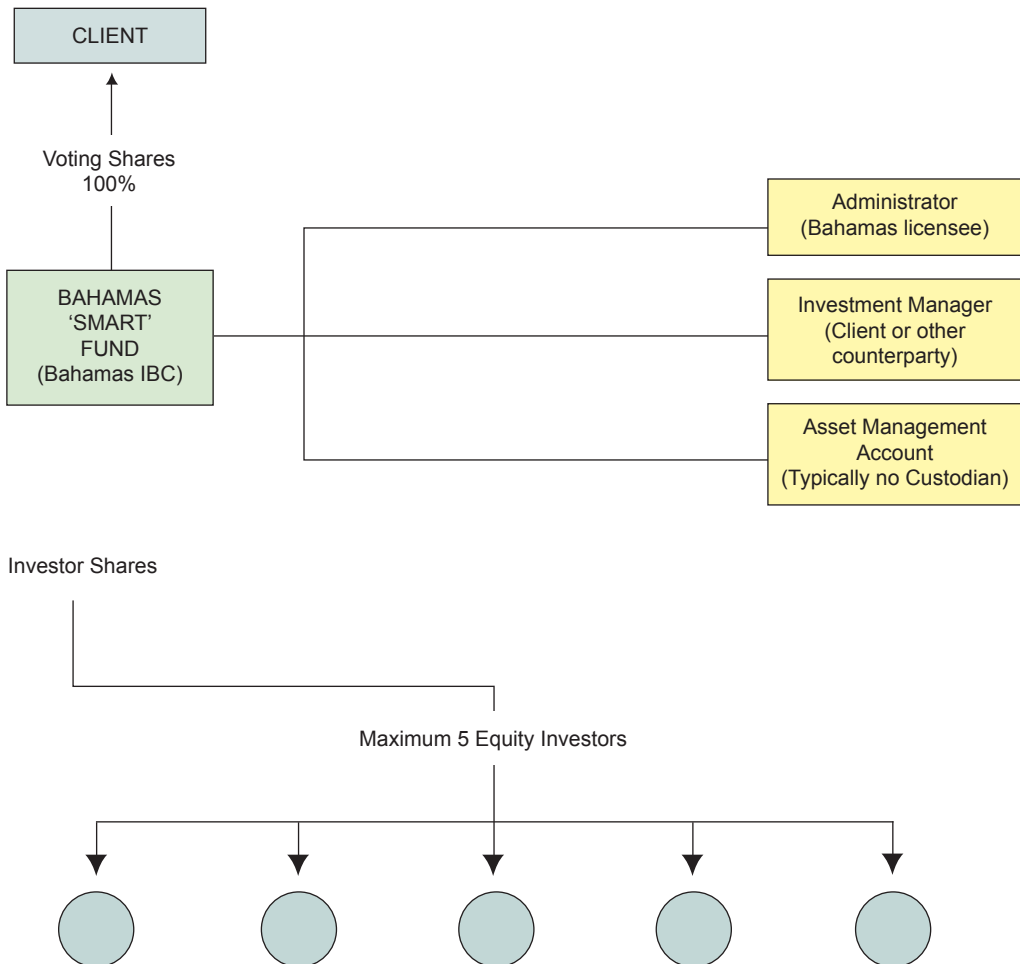
NOTE: it will also be necessary to prepare a Subscription and Redemption agreement for completion by the subscriber, but the form of this document is not defined within the legislation or regulations. The Securities Commission, however, has provided guidelines regarding the due diligence obligations of administrators and the subscription agreement should be drafted to ensure compliance with these requirements.

# EXAMPLE SMART FUND MODEL FOUR

## PRIVATE CLIENT FUND

### Scenario:

Private clients, family members, and family offices require simple asset-holding vehicles with which to open a Broker or Bank account. A SMART Fund offers an excellent tool for the client and, often, the counterparties.



## NOTES:

The fund may have no more than five investors.

This structure is also useful should the client need a vehicle to enter into a third party transaction or to open a broker account. The Fund concept is well understood internationally and counterparties are typically more comfortable entering into a relationship with a Fund licensed by a recognized regulatory authority. The Fund does not require an Offering Document just a term sheet and subscription agreement.

If all investors agree in advance the Fund does not require an annual audit.

An Unrestricted Fund Administrator has the authority to issue the license without prior reference to the Regulator.

This Fund may have an ISIN Code and Bloomberg page.

Also potentially useful within a family office structure, inheritance planning or to just provide a simple vehicle for the professional management of a portfolio of assets.

