Overview of the Investment Funds Regulations, 2018

Friday, 18th May 2018
British Colonial Hilton
Nassau, The Bahamas
Presenter: Christina R. Rolle, Executive Director
PRESENTATION OUTLINE

➢ Recap of the Development and Consultation Process
➢ Update on Status of Legislation
➢ Review of Key Changes in the Bill
➢ Overview of the Regulations Relating to Key Changes in Bill
➢ Overview of Additional Changes of Note
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 Investment Funds Bill
  ▪ Public Consultation 27 Nov. 2017 – 28 Feb. 2018
  ▪ Comments from Public Consultation Reviewed
  ▪ Amendments to Bill Arising from Consultation
  ▪ Proposed Parliamentary Submission – Early July
  ▪ Promulgation before September 2018

➢ Draft Investment Funds Regulations
  ▪ Released for consultation 13 April 2018
  ▪ Consultation period 13 April 2018 – 15 June 2018
Summary of Key Changes in Bill

- 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
KEY DEFINITIONS

Summary of Updates in IF Bill -

- “Carry on business in or from The Bahamas”
- “Investment fund or fund”
- Two definitions form basis for application of regime throughout the legislation

Draft Regulations -

- Nothing in Regulations on “Carrying on Business” or “definition of investment fund”
- Definition of Fit and Proper
  - Usual Fit and Proper Standards
  - Education, Experience, Capacity, Character and Reputation
  - Commission authorized to consider certain specific matters
  - Same as Regulation 3 in Securities Industry Regulations, 2012
**Bahamas Based Funds Recap**

**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
Application for Licensing

- Form in Schedule 3
- List of accompanying documents prescribed in schedule
- Forms provided for key documentation

No substantive changes in forms, content or procedure for applying for license

No substantive change in documents required to be submitted in support

Requirements and forms related to various reporting requirements also included in Schedules
- No substantive changes
NON-BAHAMAS BASED FUNDS

- Definition narrowed and regulatory regime rationalized
- Non Bahamas Based Fund in Bill -
  - Foreign Fund sold or being administered or managed in or from The Bahamas
    - Sold – Representative Required
    - Administered or Managed – Notice to Commission
- Commission Proposed Amendment to Standard –
  - Definition to include only Foreign Funds being administered or managed in or from The Bahamas
    - Administered or Managed – Notice to Commission
INVESTMENT FUND ADMINISTRATOR

- 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
<table>
<thead>
<tr>
<th>Obligations Under IFA Bill, 2017</th>
<th>Obligations Under IFR Bill, 2017</th>
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<tbody>
<tr>
<td>Provide Principal Office (now defined as the primary address of the fund)</td>
<td>Applications process is largely unchanged</td>
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<td>Ensure payment of fees</td>
<td>Requires two Directors</td>
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<td>Ensure that parties related to the fund are fit and proper</td>
<td>Appointment of Fit and Proper Chief Executive Officer and Compliance Officer</td>
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<td>Make reports as are required to the Commission</td>
<td>Duties to include –</td>
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<td>Obligations are administrative</td>
<td>• Making Constitutive Documents available to investors free of charge</td>
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<td>Fiduciary obligations now aligned between investment manager and operator of fund</td>
<td>• Making required reports to the Commission</td>
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INVESTMENT FUND MANAGER

IFA, 2003:
- 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
Applications process is largely unchanged

Registration restrictions apply –

- Funds where AUMS do not exceed $100,000,000
- Funds where AUMS do not exceed $500,000,000 but the investment funds do not use leverage and restrict redemption by investors within a 5 year period

Obligations include -

- 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
OVERSIGHT OF CUSTODIANS REGIME – IFR 2018

- Regime for custodians substantially provided for in the Act
- Provisions in the Regulations establish qualifications of custodian

Custodian Must Be –

- A bank and trust company licensed under the Bank and Trust Companies Regulations Act; or
- A bank, trust or other financial institution Licensed in a prescribed jurisdiction that meets certain net worth requirements; or
- Such other person as approve by the Commission.
Oversight of Operators Regime – IFR 2018

- Funds required by IF Bill to appoint Operators

- According to Structure:
  - Company – Directors
  - Partnership – General Partner
  - Unit Trust – Trustee
  - ICON - Administrator
Oversight of Operators Regime – IFR 2018

- Duties of fund realigned

- Duties/Obligations:
  - Compliance with the Act and funds constitutive documents;
  - Calculation of the NAV is properly calculated in accordance with standards in fund documents;
  - Adherence to borrowing limits;
  - Audits are conducted as required by law; and
  - Books and records of the fund are properly maintained.
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
- Commission has entered MoUs with 27 of 31 EU jurisdictions
- Working to conclude remaining MoUs (Germany/Italy)
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
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 Office 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
AIFMD REGIME
IFR 2018

- Details of Licensing Requirements largely standard
  - Identification of parties, location, organizational structure, remuneration policies, and details of delegations etc.

- AIFM required to notify the Commission of certain obligations

- Commission obliged to have regard to AIFMD in overseeing AIFM

- Reporting requirements include –
  - Details on where AIFM is managing or marketing funds;
  - Details on management relationship with funds being Managed by the AIFM
  - ‘Program of Activity’ setting out organizational structure of AIFM
  - Evidence that the AIFM has sufficient capital in accordance with the Act
AIFMD Regime
IFR 2018

- Pursuant to IF Bill AIFM obliged to appoint custodian
- Standards specific to AIF Custodians separate and different to domestic custodian
- Specific provisions related to the Custodians functions including -
  - Contractual particulars
  - Segregate Funds Assets
  - Conduct appropriate Reconciliations,
  - Record Keeping Requirements
  - Conducting Risk Assessments for Assets in Custody
  - Implementing Ex Post Controls and Verifications of Processes and Procedures
  - Escalation Policies in Relation to Irregularities
NEXT STEPS

- Release of Draft Regulations
- Review Regulations in context of the Bill
- Submit Comments:
  IFAconsultation@scb.gov.bs
THANK YOU
CONTACT INFORMATION

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