



INDUSTRY UPDATE

Investment Funds Act, 2019

Webinar

10:00 a.m. Tuesday 30 March 2021

Presenter:

Magan Taylor

Manager, Supervision

Investment Funds Unit

Securities Commission of The Bahamas

Legislative Updates

- Investment Funds Amendment, 2020
- Investments Funds Regulations 2020
- Investment Funds (Prescribed Jurisdiction) Rules, 2020
- Investment Funds (Fee) Rules, 2020

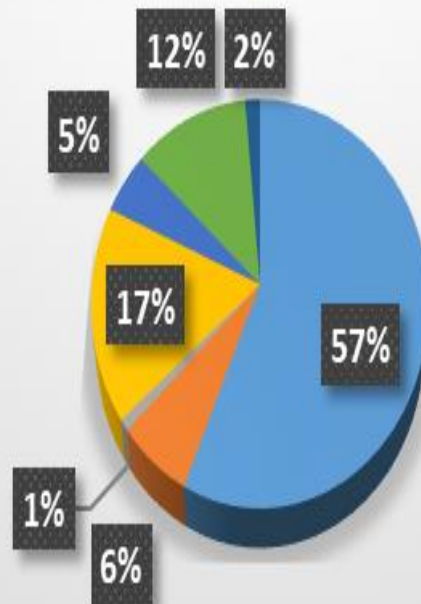
Continuing Obligations

- **Annual Fees** (principal office and license fee), **Annual Declaration, Annual Information Update Form** by 31st January
- **Financial Reporting** – AFS for Administrators within 120 days; AFS for Funds within 180 days of financial year end
- **Material Changes and Administrative Penalties** – Legislation and Tenth Schedule Tables

Investment Fund Applications by Category -

745

■ IM Applications - 439 ■ Fund Applications ■ Administrator - 7 ■ Extensions - 132 ■ Other 4 ■ Surrender - 93 ■ Liquidation - 12



Registration

- ✓ **Application Form**
 - ✓ **Cover letter or matrix** providing the information prescribed in Regulation 22 of the IFR, 2020.
 - ✓ **Due diligence information-**
 - ✓ **Audited Financial Statements -**
 - The most recent audited financial statements of the investment manager, if applicable.
 - ✓ **Application Fees -**
 - The relevant non-refundable application fees must accompany the applications.
- ✓ **Key Functions**
 - Names of Chief Executive Officer, Compliance Officer, MLRO and person(s) providing investment management to the fund(s)
 - ✓ **Investment Management Agreement**
 - Updated Term Sheet to include details of Investment Manager (as applicable)

Due Diligence for IFM Registration

- For an individual – CV, Passport or National Identity Card and police certificate (not more than 6 months old), Utility Bill, Financial Reference and copies of qualifications
- Certified copy of Certificate of Incorporation or equivalent
- Certified copy of Memorandum and Articles of Association
- Register of Shareholders and Directors
- Evidence supporting the Investment Fund Manager's licensing or regulation with a regulatory body
- Evidence of current standing with licensor or regulator
- Confirmation of Regulatory Capital (where applicable)
- Confirmation of Professional Indemnity Insurance (where applicable)
- Nature of business

Concerns

- Incomplete Applications – UIFA licensing
- Unlaunched funds and suspensions
- Submission of performance reports

Supervision Priorities

- Corporate Governance frameworks and practices
- Revisions to IFR, 2020; UIFA Booklet; Fund Manager Guidance
- SMART Fund Revisions

