



OVERVIEW OF THE INVESTMENT FUNDS ACT, 2018

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PRESENTATION OUTLINE

- Development Process
- Review of Key Changes in the Bill
- Overview of Regulations Relating to Key Changes in Bill
- Overview of Additional Changes of Note
- Next Steps



DEVELOPMENT PROCESS

- Consultants engaged and Project Team assembled
- Public Consultation
 - Investment Funds Bill (27 Nov. 2017 – 28 Feb. 2018)
 - Regulations (13 Apr. 2018 – 15 Jun. 2018)
- Comments reviewed and amendments made
- Drafters working to finalise Bill and thereafter Regulations
- Technical review to be conducted by OAG



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
- 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

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, 2018

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



BAHAMAS BASED FUNDS REGULATIONS

- 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 rationalised
- Non Bahamas Based Fund in Bill -
 - 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



INVESTMENT FUND ADMINISTRATOR REGIME – IFR 2018

Obligations Under IFA Bill, 2018

- 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

Obligations Under IFR Bill, 2018

- Applications process is largely unchanged
- Requires two Directors
- Appointment of Fit and Proper Chief Executive Officer and Compliance Officer
- Duties to include –
 - Making Constitutive Documents available to investors free of charge
 - Making required reports to the Commission



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



INVESTMENT FUND MANAGER REGIME – IFR 2018

- 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

- Bahamian managers to EU funds subject to impact and requirements of AIFMD
- Commission has entered MoUs with 27 of 31 EU jurisdictions
- 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
- 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
- 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 certain obligations



NEXT STEPS

- Conclude review and finalize with drafters
- Project Team/Board Approval
- Submission to OAG & Law Reform – Technical Review
- Final Submission to Minister of Finance
- Cabinet Approval/Parliamentary Debate
- Promulgation of Legislation



THANK YOU





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