CHAPTER 369G

INVESTMENT CONDOMINIUM

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CHAPTER 369G

INVESTMENT CONDOMINIUM

An Act to facilitate the formation of an investment condominium in The Bahamas between participants for the purpose of collective investments and for connected purposes *38 of 2014*

[Assent 19th September, 2014]

[Commencement 19th September, 2014]

1. This Act may be cited as the Investment Condominium Act. Short title.

2. In this Act, unless the context otherwise requires — Interpretation.

"administration agreement" means the agreement between the administrator and the participants from time to time, setting out the terms upon which the administrator shall administer the investment condominium;

"administrator" means the administrator of the investment condominium and shall, where the context permits, include the governing administrator and general administrator described in section 8 of this Act;

"assets" mean property in whatever form and wherever situate;

"auditor" means the auditor of the investment condominium as provided for under the Investment Funds Act; Ch. 369A.

"Central Bank" means the Central Bank of The Bahamas;

"company" means a company incorporated or continued under the International Business Companies Act; Ch. 309.

"dual foreign name" means an additional name in any language not utilizing the Roman alphabet, utilizing any letters, characters, scripts, accents

and other diacritical marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet;

"financial institution" means a restricted or unrestricted fund administrator licensed by the Securities Commission of The Bahamas under section 2 of the Investment Funds Act;

Ch. 369A.

"general administrator" has the meaning assigned to it in section 8 of this Act;

"governing administrator" has the meaning assigned to it in section 8 of this Act;

"governing regulations" means the investment condominium's regulations prescribed in the First Schedule;

First Schedule.

"initial participants" mean the first participants signing the governing regulations;

"investment condominium" means an investment condominium —

(a) described in section 3(1) of this Act; and

(b) established under section 6 of this Act or converted thereto under section 16;

"investment fund" means an investment fund as defined in the Investment Funds Act;

Ch. 369A.

"investment management agreement" means the agreement between the investment manager and the administrator representing the investment condominium;

"investment manager" means the investment manager of the investment condominium;

"licensor" means the Securities Commission or an unrestricted investment fund administrator as defined under the Investment Funds Act;

Ch. 369A.

"Minister" means the minister responsible for investment condominiums;

"offering document" means an offering document as defined under the Investment Funds Act;

Ch. 369A.

"operator" shall have the meaning assigned to it under section 2 of the Investment Funds Act;

Ch. 369A.

"participants" mean the persons who, having executed a subscription agreement, are registered in the register of participation interests of the investment condominium;

"participation interest" means a unit of ownership interest in an investment condominium;

"register" means the register of investment condominiums to be kept by the Registrar;

"Registrar" means the Registrar General defined under section 2 of the Registrar General Act; Ch. 186.

"resolution of participants" means —

(a) a resolution approved at a duly constituted meeting of the participants of an investment condominium by the affirmative vote of —

(i) a simple majority, or such larger majority as may be specified in the governing regulations, of the votes of the participants present at the meeting and entitled to vote thereon and who voted and did not abstain; or

(ii) a simple majority, or such larger majority as may be specified in the governing regulations, of the votes of the participants of each class or series of participation interests present at the meeting and entitled to vote thereon as a class or series and who voted and did not abstain and of a simple majority or such larger majority as may be specified in the governing regulations of the votes of the remaining participants entitled to vote thereon present at the meeting and who voted and did not abstain; or

(b) a resolution consented to in writing by —

(i) a simple majority or such larger majority as may be specified in the governing regulations, of the participants entitled to vote thereon; or

(ii) a simple majority, or such larger majority as may be specified in the governing regulations, of the votes of the participants entitled to vote thereon as a class or series of participation interests and of a simple majority, or such larger majority as may be

specified in the governing regulations, of the votes of the participants of the remaining participation interests entitled to vote thereon;

"Securities Commission" means the Securities Commission of The Bahamas;

"service provider" means any person that may be engaged by the administrator, representing the investment condominium, to perform delegated functions, including but not limited to —

(a) general administration;

(b) registrar and transfer agency services, including issuance and redemption of participation interests;

(c) treasury services;

(d) custody of securities and other assets;

(e) calculation of the net asset value of the investment condominium and its participation interests; and

(f) other functions, as applicable;

"subscription agreement" means the agreement between each participant and the administrator representing the investment condominium that determines the conditions upon which each participant subscribes for participation interests in the investment condominium.

Definition and constitution of an investment condominium operating as an investment fund. Ch. 369A.

3. (1) An investment condominium is the contractual relationship subsisting between one or more participants pooling assets for the purpose of operating as an investment fund as defined under the Investment Funds Act.

(2) An investment condominium is —

(a) established upon the terms and conditions, and with the rights and powers;

(b) subject to any limitations, empowered to borrow and lend money and give security over its assets,

as provided under the governing regulations, this Act and the Investment Funds Act. Ch. 369A.

(3) An investment condominium possesses no legal personality.

