



# Government launches 'revolutionary' ICON investment fund



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- 🔍 Introduction
- 🔍 Establishing an ICON
- 🔍 Governing regulations
- 🔍 Administrator
- 🔍 ICON operation
- 🔍 Exemptions from taxes
- 🔍 Comment

## Introduction

Described by Minister of Financial Services Ryan Pinder as a 'revolutionary' step, the fund structuring vehicle known as the investment condominium (ICON) is the latest investment product offering from the Bahamian financial services industry and the first of its kind in the common-law world.

Although not limited to use by investors and fund managers from any one country, the ICON was created with the Brazilian environment and the success of the Brazilian hedge fund industry in mind and will be fully compliant with Brazilian laws. All of Brazil's almost 13,000 funds are organised as condominiums registered and regulated by the Securities Commission of Brazil.

Governed and formed pursuant to the Investment Condominium Act, the ICON as defined under Section 3 of the act is a contractual relationship subsisting between investors (called participants), under which investors agree to pool assets for the purposes of investing those assets as a collective.

The ICON may be formed to operate as an open-end investment fund in which participants have the right to request the redemption of participation interests in accordance with its governing regulations or a closed-end investment fund in which the participants have no such right.

An ICON cannot make or declare dividends or make any other distributions to participants. Accordingly, participants recoup their investment only on redemption of their participation interests, which may take place in whole or in part on the terms set out in the governing regulations.

The ICON possesses no legal personality but, when represented by its administrator<sup>(1)</sup> can:

- hold assets in its own name;
- enter into agreements; and
- sue or be sued in its own name.

The administrator acting on behalf of the ICON executes all letters, contracts, agreements, deeds and documents for the ICON. The administrator also has the power to do anything necessary or conducive to the investment condominium's activities.

The structure is licensed and fully regulated as an investment fund, similar to the use of existing vehicles (eg, the International Business Company, the Exempted Limited Partnership and the Unit Trust). Section 16 of the act allows for conversion of these vehicles into an ICON. Further, a foreign company or partnership can redomicile to the Bahamas and then convert into an ICON, and in the case of a foreign trust, change its governing law to that of the Bahamas and convert into an ICON.

### **Establishing an ICON**

Section 6 of the act governs the establishment and registration of an ICON. Some of the provisions are as follows:

- An ICON is established on the execution of its governing regulations by one or more initial participants.
- The establishment of an ICON is evidenced by a certificate of establishment signed by the administrator.
- The certificate of establishment, together with the prescribed fee, must be submitted to the registrar general within seven days of establishment. The registrar general stamps the certificate and enters the ICON's name in the register of ICONs and maintains it.
- The governing regulations may be filed with the registrar (although this is not required).
- An ICON must be licensed as an investment fund by a licensor (the Securities Commission of the Bahamas or an unrestricted investment fund administrator as defined under the Investment Funds Act) within 90 days of the date of establishment, or a longer period if approved by the Securities Commission.
- On being licensed as an investment fund an ICON is governed by the Investment Funds Act and regulated as an investment fund.

### **Governing regulations**

Section 5 of the act, among other things, makes provision for the contents of the governing regulations for an ICON. Some of the particulars are as follows:

- The ICON's name.
- A statement that the ICON is formed exclusively for the purpose of operating as an investment fund under the Investment Funds Act.
- The name and address of the ICON's administrator will be the ICON's registered address.
- Provisions for the ICON's duration, which may be limited or unlimited.
- Provisions for the ICON's dissolution.
- A statement as to whether the ICON is authorised to issue classes and series of participation interests and whether the administrator is authorised to fix the classes and series.
- A statement of the number of participation interests that the ICON is authorised to issue and the currency in which the participation interests are to be issued.
- How the governing regulations can be amended.
- Provisions outlining the policies and procedures for valuation of the assets and liabilities of the ICON.
- Provisions, if applicable, addressing the division of duties of the governing administrator and general administrator.
- Provisions relating to audit.
- Provisions addressing the liability of each ICON participant, specifying how such liability is limited or that the participants are liable for the negative net equity of the ICON.

### **Administrator**

Section 8 of the act provides that the initial participants must appoint a governing administrator and a general administrator. These roles may be filled by a single entity or separate entities.

The governing administrator is deemed to be an operator for the purposes of the Investment Funds Act and shall have the powers and duties of an operator as therein provided. The governing administrator must be one of the following:

- an administrator licensed by the Securities Commission;
- a licensee under the Financial and Corporate Service Providers Act;
- an institution licensed under the Securities Industry Act to deal in securities;
- a bank or trust company licensed by the Central Bank pursuant to the Banks and Trust Companies Regulation Act;  
or
- a foreign entity licensed by or registered with a regulatory authority with functions corresponding to regulatory functions exercised by the Central Bank or the Securities Commission of the Bahamas.

The general administrator has the powers and duties of an administrator as prescribed by the Investment Funds Act and must be a restricted or unrestricted fund administrator licensed by the Securities Commission of the Bahamas.

The governing administrator has the authority to bind the ICON and the administrator has the power and authority to engage service providers and contract generally in the ICON's name.

Further, Section 19 of the act imposes a duty on the administrator to keep books and records related to the ICON at its offices. Accounting records maintained by the administrator must be kept for a minimum five-year period.

### **ICON operation**

Sections 10 to 13 of the act govern meetings of participants and voting rights.

The governing regulations may provide for participation interests with or without voting rights, or a combination thereof.

In each year, in addition to any other meeting, the administrator will call at least one meeting of participants holding voting interests as the annual meeting, and shall specify this meeting as such in the notices calling it. The annual meeting may be held in the Bahamas or anywhere in the world as the administrator may determine.

Except where the governing regulations provide otherwise, a person may participate in a meeting by teleconference or other communications equipment, by means of which all persons participating can communicate simultaneously.

### **Exemptions from taxes**

Pursuant to Section 25 of the act, an ICON is not liable for estate, inheritance, succession, gift or stamp tax provided that its participation interests are held either directly or indirectly only by persons deemed non-resident for exchange control purposes and provided that the ICON does not own, either directly or indirectly, real property in the Bahamas.

### **Fees**

The fees for the establishment or conversion of an ICON are as follows:

<b>Registration of an ICON</b>	<b>Fees</b>
First quarter	\$350
Second quarter	\$250
Third quarter	\$150
Fourth quarter	\$100
Converted ICON	\$350 (pro-rated)
Certificate of conversion	\$150
Annual fee payable to government	\$350 (due by April 30)

## Comment

The ICON is a further example of the Bahamas' commitment as a provider of market responsive, regulated and sophisticated products. It shows the Bahamas as a leader in the financial services industry, following on from a host of other products including the Specific Mandate Alternative Regulatory Test Fund,<sup>(2)</sup> the Bahamas Executive Entity and the Foundation.

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## Endnotes

(1) The act provides for the appointment of a single administrator or both a governing administrator and general administrator.

(2) Known as the SMART Fund.

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