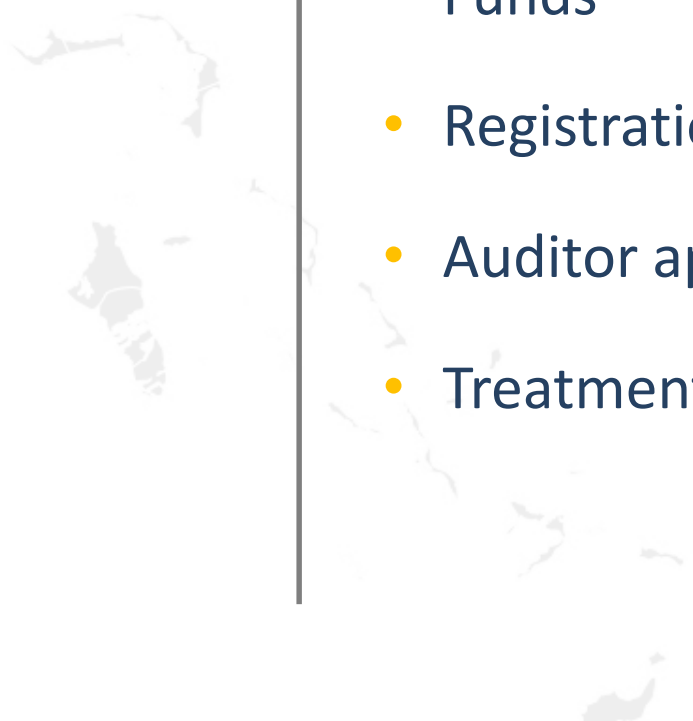
Upcoming Deadlines

- Audited Financial Statements
- Statistical Information Filing on or before **Friday 21 May 2021** via email: statisticalinfo@scb.gov.bs.



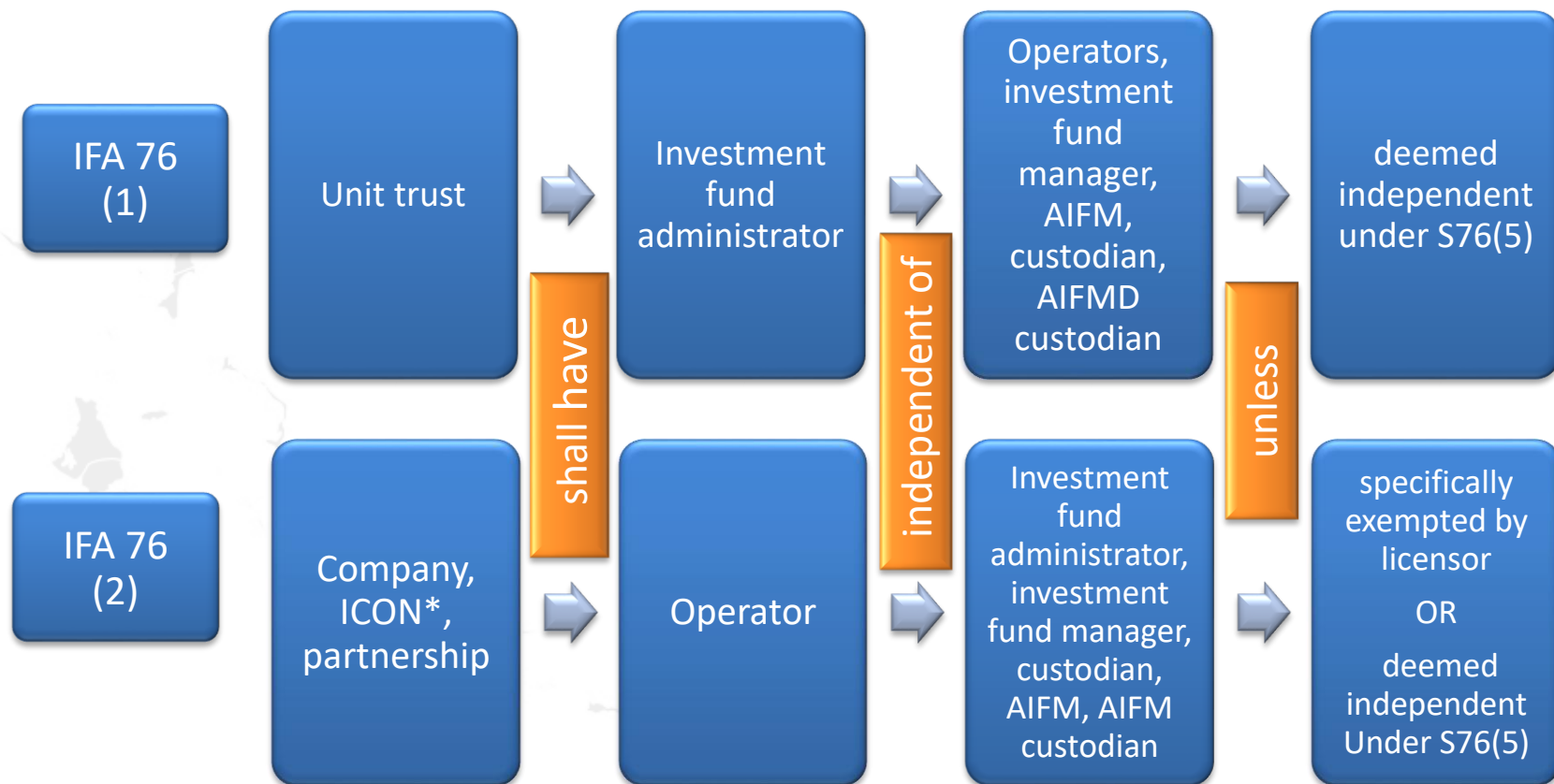
POLICY MATTERS RE: Transition to IFA 2019