(4) For the purpose of enabling an investment condominium to operate as an investment fund it is able, when represented by its administrator, to —

(a) hold its assets in its own name;

(b) enter into agreements in its own name; and

(c) sue or be sued in its own name.

(5) All letters, contracts, deeds, instruments or documents including, but not limited to, contracts of insurance to which an investment condominium is a party shall be executed by its administrator representing the investment condominium.

(6) The administrator shall have the power, on behalf of the investment condominium, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the investment condominium.

(7) A debt incurred or obligation assumed by the administrator in the conduct of the business of the investment condominium, acting in compliance with the terms of the governing regulations, shall be a debt or obligation of the investment condominium and not of the administrator in its personal capacity.

(8) All property, rights and interest in property acquired, whether by purchase or otherwise, on behalf of the investment condominium shall be held in the name of the investment condominium and managed in accordance with its governing regulations and the offering document.

(9) An investment condominium may be formed to operate as an open-end investment fund in which the 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 do not have such right.

Name of investment condominium.

4. (1) The Registrar may, upon a request made by any person, reserve for up to twenty-eight days, a name for future adoption by an investment condominium under this Act.

(2) The name of the investment condominium shall contain the expression "ICON", "IC" or "investment condominium".

(3) The name of the investment condominium, as contained in the certificate of establishment, shall be the

name used in all transactions, deeds and documents of any kind made by the administrator representing the investment condominium.

(4) The administrator may amend the governing regulations to change the name of the investment condominium and shall issue and file with the Registrar a new certificate of establishment bearing such name.

(5) The Registrar shall amend the register to reflect any change of name filed pursuant to paragraph (4).

(6) A change of name does not affect any rights or obligations of an investment condominium, or render defective any legal proceedings by or against an investment condominium, and all legal proceedings that have been commenced against an investment condominium by its former name may be continued against it in its new name.

(7) An investment condominium's name may consist of words or numbers or a combination of words and numbers and an investment condominium's name may be preceded by or followed with a dual foreign name.

(8) No investment condominium shall be established using a name that—

(a) is identical with that under which an investment condominium in existence is already established and registered or so nearly resembles the name of another condominium as to be calculated to deceive, except where the administrator of the condominium in existence gives its consent;

(b) contains, without express prior permission of the Registrar which permission may be withheld without assigning a reason, the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "Trust", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Her Majesty or any member of the Royal Family or the Government of The Bahamas, a department thereof, a statutory corporation or board or a local or municipal authority;

(c) is indecent, offensive or otherwise objectionable in the opinion of the Registrar.

Governance of an investment condominium.

5. (1) The governing regulations of an investment condominium shall contain the particulars set forth in the First Schedule.

First Schedule.

(2) In the event of a conflict between the governing regulations and the offering document, the governing regulations shall prevail.

(3) The governing regulations shall bind an investment condominium and its participants from time to time to the same extent as if each participant had executed the same, and as if there were contained in the governing regulations, on the part of each participant, its heirs, executors, administrators and assigns, a covenant to observe the provisions of the governing regulations.

(4) The governing regulations may be amended in the manner provided therein.

(5) A copy of the governing regulations shall be given to any participant who requests a copy on payment by the participant of such amount as the administrator may determine to be reasonably necessary to defray the costs of preparing and furnishing it.

Establishment and registration of an investment condominium.

6. (1) An investment condominium is established upon the execution of its governing regulations by one or more initial participants.

(2) The establishment of an investment condominium shall be evidenced by a certificate of establishment, signed by the administrator, containing the particulars prescribed in the Second Schedule.

Second Schedule.

(3) The certificate of establishment together with the prescribed fee set forth in the Fourth Schedule shall be submitted to the Registrar within seven days of the date of establishment.

Fourth Schedule.

(4) Upon receipt of the certificate of establishment and the prescribed fee, the Registrar shall enter the name of the investment condominium in the register.

(5) A certificate of establishment bearing the stamp of the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of registration.

(6) Any amendments to the statements in the certificate of establishment shall be submitted to the Registrar within twenty-eight days of the date thereof.

(7) An amendment shall not have effect until it is registered by the Registrar.

(8) The governing regulations may, but are not required to, be filed with the Registrar.

(9) An investment condominium shall be licensed by a licensor as an investment fund pursuant to the Investment Funds Act and may not operate as an investment fund until it has been licensed.

Ch. 369A.

(10) Upon being licensed as an investment fund the investment condominium shall for all legal purposes be governed by the Investment Funds Act and regulated as an investment fund pursuant thereto.

Ch. 369A.

(11) An investment condominium shall be licensed within ninety days of the date of establishment or such longer period as may be approved by the Securities Commission.

Rights of participants.

7. (1) Participants shall be entitled to a participation interest in the investment condominium.

(2) Participation interests are personal property and not of the nature of real property and are enforceable by participants as a chose in action.

(3) The participants of an investment condominium formed as an open ended fund shall have the right to request the redemption of their participation interests in accordance with the governing regulations and offering document.