### **Other potential uses.**

- To provide a holding vehicle for family assets which allows for a simple distribution amongst children by means of the issuance of shares. Investors may decide to redeem all or part of their share without removing specific assets from the family 'pot'.
- By using a Fund set up as a segregated account company specific assets may be separated from others and shares in these 'cells' passed to specific dependents. Each cell may have a different asset manager allowing, for example, a family business to be managed separately from other family assets but owned within a single structure.

# EXAMPLE TERM SHEET

## 1) NAME:

The 'Example' Fund Ltd.

## 2) DATE ESTABLISHED:

'Date'

## 3) STRUCTURE OF FUND:

The Fund is set up as a Bahamas International Business Company with an authorised capital of USD 10,000,000. The Fund will operate as an Open Ended Investment Fund and register as a SMART Fund 004 as defined within the Investment Funds Act and Regulations 2003.

## 4) NAME AND ADDRESS OF OPERATORS:

Two directors have been appointed:

'Name'	'Address'
'Name'	'Address'

## 5) NATURE OF EQUITY INTERESTS:

The Authorised Share Capital is divided into two classes of shares; 1,000 Voting Non-Participating Shares of par value USD 1.00 each (The Management Shares) and 9,999,000 Participating Non-Voting Shares of par value USD 1.00 each (The Investor Shares). Only Investor Shares are being offered for sale.

## 6) INVESTMENT OBJECTIVE AND POLICY:

The Fund seeks to increase its Net Asset Value by investing in a broad selection of financial and investment products. No investment strategy is forbidden.

## 7) DEALING POLICY:

A Net Asset Value calculation will be made semi-annually at the 31st July and 31st December, and shares will be available for sale on a semi-annual basis. Shares may be redeemed semi-annually. There is no minimum or maximum subscription or redemption.

## 8) DISTRIBUTION POLICY:

No income distributions will be made.

## 9) RELATED PARTIES:

Administrator:	'Name & Address'
Investment Manager:	'Name & Address'
Other:	'Name & Address'

**10) AUDIT FORMALITIES:**

It is not intended that audited financial statements will be prepared. Applicants for Investor shares will be asked to waive the annual audit requirement.

**11) FEES AND EXPENSES:**

**Administration :** 'Amount'

**Investment Management:** Nil

**Directors Fees:** 'Amount'

**Set Up Fee:** Will be paid by the Investment Manager

**12) TERMINATION:**

The Fund does not have a fixed termination date but the company may be wound up by the Management Shareholders or Directors per Section Number' of the Articles of Association.

**The Fund will apply to be licensed as a SMART Fund 004 pursuant to the Investment Funds Act 2003, operating as a fund which cannot have more than five holders of equity interests.**

Dated '*Date*'

NOTE: It will also be necessary to prepare a Subscription and Redemption agreement for completion by the subscriber, but the form of this document is not defined within the legislation or regulations. The Securities Commission, however, has provided guidelines regarding the due diligence obligations of administrators and the subscription agreement should be drafted to ensure compliance with these requirements.

SMART*fund*s





## ABOUT BFSB

THE BAHAMAS FINANCIAL SERVICES BOARD (BFSB) REPRESENTS AN INNOVATIVE COMMITMENT BY THE GOVERNMENT, IN PARTICULAR THE MINISTRY OF FINANCIAL SERVICES & INVESTMENTS, AND THE FINANCIAL SERVICE INDUSTRY TO PROMOTE A GREATER AWARENESS OF THE BAHAMAS'S STRENGTHS AS AN INTERNATIONAL FINANCIAL CENTRE. THE STRENGTH OF BFSB IS FOUND IN THE EFFECTIVE PARTNERSHIP WITH THE GOVERNMENT OF THE BAHAMAS AND ITS MEMBER FIRMS. THIS PARTNERSHIP IS FOCUSED ON ENSURING THAT THE COUNTRY'S REGULATORY AND BUSINESS ENVIRONMENT IS SUITABLE FOR BOTH CLIENTS AND THE INTERNATIONAL STATURE OF THE BAHAMAS AS A MEMBER OF THE COMMUNITY OF NATIONS.

A BROADLY BASED AND HIGHLY SKILLED PRIVATE SECTOR CREATES A DYNAMIC MIX OF BANKING, TRUST, FUND ADMINISTRATION, INVESTMENT ADVISORY AND INSURANCE SERVICES IN THE BAHAMAS. AUGMENTED BY PROFESSIONAL ADVISORS FROM LEGAL, ACCOUNTING, REALTY, INFORMATION AND COMMUNICATION FIRMS, THE BAHAMAS IS A COMPLETE INTERNATIONAL CENTRE.

FOR FURTHER INFORMATION CONTACT:  
BAHAMAS FINANCIAL SERVICES BOARD  
TEL 242.326.7001  
INFO@BFSB-BAHAMAS.COM  
WWW.BFSB-BAHAMAS.COM