

A Bahamas LatAm approach driven by innovation

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Only five years ago, the Bahamas launched an innovative piece of legislation, the Investment Condominium Act 2014, enhancing the jurisdiction's fund product offerings. This legislation, the first of its kind in any international financial center (IFC), targeted Brazilian multi-market funds. The Bahamas Investment Condominium (ICON) was created to appeal to the Brazilian investment fund market. Effectively it is a civil-law product, introduced in a common-law context, and so its structure is familiar to the Latin American market.

In pursuing this initiative, the Bahamian Government engaged a Brazilian law firm to review the applicability of the ICON structure in the Bahamas. Along with detailed market studies, their work included consultation with many top Brazilian law firms, family offices, investment firms and other potential user firms, to develop the technical plan for how the ICON structure would work in the Bahamas, and how it could be packaged to appeal to the target market. It came to fruition quickly, and was promulgated into law in late 2014.

Where are we today?

The question often asked by professionals inquiring about structuring an ICON is: "What is the difference between a SMART fund, a professional fund and an ICON?" The simple answer is that an ICON is like a company, a unit trust or a partnership; except it is an alternative legal structure under Bahamian law and, as such, once it is established it can be licensed as a SMART fund or as a professional fund.

Once established and licensed, the structure bears all the attractive features of a fund including, and not limited to, asset planning, pooling of resources and family investment planning.

Getting in formation

From the administrator's perspective, it has to be understood that the ICON is neither a company, nor is it a partnership: rather it is a sort of hybrid of both. Similar to a corporation, with articles and a memorandum of association, or a limited partnership, with a partnership agreement, the ICON is organized by its governing regulations, verified by a certificate of establishment signed by its initial participants.

In other words, while corporations have shareholders, and partnerships have partners, an ICON has participants. Further, the ICON has a governing administrator, responsible for corporate governance of the entity, similar to a company having a director, and a partnership having a general partner.

Another key role in fund establishment is that of the fund administrator. Under the ICON structure, this role is referred to as the general administrator: a party responsible for tasks such as calculating the net asset value and undertaking registrar and transfer agency functions.

Use of the ICON

ICON funds have been established as private equity funds, traditional equity funds, and hedge funds. They have also been established for asset classes: they are not limited only to traditional bankable assets. ICON-based funds have also been able to open brokerage and custody accounts in many jurisdictions, with many global financial institutions (FIs).

This hybrid structure of common and civil law has not prohibited the ICON from establishing itself as a mainstay Bahamian product, or from being accepted by

mainstay FIs.

From a technical perspective, the governing regulations require that upon establishment, the ICON indicates that it was established exclusively for the purpose of an investment fund under the Bahamas Investment Fund Act 2003. They further describe inter alia the provisions for the dissolution of the ICON; the number and currency of participation interests to be issued; the authority to issue classes and series; and the manner in which material agreements and the governing documents are to be formatted.

An offering document for the ICON is typical of that used for any fund. Among other things, it details the methodology of fees, including performance and management fees. It also provides clear details of the risk associated with the investments, and how the subscription and redemption process works.

Participants of an ICON are required to provide standard due-diligence information. The general administrator must also send an acknowledgement and a confirmation of investment, followed by a statement of participation, as would happen in a Bahamian professional fund or a SMART fund.

What is the way forward?

While some investors, including those from the Brazil, have fully embraced the use of the Bahamas' ICON, others continue to use the Bahamas International Business Company or exempted limited partnerships structures to develop and launch funds. However, like the Bahamas SMART fund and Bahamas foundation, the ICON is expected to gain traction with not only Brazilian investors but, in time, with investors elsewhere in Latin America.

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