(4) A certificate or confirmation issued by the administrator shall be *prima facie* evidence of the title of the participant to the participation interests specified therein.

Appointment, powers and duties of the administrator.

8. (1) The initial participants shall appoint a governing administrator and a general administrator which roles may be filled by a single entity or separate entities.

(2) The participants entitled to vote in respect of their participation interests, may by a resolution agreed or consented to by such majority as may be specified in the governing regulations, remove and replace the administrator.

(3) An administrator shall not be removed unless and until a replacement administrator has agreed to act and has entered into an administration agreement and any

removal or replacement thereof shall be notified to the Securities Commission and the Registrar.

(4) Where both a general administrator and governing administrator are appointed —

(a) the governing administrator shall be 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; Ch. 369A.

(b) the general administrator shall be a financial institution and shall have the powers and duties of an administrator as prescribed within the provisions of the Investment Funds Act; and Ch. 369A.

(c) the governing administrator shall be —

(i) a financial institution;

(ii) an institution licensed as a corporate services provider under the Financial and Corporate Services Providers Act; Ch. 369.

(iii) an institution licensed under the Securities Industry Act to deal in securities; Ch. 363.

(iv) a bank or trust company licensed by the Central Bank of The Bahamas under the Banks and Trust Companies Regulation Act; or Ch. 316.

(v) any entity registered with or licensed by a regulatory authority in a foreign jurisdiction, which regulatory authority exercises functions that correspond to regulatory functions exercised by the Central Bank of The Bahamas or the Securities Commission of The Bahamas.

(5) The administrator shall, in performing its duties, act honestly and in good faith and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(6) The administrator shall have the authority to bind the investment condominium and the acts of the administrator or the governing administrator as the case may be shall so bind the investment condominium unless such administrator acting has in fact no authority to act in the particular matter, and the person with whom it is dealing knows or reasonably ought to know that it has no authority.

(7) The administrator shall have the power and authority to engage service providers and contract generally in the name of the investment condominium.

(8) Except where the governing regulations otherwise provide —

(a) the administrator may delegate any of its powers and duties to any person and on such terms as the administrator thinks fit;

(b) if the administrator makes reasonable efforts to satisfy itself that a delegate has appropriate knowledge, experience and integrity, it shall not be responsible for any loss by reason only of it having appointed the delegate;

(c) if the administrator has made reasonable efforts to keep itself informed concerning the performance of a delegate, it shall not be liable or responsible for any default or wrongful act of the delegate which occurs at a time when the delegate reasonably appeared to the administrator to be performing honestly and competently.

(9) For the purposes of paragraph (b) of subsection (8), a licensee of the Central Bank or the Securities Commission shall be deemed to be a delegate with appropriate knowledge, experience and integrity.

Indemnification.

9. (1) Except in the case of wilful default and subject to subsection (2) and any provisions in the governing regulations, the administrator and any service provider may be indemnified against all expenses (including legal fees), judgments, fines and amounts paid and incurred in connection with legal or administrative proceedings if it is, or was a party or is threatened to be made a party to any threatened, pending or completed proceedings whether civil, criminal or administrative, by reason of the fact that it is or was the administrator or service provider.

(2) The amount for which indemnity is provided under subsection (1) shall attach immediately as a first priority lien on the assets of an investment condominium, and shall have priority over any other secured or unsecured claims.

(3) The investment condominium may purchase and maintain insurance in relation to any person who is or was an administrator or a liquidator of the investment condominium.

Meetings of participants.

10. (1) In each year the administrator shall call at least one meeting of participants holding voting participation interests as the annual meeting in addition to any other meeting and shall specify the meeting as such in the notices calling it.

(2) Except where the governing regulations otherwise provide —

(a) a quorum for meetings at which an extraordinary resolution is to be considered shall be the participants holding twenty-five percent of the issued and outstanding voting participation interests; and

(b) a quorum for meetings at which an ordinary resolution is to be considered shall be the participants holding ten percent of the issued and outstanding voting participation interests.

(3) The annual meeting may be held in the Commonwealth of The Bahamas, or anywhere in the world as the administrator may determine.

Convening of special meetings on requisition of a majority of participants.

11. (1) On the requisition of participants holding at least twenty percent of the issued and outstanding voting participation interests the administrator shall forthwith proceed duly to convene a meeting of participants.

(2) The requisition of participants shall state the objectives of the meetings, be signed by the requisitioners and be delivered to each participant and the administrator.

(3) If the administrator does not, within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitioners may themselves convene a meeting on not less than twenty-one, nor more than sixty days notice.

Voting rights.

12. (1) Participation interests shall have the voting rights, if any, specified in the governing regulations.

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

Provisions as to meetings.

13. (1) Except where the governing regulations otherwise provide, the following provisions shall have effect for meetings —

(a) a meeting may be called by seven days notice in writing, or on shorter notice if consented to by all participants; and

(b) the participants shall elect from their number a person to act as chairman for the purposes of the meeting.