Presenter:
Christina Rolle
Executive Director
Securities Commission of The Bahamas

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- Independence of Directors(/Operators)
 - Appointment of Fund Managers by SMART Funds
 - Registration of Unappointed Fund Managers
 - Auditor approval requirements
 - Treatment of Foreign Fund Administrators

Policy Matter: Independence of Directors(/Operators)

Q: What are the legal requirements regarding the independence of directors/operators?



* An investment fund that is an investment condominium not required to have operator that is independent from its administrator

... (continued)

Policy Matter: Independence of Directors(/Operators)

Q: What are the legal requirements regarding the independence of directors/operators?

76(5).– Re independence of investment fund administrator, operator, custodian and AIFMD Custodian (Summary)

*Where they are companies **with the same parent company**, deemed independent if:*

- (a) they are subsidiaries of a financial institution;*
- (b) none of them is a subsidiary of the other;*
- (c) at least one director of a custodian or AIFMD custodian is not also a director of the investment fund administrator, operator, or the AIFMD custodian; and*
- (d) They sign an undertaking with the Commission that they will act independently of each other in their dealings with the investment fund or EU AIF; or the investment fund or EU AIF is established in a jurisdiction that applies similar rules to those provided in the Regulations with respect to the independence of these persons, or*
- (e) the investment fund or EU AIF is established in a jurisdiction that applies similar rules to those provided in these Regulations with respect to the independence of these persons.*

Appointment of Fund Managers by SMART Funds

Q: Are SMART Funds required to appoint investment fund managers?

IFA, 2019 section 6.

Professional and standard fund

Notwithstanding section 5, a professional fund or standard fund shall not carry on or attempt to carry on business in or from The Bahamas unless –

- a) it has appointed an investment fund administrator and an investment fund manager or AIFM...

IFA, 2019 section 7.

SMART fund

(1) Notwithstanding section 5, a SMART fund shall not carry on or attempt to carry on business in or from The Bahamas unless –

- a) It complies with any written rule of the Commission establishing the parameters or requirements in respect of the category, class or type of investment fund; and
- b) the prescribed fees have been paid in respect of the investment fund.

Registration of Unappointed Fund Managers

Q: Can an investment fund manager be registered under the IFA without having been appointed to an investment fund?

Legislative References:

IFA, 2019 S. 24 Appointment of investment fund manager (amended, IFA(A)A, 2020)

- (1) Subject to subsection (3) and section 26(1), an investment fund shall appoint an investment fund manager upon commencement of operations as a regulated investment fund.
- (2) An investment fund manager appointed under subsection (1) shall provide or is entitled to provide an investment fund with investment management services and may provide investment advice for valuable consideration.
- (3) Where an investment fund appoints an investment fund manager, the investment fund manager shall be required to be registered as an investment fund manager.

... (continued)

Registration of Unappointed Fund Managers (cont.)

IFA section 26

Requirements for the registration of an investment fund manager (amended, IF(A)A, 2020 s. 11)

- (1) A person shall not act as an investment fund manager for –
- a) a standard fund or any other fund in any other jurisdiction whose equity interests are not limited to being offered to accredited investors only unless –
 - i. registered under the Securities Industry Act, 2011 (No. 10 of 2011); or
 - ii. licensed or registered in a prescribed jurisdiction and
 - iii. registered under this Act.
 - b) a professional, SMART of any other fund in any other jurisdiction, other than the EU, whose equity interests are limited to being offered to accredited investors only unless registered under this Act.
- (2) Subject to subsection (1), a person acting as an investment fund manager shall apply to the Commission to be registered under this Act.”

Re: Treatment of Foreign Fund Administrators

Q: What is the SCB's intent regarding the treatment of ongoing reporting obligations for Foreign Funds Administrators?

Presently, the ongoing obligations for Foreign Fund Administrators are the same as those for restricted/unrestricted investment fund administrators.

Re: Approval of Auditors


Q: Why is an auditor required to be approved by the Commission to Act on behalf of a regulated person?

In order to meet the European Union's standards and avoid blacklisting, regulation of auditors was a requirement (IFR, 2020, Regulation 75)

Thank you!

Q&A





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