



OVERVIEW OF THE INVESTMENT FUNDS BILL, 2017

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Baha Mar Convention Center

Nassau, The Bahamas

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Property of The Securities Commission of The Bahamas



PRESENTATION OUTLINE

- Development Process
- Consultation Process
- Structure of Bill
- Key Changes
 - Definitions
 - Bahamas vs. non-Bahamas Based Funds
 - Licensing of Funds and Administrators
 - Licensing Requirements for Investment Fund Managers
 - Regulatory Oversight of Custodians
 - Audit Sign-Off
 - AIFMD Licensing Regime



DEVELOPMENT PROCESS

- Drafting & Technical Consultants engaged
 - Gonsalves-Sabola Chambers
 - Graham Thompson
- Project Team assembled
 - Linda Beidler-D'Aguilar
 - Christel Sands-Feaste
 - Pamela Klonaris
 - Ian Fair
 - Anthony Inder Rieden
 - Michael Paton
- International Law Firm Charles Russell Speechlys contracted
 - Competitive benchmarking
 - Compliance with AIFMD requirements



CONSULTATION PROCESS

➤ Draft Bill

- Released 27 November 2017 for consultation
- Consultation period 27 November 2017 – 28 February 2018

➤ Reviews by Office of the Attorney General

➤ Parliamentary Approval

➤ Promulgation before June 2018

➤ Draft Regulations

- To be released for consultation December 2017
- Consultation period December 2017 – 28 February 2018



STRUCTURE OF BILL

- Preliminary Section
 - Interpretation of provisions
 - Purpose of legislation
- Adopts structure of SIA, 2011
 - Parts arranged according to activity undertaken
 - Divisions address categories of persons to whom these activities apply
- Example:
 - Part 1 – Licensing and Registration
 - Division 1 of Part 1 – Licensing of Investment Fund
 - Division 3 of Part 1 – Licensing of Fund Manager



KEY DEFINITIONS

- “Carry on business in or from The Bahamas”
 - definition forms the basis for the triggering of licensing in relation to funds and administrators

- “Investment fund or fund”
 - Definition amended in that it no longer ties the definition of an investment fund to its being a Bahamas based fund
 - References in definition in IFA, 2003 to a specific “nexus” to the jurisdiction have been deleted (i.e. incorporated in The Bahamas or having appointed a party to the fund established in The Bahamas)

- Two definitions form basis for application of regime throughout the legislation



TRIGGERS FOR LICENSING (BAHAMAS BASED)

Bahamas Based IFA, 2003

- Incorporated in The Bahamas, Administrator, Manager or advisor incorporated or have a place of business in The Bahamas

Bahamas Based IF Bill, 2017

- Incorporation in The Bahamas
- Registered or Established in The Bahamas
- Sold in The Bahamas to non-accredited investors



TRIGGERS FOR LICENSING CONT'D

Licensing Requirements if Bahamas Based

- Under IFA, 2003 Bahamas based if:
 - Incorporated or administered in or from The Bahamas
 - Administrator, manager or advisor incorporated or have a business in The Bahamas
- Under IFA, 2017 Bahamas based if:
 - Incorporated, registered, established in The Bahamas
 - Sold in The Bahamas to non-accredited investors
- Parameter for licensing is activity being conducted and not indirect connection of receiving services in the jurisdiction
- Appointment of Bahamian licensed administrator no longer trigger for licensing of fund



NON-BAHAMAS BASED FUNDS

- Definition narrowed and regulatory regime rationalized
- Means a fund that is incorporated, registered or established in a jurisdiction other than The Bahamas but has nexus to The Bahamas through -
 - Its equity interest being offered for sale to an accredited investor in The Bahamas; or
 - It being administered or managed in or from The Bahamas
- Representative required to be appointed where fund is being sold to accredited investors in The Bahamas
- Where administrator or manager appointed, service provider to notify Commission of appointment



INVESTMENT FUND ADMINISTRATOR LICENSING REGIME

- Elimination of the nexus of the administrator from definition of Bahamas-based fund
- Elimination of requirement for Bahamas-based fund to appoint administrator licensed in The Bahamas to provide principal office
- Administrator to be licensed under the Act or established and operating in a prescribed jurisdiction to act on behalf of an investment fund



INVESTMENT FUND ADMINISTRATOR LICENSING REGIME

Administrator Regime Under IFA, 2003

1. ALL funds administered by licensed IFA considered Bahamas Based
2. Unrestricted, Restricted and Exempt categories
3. Requirements for license:
 - IBC or Bahamian Company
 - General qualifications requirements
 - No physical presence requirements