(2) Except where the governing regulations provide otherwise, a person may participate in a meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time.

(3) Participation by a person in a meeting in the manner prescribed in subsection (2), is treated as presence in person at that meeting.

(4) Unless otherwise determined by the participants, the meeting shall be deemed to be held at the place where the chairman is at the start of the meeting.

(5) Except where the governing regulations otherwise provide, participants may attend meetings by proxy and the following provisions shall apply in relation to proxies —

(a) the instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, under the hand of an officer or attorney duly authorised for that purpose; a proxy holder need not be a participant;

(b) the instrument appointing a proxy shall be deposited at the registered office of the administrator or at such other place as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent out by the administrator not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, provided that the notice convening the meeting, or in an instrument of proxy sent out by the administrator, direct that the instrument appointing a proxy may be deposited (no later than the time for holding the meeting or adjourned meeting) at the registered office of the administrator or at such other place as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent out by the administrator;

(c) the chairman may in any event at his discretion direct that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted shall be invalid;

(d) the instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked; and

(e) votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed unless notice in writing of such death, mental incapacity or revocation was received by the administrator at its registered office before the commencement of the meeting, or adjourned meeting at which it is sought to use the proxy.

Dissolution.

14. (1) Subject to the provisions of subsection (2), an investment condominium may be dissolved —

(a) compulsorily by the court; or

(b) voluntarily —

(i) subject to the governing regulations, whenever the participants pass a resolution requiring it; or

(ii) on the occurrence of an event upon which the governing regulations require that the investment condominium be dissolved.

(2) An investment condominium shall not be dissolved by an act of the participants until a notice of dissolution signed by the administrator has been filed with the Registrar.

Circumstances under which the court may issue a decree of dissolution.

15. (1) The court may issue a decree of dissolution in respect of an investment condominium if —

(a) the participants have passed a resolution requiring the investment condominium to be dissolved by the court;

(b) the investment condominium is insolvent;

(c) the court is of the opinion that it is just and equitable that the investment condominium should be dissolved; or

(d) a regulator petitions for a decree of dissolution of the investment condominium over which it has regulatory authority and whose licence or registration has been suspended or revoked.

(2) For the purposes of this section, an investment condominium is deemed "insolvent" if —

(a) the investment condominium is unable to pay its debts as they fall due; or

(b) the liabilities of the investment condominium exceeds the value of its assets:

Provided that where the governing regulations provide that the participants are liable for the negative net equity of the investment condominium it shall not be deemed insolvent until such time as the participants have been asked to make such contributions as may be required to restore the investment condominium to solvency and have failed to do so.

Conversion of certain entities to an investment condominium. Ch. 312.

16. A company, an exempted limited partnership registered under the Exempted Limited Partnership Act or a unit trust established under the laws of the Commonwealth of The Bahamas, may be converted to an investment condominium in the manner prescribed in the Third Schedule.

Third Schedule.

Effect of conversion.

17. (1) In respect of a company, from the date of conversion specified in the certificate of conversion —

(a) the company to which the certificate relates shall cease to be a body corporate without dissolving or winding up the company;

(b) the shareholders of the company shall be participants with all the attendant rights and obligations of participants pursuant to this Act;

(c) all of the assets and liabilities of the company including property of every description and choses in action, shall be vested in the investment condominium and the company shall be struck off the register of companies;

(d) all shares in the company that were outstanding prior to the conversion shall be converted to participation interests in conformity with the articles of conversion, and this Act without transfer, redemption or reissue;

(e) the participants shall remain liable for the amount unpaid on any share that remains unpaid at the time of conversion; and

(f) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the company or any former shareholder, director, officer or agent thereof, is released or impaired by its conversion to an investment condominium under this Act.

(2) In respect of an exempted limited partnership regulated under the Exempted Limited Partnership Act, from the date of conversion specified in the certificate of conversion — Ch. 312.

(a) the exempted limited partnership to which the certificate relates shall cease to be an exempted limited partnership registered under the Exempted Limited Partnership Act without dissolving or winding up the exempted limited partnership; Ch. 312.

(b) the partnership interests of the general and limited partners shall be converted to participation interests and the general and limited partners shall be participants with all the attendant rights and obligations of participants pursuant to this Act;

(c) all of the assets and liabilities of the general partners held upon trust for the exempted limited partnership including property of every description and choses in action, shall be vested in the investment condominium and the exempted limited partnership shall be struck off the register of exempted limited partnerships;

(d) all partnership interests that were outstanding prior to the conversion shall be converted to participation interests in conformity with the articles of conversion, and this Act without transfer, redemption or reissue;

(e) the participants shall remain liable for the amount unpaid on any partnership interest that remains unpaid at the time of conversion; and

(f) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the exempted limited partnership or any partner or any other

person, is released or impaired by its conversion to an investment condominium under this Act.

