



The Bahamas Investment Condominium - ICON (Part 1)

RECENT SECURITIES LEGISLATION establishing a sophisticated investment fund vehicle called an *Investment Condominium* (“ICON”) under Bahamian law, is an example of The Bahamas’ enduring commitment to financial services, one extending as far back as the 1930’s.

The statutory framework for the ICON is the *Investment Condominium Act, 2014* (“**ICON Act**”). The ICON is intended to be an alternative to a traditional company, unit trust or exempted limited partnership vehicle for use in relation to investment funds. It must be licensed as one or other of the already-existing Bahamian investment funds, namely, a *SMART fund*, *professional fund* or *standard fund*.

The ICON is modelled after the Brazilian ‘condominium’ concept of pooling assets for collective investments in an unincorporated manner akin to the concept of joint ownership and administration of property well-understood in the civil law jurisdictions of South America. Common law jurisdictions would recognize in the ICON a similarity to the partnership concept albeit with corporate-like features.

Main characteristics of the ICON

- (i) It is a contractual relationship between one or more participants pooling assets for the purpose of operating an investment fund;
- (ii) It must be licensed as an investment fund under the laws of The Bahamas;
- (iii) It is established upon the terms and conditions and with the rights and powers as provided for in its governing regulations;
- (iv) The governing regulations are the constitutive documents of the ICON;
- (v) Governing regulations do not have to be filed with the Companies Registry in The Bahamas (“**RGD**”) on establishment of the ICON;
- (vi) The governing regulations bind the ICON and its participants to the same extent as if each participant had executed same;
- (vii) The ICON possesses no legal personality;
- (viii) It can hold assets in its own name;



- (ix) It can enter into agreements in its own name; and
- (x) It can sue or be sued in its own name.

Establishment of the ICON

Step 1 – Reserve the Name

The name of the ICON must contain the expression ICON, IC or investment condominium. The name is reserved with the RGD and held by the RGD for 28 days.

Step 2 – Signing of the governing regulations

The initial participants sign the governing regulations and this establishes the ICON. The initial participants appoint the governing administrator and the general administrator of the ICON.

Step 3 – Administrator issues the Certificate of Establishment

Once the governing regulations are signed the administrator then issues the Certificate of Establishment. The Certificate of Establishment is required to contain the following information:

- (i) Name of the ICON;
- (ii) Statement that the ICON shall be licensed as an investment fund;
- (iii) Address in The Bahamas for service of process;
- (iv) Name and address of the Administrator; and
- (v) Date of establishment.

Step 4 – Certificate of Establishment is submitted to the RGD

The Certificate of Establishment is submitted to the RGD within seven days for stamping by the RGD.

A stamped Certificate of Establishment is *prima facie* evidence of compliance with the registration requirements.



Registration is complete once the Certificate of Establishment is stamped by the RGD with the date of the establishment of the ICON being the date as stated in the Certificate of Establishment.

Filing fees for registration of an ICON depend upon the quarter in which filing occurs:

- Within the first quarter of a calendar year:\$350.00
- Within the second quarter of a calendar year:\$250.00
- Within the third quarter of a calendar year:\$150.00
- Within the fourth quarter of a calendar year:\$100.00

Licensing of the ICON

The ICON must be licensed as an investment fund within 90 days of the date of establishment.

In this issue, we wish to also highlight three features of the ICON namely: (i) Governance (ii) Restrictions on dividends and (iii) Closed-end ICON's

Taking each one in turn:

Governance

- Persons responsible for the governance of an ICON are regulated persons. As mentioned, the ICON is required to have both a governing administrator and a general administrator;
- A governing administrator has to be one of the following:
 - (i) a licensed investment fund administrator;
 - (ii) a financial and corporate services provider;
 - (iii) a registered firm registered to deal in securities;
 - (iv) a bank or trust company licensed by the Central Bank of The Bahamas ("**CBB**"); or
 - (v) any entity registered with or licensed by a regulatory authority in a foreign



jurisdiction exercising regulatory functions that correspond to regulatory functions exercised by the CBB or the Securities Commission of The Bahamas;

- Only a licensed investment fund administrator may act as the general administrator of an ICON;

The governing administrator is the operator of the fund and the general administrator performs general administration duties. If there is only one administrator, that entity is both the general and governing administrator of the ICON.

Restrictions on dividends

The ICON is prohibited by the ICON Act from making or declaring dividends or making any other distributions to participants.

Closed-end ICONs

All investment funds structured as an ICON are required to be licensed as an investment fund, including closed-end funds.

Future updates: Coming soon will be our further updates discussing how to convert an existing fund structure to an ICON, the role and duties of the administrator of the ICON, and a comparison between the ICON and non-ICON fund structures.

DELANEY PARTNERS is well-equipped to advise you in all aspects regarding an ICON. For more information please contact Samantha Knowles-Pratt (skpratt@delaneypartners.com), Pamela Klonaris (pklonaris@delaneypartners.com), or Sofia Papageorge (spapageorge@delaneypartners.com).