Administrator Regime IFA Bill, 2017

1. License required ONLY on the basis that administering funds in or from The Bahamas
2. Unrestricted and Restricted categories
3. Requirements for license:
 - Bahamian Company
 - Expertise in fund administration
 - Fitness and Propriety Requirements for Directors, Officers and Senior Managers
 - Physical presence requirements (Two senior officers residing in The Bahamas)



INVESTMENT FUND ADMINISTRATOR LICENSING REGIME, CONT'D

Obligations Under IFA, 2003

- Administrator required to be Principle Office
- Obligations on administrator included
 - Audited Statements;
 - Funds operating in compliance with legal obligations and not prejudicial to investors etc.
 - Reporting obligations
 - Operators are meeting obligations and in compliance with the laws

Obligations Under IFA Bill, 2017

- Provide Principal Office (now defined as the primary address of the fund)
- Ensure payment of fees
- Ensure that parties related to the fund are fit and proper
- Make reports as are required to the Commission
- Obligations are administrative
- Fiduciary obligations now aligned between investment manager and operator of fund



AUDIT SIGN-OFF

- Consideration given to implementing requirement for local sign-off for Bahamas based funds
- Commission considered benefits/implications:
 - Increase in business for local accounting firms
 - Direct connection in audits of the fund to the jurisdiction
 - Additional costs imposed on fund
 - Local capacity to handle increased audit work
- Determination made to maintain status quo
- Requirement for local sign-off diametrically apposes objective of opening jurisdiction for global opportunities



INVESTMENT FUND MANAGER LICENSING REGIME

➤ IFA, 2013:

- No licensing requirements for Managers of funds

➤ Investment Funds Bill, 2017:

- Manager required for all Bahamas based funds except where:
 - investors are the investment fund manager or parent or subsidiary of the fund manager
 - Feeder fund invests 100% of assets in a master fund
- Dual level regime
 - Registration for managers of funds for accredited investors
 - Licensing required to manage retail funds
- Trigger for licensing is provision of investment management services



INVESTMENT FUND MANAGER LICENSING REGIME

➤ Key Obligations:

- Act honestly, fairly and with due skill, care and diligence
- Act in best interests of each investment fund, investors and integrity of the market
- Be appropriately resourced for proper performance of business activities
- Take reasonable steps to avoid conflicts of interest
- Comply with regulatory requirements
- Treat all investors fairly
- Where custodian not appointed ensure custodial obligations carried out as appropriate



OVERSIGHT OF CUSTODIANS

- No requirement to license or register separately from investment fund
- Custodian required unless exempted by Commission
- Custodian to be independent of administrator, investment fund manager and operator of fund
- Custodian to segregate cash and other assets
- Custodian provisions checked against IOSCO Principles and International Standards



AIFMD LICENSING REGIME

- Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD)
- Creates comprehensive & effective regulatory & supervisory framework for alternative investment fund managers (AIFMs) within the EU
- Establishes certain regulatory requirements for non-EU AIFMs providing services to EU funds (managing and/or marketing)
- Bahamian managers to EU funds subject to impact and requirements of AIFMD



AIFMD LICENSING REGIME

- Key Goal of AIFMD Regime in Legislation:
 - Qualify for European Union (EU) Passporting
 - Allow Bahamian funds and managers access to the EU
- Passport enables non-EU AIFMs to enjoy the same rights, and subject to the same obligations, as EU based AIFMs.
- Benchmarking conducted against jurisdictions granted EU Passport
- Commission seeking to be included in next round of assessments for passporting
- Working to conclude remaining MoUs (Germany/Italy)



AIFMD LICENSING REGIME

- Legislation establishes entire regime for persons wanting to be AIFMD compliant
- Framework provides for distinct license to managers operating in or managing funds from the EU
- Provisions operate wholly independently of those relating to managers operating in or from The Bahamas and not in the EU or with EU funds
- AIFM license required when a person intends to:
 - Market an investment fund or an EU AIF in the EU with an EU passport
 - Manage an EU AIF with an EU passport irrespective of where the EU AIF is marketed



AIFMD LICENSING REGIME

- Commission to ensure licensing criteria:
 - Fitness & Propriety Standards
 - Principal & Registered Off in The Bahamas
- Commission to report to ESMA on licenses granted and revoked
- Licensee to meet obligations:
 - Financial requirements (Capital and Indemnity Insurance)
 - General organizational requirements and operating conditions of an AIFM
 - Requirements related to the valuation of assets
 - Appointment of custodian for each EU fund it manages
 - Submission of annual report



NEXT STEPS

- Release of Draft Regulations
- Industry Meeting to Discuss
- Finalisation of Investment Funds Bill, 2017
- Submit Comments: IFAconsultation@scb.gov.bs



THANK YOU





CONTACT INFORMATION

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