(3) In respect of a unit trust established under the laws of The Bahamas, from the date of conversion specified in the certificate of conversion —

(a) the unit trust to which the certificate relates shall cease to be a unit trust without any need for dissolution;

(b) the unit holders of the unit trust shall be participants with all the attendant rights and obligations of participants pursuant to this Act;

(c) all of the assets and liabilities held by the trustee for the benefit of the unit holders including property of every description and choses in action, shall be vested in the investment condominium;

(d) all trust units in the unit trust that were outstanding prior to the conversion shall be converted to participation interests in conformity with the articles of conversion, and this Act without transfer, redemption or reissue;

(e) the participants shall remain liable for the amount unpaid on any trust unit that remains unpaid at the time of conversion; and

(f) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the trustee or any former shareholder, director, officer or agent thereof, is released or impaired by the conversion of the unit trust to an investment condominium under this Act.

Distributions.

18. The investment condominium shall not make or declare dividends or make any other distributions to participants.

Keeping of books and records and participation interest register.

19. (1) In respect of an investment condominium, the administrator shall keep at the office of the administrator —

(a) a copy of its governing regulations and all amendments thereto; and

(b) a register of participant interests.

(2) In respect of every investment condominium the administrator shall ensure that reliable accounting records are kept in relation to —

(a) all sums of money received and expended for and on account of the investment condominium and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the investment condominium.

(3) For the purposes of subsection (2), accounting records shall —

(a) correctly explain all transactions;

(b) enable the financial position of the investment condominium to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate paragraphs (a), (b) and (c).

(4) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

(5) Such accounting records shall be kept at the office of the administrator or at such other place, whether or not in The Bahamas, as the administrator shall determine.

(6) One or more registers to be known as "participation interest registers" shall be kept at the office of the administrator and shall contain —

(a) the names and addresses of the persons who hold registered participation interests in the investment condominium;

(b) the number of each class and series of registered participation interests held by each person;

(c) the date on which the name of each person was entered in the participation interest register; and

(d) the date on which any person ceased to be a participant.

(7) The participation interest register may be in such form as the administrator may approve but if it is in magnetic, electronic or other data storage form, the administrator must be able to produce legible evidence of its contents.

(8) The participation interest register shall be *prima facie* evidence of any matters directed or authorised by this Act to be contained therein.

Rectification of participation interest register.

20. (1) If —

(a) information, that is required to be entered in the participation interest register under subsection (6) of section 19 of this Act is omitted therefrom or inaccurately entered therein; or

(b) there is unreasonable delay in entering the information in the participation interest register,

a participant of the investment condominium, or any person who is aggrieved by the omission, inaccuracy or delay may apply to the court for an order that the participation interest register be rectified, and the court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the participation interest register and may direct all costs of the application and any damages the applicant may have sustained to be paid out of the investment condominium's assets.

(2) The court may, in any proceedings under subsection (1) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the participation interest register, whether the question arises between —

(a) two or more participants or alleged participants; or

(b) between participants or alleged participants and the investment condominium,

and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the participation interest register.

Transfer of registered participation interests.

21. (1) Subject to any limitations in the governing regulations, a registered participation interest of an investment condominium may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

(2) In the absence of a written instrument of transfer mentioned in subsection (1), the administrator may accept such evidence of a transfer of participation interest as it considers appropriate.

(3) An investment condominium shall not be required to treat a transferee of a registered participation interest in the investment condominium as a participant until the transferee's name has been entered in the participation interest register.

(4) Subject to any limitations in its governing regulations, the administrator representing the investment condominium shall, on the application of the transferor or transferee of a registered participation interest in the investment condominium, enter in its participation interest register the name of the transferee of the participation interest.

(5) A transfer of a registered participation interest of a deceased or bankrupt participant made by its personal representative, guardian or trustee, as the case may be, or a transfer of registered participation interest owned by a person as a result of a transfer from a participant by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the participation interests at the time of the execution of the instrument of transfer.

Service of process on the investment condominium.

22. (1) Any summons, notice, order, document, process, information or written statement to be served on an investment condominium may be served by leaving it, or sending it by registered mail addressed to the investment condominium at the address of the administrator.

(2) Service of any summons, notice, order, document, process, information or written statement on the investment condominium at the address of the administrator may be proven by showing that the summons, notice, order, document, process, information or written statement—

(a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

Removal from the register and restoration thereto.

23. (1) Where the Registrar has reasonable cause to believe that the investment condominium no longer satisfies the requirements prescribed for an investment condominium, the Registrar shall serve on the investment condominium a notice that the name of the investment condominium may be struck off the register if the

investment condominium no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within thirty days immediately following the date of the service of the notice referred to in subsection (1), he shall publish a notice in the *Gazette* that the name of the investment condominium will be struck off the register unless the administrator or another person satisfies the Registrar that the name of the investment condominium should not he struck off.

