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BAHAMAS SMART FUNDS AN ALTERNATIVE OPTION FOR THE PERSONAL INVESTOR

The Bahamas Investment Funds Act, 2003, gives recognition to so called SMART Funds. An acronym for Specific Mandate Alternative Regulatory Test, SMART Funds can be established as one of seven currently pre-approved models – although additional models can be considered by the Securities Commission of The Bahamas on request – and benefit from a stream-lined, regulatory and licensing procedure.

This stream-lined process is not only attractive for professional fund managers looking to establish a track record before transitioning to a fully regulated fund to be offered to members of the public, but also to high net worth individuals and families are also using the facility as a flexible and relatively inexpensive means to hold and manage their personal wealth.

The fund nature of the structure enables an individual and families to pool investments, whether they be owned via a trust, foundation, company or directly, under one investment vehicle.

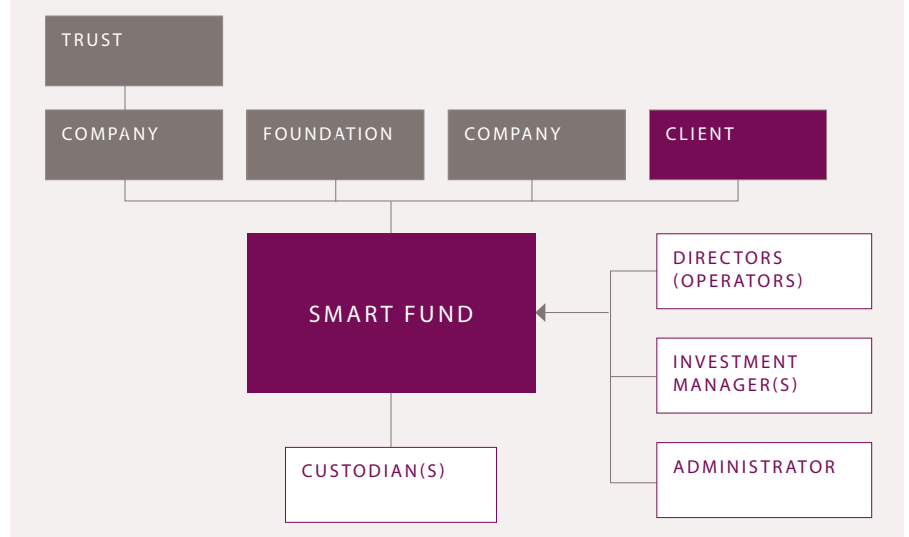
By pooling funds under one holding umbrella, significant savings can be achieved via economies of scales. Additionally, investments

may become available which otherwise would have been prohibited due to minimum investment or diversification requirements. For example, as the SMART Fund Model 007 requires a minimum investment of USD 500,000 per investor, it provides a licensed and regulated means of investment for those clients in jurisdictions which only permit external investments in this amount or higher.

The flexibility of the SMART Fund also allows innovative structuring solutions via various regulated vehicles including the International Business Company and the Segregated Accounts Company. However structured, the SMART Fund issues investors redeemable shares that, as with any other mutual fund, carry an assessed Net Asset Value (“NAV”).

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A TYPICAL STRUCTURE MIGHT LOOK LIKE THIS





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The information and comments contained herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

SMART Fund Model 007, referred to as the “Super Qualified Investment Fund”, which was approved by the Securities Commission of The Bahamas on 10th August, 2012, is particularly ideal for use by high net worth individuals or families as the structure allows a single investor. While a fully detailed Offering Memorandum need not be prepared for this fund model, a Term Sheet is required and must contain at least the following information:

- i. Name of the fund;
- ii. Date of establishment of the fund;
- iii. Structure of the fund (how the fund is established and the amount of the authorised share capital);
- iv. Name and address of the operators (directors);
- v. Nature of equity interests (how the authorised share capital is made up – divided between voting, non-participating shares held by the fund manager and participating, non-voting shares to be issued to the investors);
- vi. Investment objective(s) and policy;
- vii. Dealing policy (how often the NAV will be calculated and when shares can be purchased or redeemed including any minimums that apply);
- viii. Distribution policy (will income be distributed to shareholders or retained in the fund for reinvestment?);
- ix. Name and address of all parties related to the fund;
- x. A statement that the financial statements shall be audited annually unless unanimously waived by the holders of the equity interests in the fund and that if there is such a waiver a performance report of the fund shall be filed with the Securities Commission of The Bahamas every six months for so long as the waiver is valid;
- xi. Fees and expenses of the Administrator, Investment Manager (including any performance fees), Directors and set up fees;
- xii. Termination (details of any fixed termination date);
- xiii. A statement that “The fund is licensed as a SFM 007 pursuant to the Investment Funds Act, Chapter 369A, operating as a fund:

1. With a minimum of one investor and a maximum of fifty investors holding equity interests in the fund;
2. Where the minimum initial investment per investor in the fund is USD500,000; and

- xiv. A statement that “the operators of the fund accept responsibility for the information contained in the offering document or term sheet as being accurate”.

The SMART Fund 007 does not need to appoint an administrator and where an administrator is not appointed the operators (directors) fulfill this role. The administrative duties can be outsourced to any reputable person in any jurisdiction on an approved basis. Approval in this instance would be issued by the Securities Commission of The Bahamas. This ability to outsource administrative functions is particularly beneficial as it enables the administration to be undertaken in the location the investors consider most ideal taking into account their own residence and reporting obligations. Bahamian legislation requires that all SMART Funds be licensed either by the Securities Commission of The Bahamas or by an unrestricted fund administrator in specific instances. The license application can be fast-tracked.

While a SMART Fund is designed to be “light” from a regulatory perspective, it is advisable that proper corporate governance still be applied. For example, if the fund provides for quarterly NAV calculations, subscriptions and redemptions, then, unless a specific exception is made, it is advisable to adhere to this requirement. Not only will this help to demonstrate that the fund is a genuine investment vehicle, but where there are several family investors it helps ensure that no one is prejudiced by adverse events such as an early redemption requiring a sale of assets at an inopportune time.