

**The Investment Funds Act (the “Act”) & Regulations (the
“Regulations”) – Information Paper**

Name:

The Mutual Funds Act has been repealed and replaced by the Investment Funds Act.

Objective:

To ensure that any product falling within the definition of an investment fund under the Act will be required to be regulated. This allows the Bahamas the flexibility of regulating different types of investment vehicles. ALL INVESTMENT FUNDS ARE REGULATED IN SOME FORM OR FASHION UNDER THE ACT.

Categorization of funds:

The type of funds regulated under the Act is:

- The Professional Fund – is a fund which has as its investors a specific type of investor as defined in the Act.
- The SMART Fund – is a flexible fund whose structure is to be approved by the Commission before it can be licensed as a SMART Fund. The Commission is to establish rules on the parameters, class or type of investment fund that can qualify as a SMART Fund.
- The Standard Fund – includes any fund that does not fall under any of the other categories for licensing.
- Recognized Foreign Funds – includes Funds that are Bahamas-based but have a nexus (which is provided for in the Act) to a prescribed jurisdiction. The Recognized Foreign Fund is required to be registered with the Commission.

Non-Bahamas based fund:

A Non-Bahamas based fund which intends to sell its units or shares in or from the Bahamas is required to appoint a representative approved by the Commission. Qualifications for the representative for a Non-Bahamas based fund can be found in the Regulations. All other Non-Bahamas Based Funds, for example, those whose custodian is in this jurisdiction, are required to notify the Commission in writing of the nature of its nexus to the Bahamas.

Licensing of Funds:

Investment Fund Administrators that hold an Unrestricted Investment Fund Administrator’s licence can still license funds, but can only license professional funds

and SMART funds. Unrestricted Investment Fund Administrators can only license funds for which they provide the principal office and for which they are the administrator. The Commission is able to license all types of funds under the Act; and standard and self-administered funds can only be licensed by the Commission. The Recognized Foreign Fund is to be registered with the Commission.

Closed-end Funds:

Closed-end funds are not required to be regulated under the Act. However, closed-end funds may opt to be regulated under the Act and if so elects, shall from the date of licensing be deemed an investment fund under the Act.

Self-Administered Funds:

A self-administered fund is a fund that is administered by its own operators performing the functions of an Investment Fund Administrator. In such case, a reference to an Investment Fund Administrator shall be deemed to be a reference to the operator of the self-administered fund who is performing the function of an administrator.

Such a fund is still regarded as a regulated investment fund and is required to hold an investment fund license or be registered with the Commission.

Material Change Information:

Any material change to an investment fund or to its investors which an investment fund considers not to require an amendment to the offering memorandum or constitutive documents is required to be reported to the Commission within 21 days of the occurrence of the material change.

The Commission may require that details of any material change be reported to the investors.

An investment fund, other than a Recognised Foreign Fund, is also required to submit changes to the Offering Memorandum of a fund to the Commission within 21 days of the changes.

IBC's as Investment Fund Administrators:

There are no restrictions in the Act on IBC's having to conduct its investment fund administration business overseas. Consequently, they can apply for and subject to satisfying all other provisions for licensing under the Act be granted an Unrestricted Investment Fund Administrator's License.

Investment Fund Administrators:

Under the Act, only companies incorporated or registered under the Companies Act, 1992 or international business companies incorporated under the International Business Companies Act, are permitted to be Investment Fund Administrators.

Restricted Investment Fund Administrators:

Restricted Investment Fund Administrators under the Act, in addition to being required to have a registered office in the Bahamas, are also required to have a place in the Bahamas where administration records of the investment funds under its administration are available unless the applicant has a physical place of business in the Bahamas.

Investment Fund Administrators that are also Banks & Trust Companies:

Under the Act, **all** Investment Fund Administrators, regardless of whether they are also licencees of the Central Bank are required to obtain the prior approval of the Commission before issuing or transferring or otherwise disposing of such shares in the company and before appointing or changing a director or similar senior officer/chief executive officer.

Auditors:

Under the Act, auditors to investment funds and investment fund administrators are required to be approved by the Commission and they are also subject to certain reporting obligations.

Filing of Funds:

Unrestricted Investment Fund Administrators who license investment funds are required to file with the Commission certain documentation including a copy of the investment fund licence within 30 days of the licensing of the investment fund and if such documents are not filed within the specified period of time, the unrestricted investment fund administrator shall pay to the Commission a fine equal to double the amount of the annual registration fee payable by the investment fund.

On-Site and Off-Site Examinations:

The Act contains express provisions on the Commission's authority to conduct both on-site and off-site examinations of the business of investment funds and parties related to an investment fund.

Supervisory Authority:

The Commission's authority over unregulated funds or administrators is expressly provided for in the Act and is provided to be the same as regards to a regulated fund or administrator.

Specific authority has been given to the Commission to petition the Court to wind-up an unregulated investment fund operating in the Bahamas.

Standard duties of an administrator:

The Act expressly provides that the various duties imposed on an administrator are applied at a **reasonable standard**. Thus an administrator shall use reasonable efforts to ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to provisions in the Act.

Penalty for non-payment of annual fee by investment fund or investment fund administrators:

If an investment fund or investment fund administrator fails to pay the prescribed annual fee on or before the 31st day of January, the investment fund or investment fund administrator shall be required to pay an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed remains unpaid up to the 1st day of April of the relevant year.