(3) At the expiration of a period of ninety days immediately following the date of the publication of the notice under subsection (2), the Registrar shall strike the name of the investment condominium off the register, unless the administrator or any other person satisfies the Registrar that the name of the investment condominium should not be struck off, and the Registrar shall publish notice of the striking-off in the *Gazette*.

(4) An investment condominium that has been struck off the register under this section remains liable for all claims, debts, liabilities and obligations of the investment condominium, and the striking-off does not affect the liability of any of its participants, agents or administrator.

(5) If the name of the investment condominium has been struck off the register due to failure to pay any prescribed fee due under this Act, the administrator may apply to the Registrar to have the name of the investment condominium restored to the register and upon payment to the Registrar of the prescribed fee in the Fourth Schedule to this Act, the Registrar shall restore the name of the investment condominium to the register and upon restoration of the name of the investment condominium to the register, the name of the investment condominium shall be deemed never to have been struck off the register.

Fourth Schedule.

Inspection of documents and issuance of certificate of good standing.

24. (1) Any person may inspect the documents kept by the Registrar pursuant to this Act.

(2) Any person may require a certificate of establishment, conversion or dissolution, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar, and such certificate shall be *prima facie* evidence of the matter contained therein.

(3) Any document or a copy or an extract of any document or any part of a document certified by the Regis trar under subsection (2) is admissible in evidence in any proceedings as if it were the original document.

(4) Upon receipt of the prescribed fee, the Registrar shall issue a certificate of good standing in respect of an investment condominium that —

(a) has paid all fees required by this Act;

(b) is on the register and otherwise is in good standing with the Registrar; and

(c) is not being wound up or in the process of dissolution.

Exemptions. Ch. 370.

25. (1) Notwithstanding any law other than section 28D(e) of the Stamp Act, an investment condominium formed under this Act or a participant shall not be subject to —

(a) any business licence fee or any other tax on income or distributions accruing to or derived from such investment condominium or in connection with any transaction to which that investment condominium or participant, as the case may be, is a party;

(b) any estate, inheritance, succession or gift tax, rate, duty, levy or other charge payable in The Bahamas with respect to any participation interest.

(2) Subsection (1) shall not apply to —

(a) a person who is a resident of The Bahamas within the meaning of the Exchange Control Regulations Act; Ch. 360.

(b) to an investment condominium, if a resident of The Bahamas is the beneficial or legal owner of any of the participation interests issued or to be issued by the investment condominium;

(c) to an investment condominium, if a resident of The Bahamas acquires a legal or beneficial interest in any debt or other securities issued or to be issued by such investment condominium;

(d) to an investment condominium, if a resident of The Bahamas is otherwise directly or indirectly entitled to receive participation interests from such investment condominium.

(3) All transactions in respect of the participation interests, debt obligations or the securities of an investment condominium and all other transactions relating to the business of an investment condominium, formed under this Act, are exempt front the payment of stamp duty.

(4) Subsection (3) shall not apply to a resident of The Bahamas, within the meaning of the Exchange Control Regulations Act.

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(5) Stamp duty shall be payable by an investment condominium in relation to real property situated in The Bahamas —

(a) which it owns, or over which it is a lessee; or

(b) owned by any investment condominium or company in which it holds participation interests or shares.

(6) Any resident of The Bahamas, within the meaning of the Exchange Control Regulations Act and the regulations made thereunder, shall, prior to acquiring ownership in any participation interest or any other debt or other securities issued or to be issued by an investment condominium including options or other contracts which are intended to confer rights to participation interests derived from such investment condominium, and any of whose participants are non-resident within the meaning of the Exchange Control Regulations Act, obtain permission from the Central Bank with respect to such acquisition.

Ch. 360.

Ch. 360.

(7) The exemptions granted by this section shall remain in force for a period of twenty years from the date of establishment of the investment condominium under this Act.

Ch. 360.

(8) The Exchange Control Regulations Act and any regulations made thereunder shall not in any manner apply to an investment condominium formed under this Act, the operations of which are or are intended to be conducted exclusively overseas.

(9) For the purposes of this section the expression "formed under this Act" shall include investment condominiums which have been converted thereto pursuant to section 16 of this Act.

Offences.

26. (1) Any person who contravenes any provision of section 4 of this Act is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

(2) Any person who fails to keep and maintain a participation interest register is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

(3) Any person who makes or assists in making a report, return, notice or other document for submission to the Registrar that —

(a) contains any untrue statement of a material fact; or

(b) omits to state a material fact required in such report, return, notice or other document,

is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

(4) A person is not guilty of an offence under subsection (3) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

Power to make regulations.

27. The Minister may make regulations —

(a) prescribing forms and records required to be prescribed under the Act; and

(b) generally prescribing all other matters which are necessary or convenient for carrying out or giving effect to this Act.

Fees.
Fourth Schedule.

28. (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Fourth Schedule the several fees specified therein and such other fees as the Minister may, by order, prescribe.

(2) The Minister may by order, amend the Fourth Schedule for the purpose of varying the fees specified therein and any such order which vary the fees shall be exempt from the provisions of section 31 of the Interpretation and General Clauses Act but shall be subject to an affirmative resolution of the House of Assembly.

Ch. 2.

(3) In subsection (2) "affirmative resolution of the House of Assembly" in relation to subsidiary legislation means that such legislation does not come into operation unless and until affirmed by a resolution of that House.

Amendment of Schedules.
First, Second and Third Schedules.

29. The Minister may, by Order published in the Official Gazette, amend or revoke and replace any of the provisions of the First, Second and Third Schedules.

FIRST SCHEDULE (Section 2)

GOVERNING REGULATIONS OF AN INVESTMENT CONDOMINIUM

The governing regulations of an investment condominium shall contain the following particulars —

(a) the name of the investment condominium;

(b) a statement that it is formed exclusively for the purpose of operating as an investment fund under the Investment Funds Act;

Ch. 369A.

(c) the name and address of the administrator of the investment condominium, which address shall be the registered address of the investment condominium;

(d) the address in The Bahamas for service of process on the investment condominium;

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(e) subject to the Investment Funds Act, provisions relating to audit;

(f) provisions for the duration of the investment condominium, which may be limited in time or unlimited;

(g) provisions for the dissolution of the investment condominium;

(h) a statement of the number of participation interests that the investment condominium is authorised to issue and the currency in which the participation interests are to be issued;

(i) a statement as to whether the investment condominium is authorised to issue classes and series of participation interests and whether the administrator is authorised to fix the number of classes and series thereof;

(j) a statement of the designations, powers, preferences and rights, and the qualifications, limitation or restrictions of each class and series of participation interests that the investment condominium is authorised to issue, or a statement that the administrator is to be authorised to fix any such designations, powers, preferences, rights,

qualifications as approved by the participants entitled to vote thereon;

(k) the manner in which the material agreements and the governing regulations may be amended;

(l) a provision addressing the liability of each participant in the investment condominium which specifies —

(i) how such liability is limited; or

(ii) that the participants are liable for the negative net equity of the investment condominium;

(m) provisions outlining the policies and procedures for valuation of the assets and liabilities of the investment condominium;

(n) provisions if applicable addressing the division of the duties of the governing administrator and general administrator; and

(o) such other provisions as are deemed necessary and as are required under the provisions of the Investment Funds Act. Ch. 369A.

SECOND SCHEDULE (Section 6)

CERTIFICATE OF ESTABLISHMENT

Every Certificate of Establishment shall contain the following —

(a) the name of the investment condominium;

(b) a statement that the investment condominium shall be licensed as an investment fund pursuant to the Investment Funds Act; Ch. 369A.

(c) the address in The Bahamas for service of process;

(d) the name and address of the administrator; and

(e) the date of establishment.

THIRD SCHEDULE (Section 16)

CONVERSION PROCEDURES

(1) Conversion of a company to an investment condominium —

(a) Articles of conversion, written in English or if written in a language other than English, accompanied by a certified translation into English, shall be approved —

(i) by all of the directors or the other persons who are charged with exercising the powers of the company; and

(ii) by a majority of the shareholders or other persons holding shares and having the right to vote in respect of such shares; and

(b) The articles of conversion shall contain —

(i) the name of the investment condominium;

(ii) provisions detailing the basis upon which shares including classes and series of shares of the company shall be converted to participation interests in the condominium along with details of any rights attaching thereto;

(iii) provisions for the valuation and accounting treatment of the assets and liabilities of the company and any retained earnings upon conversion;

(iv) the date on which the company was incorporated or continued;

(v) an annexed copy of the governing regulations containing the information prescribed in the First Schedule adopted by the shareholders of the company;

First Schedule.

(vi) the name and address of the administrator; and

(c) The conversion shall be evidenced by a certificate of conversion executed by the administrator under seal certifying that the company has been converted to an investment condominium;

(d) The certificate of conversion along with the prescribed fee shall be submitted to the Registrar within seven days of the date of the certificate of conversion;

(e) A certificate of conversion bearing the stamp of the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of conversion;

(f) The investment condominium shall apply to be licensed as an investment fund pursuant to the provisions of this Act and the Investment Funds Act; Ch. 369A.

(g) The administrator shall be required to provide to each participant and former shareholder, a confirmation stating —

(i) the number of shares converted and the number of participation interests held by such participant; and

(ii) that the conversion of the company to an investment condominium has not affected the value of the capital contribution made by such former shareholder or the value of the newly converted participation interests; and

(h) Any purported conversion that takes place on a date when such company is struck off the register, while such company is in the process of being wound up or dissolved or is otherwise not in good standing with the Registrar, shall be void and of no effect.