Under the Act, where the investment fund or investment fund administrator fails to pay the required fee and any additional fee imposed on or before the 1st day of April of the relevant year, the Commission may revoke the licence or registration of the investment fund or investment fund administrator.

Waiver of Provisions:

The Commission, if satisfied that to do so would not be prejudicial to the public interest has the power to direct that all or any of the provisions in the Act or Regulations shall not apply or will apply subject to such modifications as may be specified to any person or class of person. Also, a direction granted by the Commission may be subject to any conditions as the Commission may see fit to specify and may be revoked at any time at the discretion of the Commission.

Custodian:

The Regulations require an investment fund to appoint one or more persons as custodians of the assets of the investment fund unless the operators of the fund certify in writing that the structure of the investment fund or the nature of the assets of the investment fund are such that they do not require that a custodian be appointed to hold the assets of the investment fund. However, the Commission has the power to determine that an investment fund **is** required to appoint a custodian.

A custodian of an investment fund is required to be either (i) a bank or trust company with an unrestricted licence issued by the Central Bank of The Bahamas; (ii) such other bank or trust company or financial institution licensed in a prescribed jurisdiction and having paid-up capital as set down in the Regulations or (iii) such other person as approved by the Commission.

Minimum Number of Operators of Companies:

The Regulations require for an investment fund that is a company to have a minimum of two operators.

Transitional Provisions:

The transitional provisions of the Act provide as follows:

- (a) A mutual fund in existence immediately before the commencement of the Act carrying on business as a licensed or authorised fund under the Mutual Fund Act, 1995 is deemed to have complied with the requirements of licensing under the Act. However, such a mutual fund shall submit to the Commission full details as required by the Commission regarding its classification and structure within nine months of the commencement of the Act.
- (b) A mutual fund carrying on business immediately before the commencement of the Act as an exempt fund pursuant to Section 3(4), Mutual Funds Act, 1995 may continue to carry on business for nine months after the promulgation of the Regulations if the mutual fund applies to a licensor in the prescribed manner within 90 days after the promulgation of the Regulations to be licensed as an investment fund and the application is not refused within the nine months period.
- (c) A mutual fund carrying on business immediately before the commencement of the Act as an exempt fund pursuant to Section 3(6), Mutual Funds Act, 1995 may continue to carry on business for nine months after the promulgation of Regulations provided that the investment fund applies to the Commission in the prescribed manner within ninety days after the promulgation of the Regulations to be registered as a recognized foreign fund and the application is not refused within the nine month period.
- (d) A person who immediately before the commencement of this Act was carrying on business as a licensed mutual fund administrator under the Mutual Funds Act, 1995, is deemed to have complied with the requirements for licensing under the Act save that the mutual fund administrator shall be required to comply with the paid-up capital requirements established in the Regulations and must provide the Commission with evidence of such compliance within nine months of the promulgation of the Regulations.

Surrender of Licence or Registration:

An investment fund shall in the prescribed manner notify the Commission in writing of its intention to surrender its licence or registration, at least fourteen days prior to the effective date of the surrender and shall also surrender to the Commission any certificate issued as evidence of its being licensed or registered.

Transfer to and from the jurisdiction:

An investment fund transferring to the Bahamas from another jurisdiction is required to notify the Commission within seven days of the transfer supplying to the Commission certain information as required under the Act. Such a fund has thirty days within which to obtain an investment fund licence.

An investment fund transferring from the Bahamas to another jurisdiction is required to notify the Commission in the prescribed form at least fourteen days prior to the effective date of the transfer and is required to surrender to the Commission any certificate issued as evidence of it being licensed or registered.

Transfer of Investment Fund Administrator:

An investment fund which transfers from one investment fund administrator to another shall notify the Commission in writing within fourteen days of the effective date of the transfer.

Termination of Administration Agreement:

An investment fund administrator shall inform the Commission in writing of its intention to terminate its administration agreement with an investment fund at least thirty days prior to the date of the proposed termination. The Act requires for an investment fund to appoint a new investment fund administrator at least seven days prior to the date of termination and to notify the Commission in writing of such appointment. If a fund fails to appoint a new administrator in the required time, such fund shall be liquidated and have its licence revoked by the Commission.

Dormant Investment Fund:

An investment fund which ceases trading and liquidates its assets without formally liquidating its structure is a dormant fund and such a fund is required to notify the Commission in writing within fourteen days of becoming dormant. A dormant fund may re-launch its operations within one year from the date of it becoming dormant which period can be extended by the Commission for a total period not exceeding eighteen months.

Winding-up of Investment Fund:

An investment fund is required to notify the Commission in writing that it has commenced winding-up within fourteen days of such commencement and upon the conclusion of such winding-up is required to submit to the Commission within fourteen days such evidence of winding-up as the Commission may reasonably require.

Annual Declaration for Investment Funds:

An investment fund is required to renew its licence or registration on an annual basis by submitting to the Commission on or before the 31st day of January in each year a written declaration that all information filed with the Commission is current and applicable.

Annual Declaration for Investment Fund Administrators:

An investment fund administrator shall on or before the 31st day of January in each year along with paying its annual licence fee submit to the Commission a written declaration that all information filed with the Commission is current and applicable along with its annual licence fee.