(2) Conversion investment condominium of an exempted limited partnership to an —

(a) Articles of conversion, written in English or if written in a language other than English, accompanied by a certified translation into English, shall be approved —

(i) by the general partners of the exempted limited partnership; and

(ii) by a majority of the limited partners having the right to vote in respect of such limited partnership interests; and

(b) The articles of conversion shall contain —

(i) the name under which the exempted limited partnership shall conduct business as an investment condominium;

(ii) provisions detailing the basis upon which limited partnership interests in the exempted

limited partnership including classes and series thereof shall be converted to participation interests in the investment condominium along with details of any rights attaching thereto as of the date of conversion;

(iii) provisions for the valuation and accounting treatment of the assets and liabilities of the exempted limited partnership and any retained earnings upon conversion;

(iv) the date on which the exempted limited partnership was registered and the date on which it intends to convert to an investment condominium;

(v) an annexed copy of the governing regulations containing the information prescribed in the First Schedule adopted by the general partners and limited partners of the exempted limited partnership; and

First Schedule.

(vi) the name and address of the administrator; and

(c) The conversion shall be evidenced by a certificate of conversion executed by the administrator under seal, certifying that the exempted limited partnership has been converted to an investment condominium;

(d) The certificate of conversion along with the prescribed fee shall be submitted to the Registrar within seven days of the date of the certificate of conversion;

(e) A certificate of conversion bearing the stamp of the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of conversion;

(f) The investment condominium shall apply to be licensed as an investment fund pursuant to the provisions of this Act and the Investment Funds Act;

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(g) The administrator shall be required to provide to each participant and former general and limited partner a confirmation stating —

(i) the number of partnership interests converted and the number of participation interests held by such participant; and

(ii) that the conversion of the exempted limited partnership to an investment condominium has not affected the value of the capital contribution made by such former partner or the value of the newly converted participation interests; and

(h) Any purported conversion that takes place on a date when such exempted limited partnership is struck off the register, while such exempted limited partnership is in the process of being wound up or dissolved or is otherwise not in good standing with the Registrar, shall be void and of no effect.

(3) Conversion of a unit trust established under the laws of The Bahamas to an investment condominium —

(a) If permitted by the terms of the trust instrument, in the manner provided by the terms thereof and this paragraph;

(b) Articles of conversion, written in English or if written in a language other than English, accompanied by a certified translation into English, shall be approved —

(i) by the trustee or such other persons as required by the terms of the trust instrument; and

(ii) by the majority of unit holders having the right to vote in respect of such units; and

(c) The articles of conversion shall contain —

(i) the name under which the investment condominium shall conduct business as an investment condominium;

(ii) provisions detailing the basis upon which including classes and series of units of the unit trust shall be converted to participation interests in the condominium along with details of any rights attaching, thereto as of the date of conversion;

(iii) provisions for the valuation and accounting treatment of the assets and liabilities of the unit trust and any retained earnings upon conversion;

(iv) the date on which the unit trust was established and the date on which it is intended to convert into an investment condominium;

(v) the governing regulations containing the information prescribed in the First Schedule adopted by the trustee and such other persons as required by the trust instrument; and

First Schedule.

(vi) the name and address of the administrator of the investment condominium appointed by the trustee; and

(d) The conversion shall be evidenced by a certificate of conversion executed by the administrator under seal certifying that the unit trust has been converted to an investment condominium;

(e) The certificate of conversion along with the prescribed fee shall be submitted to the Registrar within seven days of the date of the certificate of conversion;

(f) A certificate of conversion bearing the stamp of the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of conversion;

(g) The investment condominium shall apply to be licensed as an investment fund pursuant to the provisions of this Act and the Investment Funds Act.

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(h) The administrator shall be required to provide to each participant and former unit holder, a confirmation stating —

(i) the number of trust units converted and the number of participation interests held by such participant; and

(ii) that the conversion of the unit trust to an investment condominium has not affected the value of the capital contribution made by such former unit holder or the value of the newly converted participation interests; and

(i) Any purported conversion that takes place on a date when such unit trust is in the process of being wound up or dissolved shall be void and of no effect.

FOURTH SCHEDULE (Section 28)

Matter in respect of which fees are payable	Amount of fee
(1) Registration of an investment condominium during —	
(a) First quarter of a calendar year	$350.00
(b) Second quarter of a calendar year	$250.00
(c) Third quarter of a calendar year	$150.00
(d) Fourth quarter of a calendar year	$100.00
(2) Filing of Certificate of Conversion	$150.00
(3) Certificate of Good Standing	$50.00
(4) Certified copy of a —	
(a) Certificate of Establishment	$50.00
(b) Certificate of Conversion	$50.00
(c) governing regulations (if delivered to the Registrar)	$50.00
(d) Any other document under this Act	$50.00
(5) An Investment Condominium whose name is on the register as at 31st December in any year shall —	
(a) before 30th April of the following year pay to the Registrar General an annual fee of	$350.00
(b) before 31st October of such year pay an increased annual fee of	$450.00
(c) after 31st October of such year pay a further increased annual fee of	$550.00
(6) Filing of Notice of Dissolution	$150.00
(7) Restoration to the register of investment condominiums	$750.00