



October 27, 2009

Reference number: IFA 2009-0003

XXX

Dear XXX:

Re: *International Financial Activity Act*

Thank you for your letter dated XXX, and email of XXX, requesting a technical interpretation with respect to the provisions of the *International Financial Activity Act* ("IFA Act"). The issues outlined in your letter were further expanded and discussed in our telephone conversations of XXX and XXX, and XXX.

The technical interpretation requests relate to the hypothetical fact pattern outlined in your letter, subject to amendments arising from our phone conversations last XXX.

#### FACTS

The facts as we understand them are:

1. Company A currently carries on hedge fund administration services for arm's length fund managers, not resident in Canada.
2. Company A's operations are currently located in a country other than Canada but it will be transferring these operations to British Columbia.
3. As part of the transfer, Mr. X, who is a non-resident of Canada, will be transferring to British Columbia.
4. Company A provides the following services to its non-resident clients:
  - accounting for fund investments
  - providing any tax information
  - valuing the fund assets
  - executing buy and sell trades
  - acting as a custodian of the fund assets
  - providing regular reports on fund performance
  - calculating asset manager performance fees and bonuses
  - dealing with investor relations

5. Mr. X will be spending more than 70% of his time performing the services to non-resident clients and this is detailed in his written employment contract.
6. Company A is a member of the IFC BC and plans to register under the IFA Act. It is not primarily in the business of providing legal, accounting or tax services.

## LEGISLATION

An “international financial business” (IFB) is defined under section 1 of the IFA Act as follows:

- “international financial business”, in relation to a corporation, means a business
- (a) that is a qualifying business carried on by the corporation through a fixed place of business in British Columbia, and
  - (b) all the activities of which are international financial activities;

To be a “qualifying business”, a corporation will have to satisfy one of the following criteria establishing a substantial British Columbia presence:

- the corporation carries on an active business,<sup>1</sup>
- the corporation carries on a separate business within a corporation that carries on an active business where that separate business earns income principally from property (such as treasury activities), other than from property used in or incident to the active business, or
- the corporation is affiliated with another corporation that carries on an active business, the corporation pays at least \$300,000 in annual salary and wages to employees employed in the active conduct of the corporation’s qualifying business and the corporation has “capital employed in BC”<sup>2</sup> of at least \$10 million.

The IFA Act defines “business” as having the same meaning as under section 248(1) of the federal Act, except it does not include an adventure or concern in the nature of trade. To qualify as an international financial business, “all the activities” of the “business” must be “international financial activities”. For this purpose, “international financial activities” has the meaning as provided in section 2 of the IFA Act.

An IFA specialist is defined as an individual who has been registered under section 14 of the IFA Act.

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<sup>1</sup> For this purpose, active business has the same meaning as under section 248(1) of the *Income Tax Act* (Canada) (federal Act).

<sup>2</sup> Defined to mean an amount equal to the total capital stock of the corporation multiplied by the corporation’s BC taxable income for the year divided by the Corporations federal taxable income for the year.

A registered corporation may apply to register an employee as an IFA specialist under section 13(1) of the IFA Act if the following conditions are met:

- Prior to registration, the employee is a specialist in qualifying international financial activities.
- The employee was either a non-resident of Canada immediately before entering into a written employment contract with the registered corporation, or was previously registered as a specialist.
- The terms of the written contract of employment require that at least 70% of the individual's working time is devoted to performing qualifying international financial activities for the corporation's IFB.

The following are not qualifying international financial activities under section 13(1)(a) of the IFA Act:

- Activities related to selling, assigning or licensing a qualifying patent to a non-resident (section 2(2)(q.1) of the IFA Act) .
- Activities related to selling to a non-resident a good or service whose sales revenue is principally derived from an invention for which a qualifying patent is owned by the corporation (section 2(2)(q.2) of the IFA Act).
- Providing to a non-resident, administrative support services, other than call centres, marketing or advertising services, that are directly related to a financial activity of the non-resident (section 2(2)(r) of the IFA Act).
- Providing to a non-resident, management services that are directly related to the business operations of the non-resident (section 2(2)(r.1) of the IFA Act).
- Providing to a non-resident person, services, equipment and premises to continue the business operations of the non-resident in the event their primary equipment or premises become temporarily unusable (back-up office services) (section 2(2)(s) of the IFA Act).

Under section 16 of the IFA Act, an employee can be an IFA specialist for only five years from the date he or she is first registered.

## INTERPRETATION

The letter requests our interpretation as to whether Mr. X would qualify as a specialist under section 13(1) of the IFA Act.

With reference to the "Facts" above, it is assumed that Mr. X will be spending more than 70% of his time as noted in Item 5 on the services noted in Item 4.

In your email of XXX, you provided references to websites for such major international corporations as UBS and Citigroup who provide fund administration services. The email

included a reference to an article entitled “What is Hedge Fund Administration”<sup>3</sup> which summarizes the services which are considered in the industry to fall within the definition of “Administration”, as follows:

“Administration”, in the context of Alternative Investment and Hedge Funds, ..., means, in effect, the management of the Fund in virtually all aspects of the day-to-day operation of the Fund, except the actual investment of the assets, which is the responsibility of the Investment Manager. In this role, the Administrator is always answerable to the Board of Directors and does not have any actual management control.”

The definition cited above makes a clear distinction between the duties and powers of the Administrator as compared to the Investment Manager. The management functions of the Administrator relate to the administrative functions associated with operating the Fund. The Investment Manager is responsible for managing and directing the investments which includes overseeing the investment strategy and making the investment decisions for the Fund.

The IFA Act makes a similar distinction between investment management activities set out in section 2(2)(l) of the IFA Act and administrative activities set out in section 2(2)(r) of the IFA Act, as follows:

- managing, for a fee or commission, investments for non-resident persons under section 2(2)(l) of the IFA Act
- providing administrative support services directly related to a financial activity of a non-resident under section 2(2)(r) of the IFA Act

In order to qualify as an IFA specialist, the employee must specialize in qualifying international financial activities under section 13(1)(a) of the IFA Act, as noted above.

The activities to be carried out by Mr. X that are listed under Item 4 of the Facts are clearly administrative support services under section 2(2)(r) of the IFA Act, rather than investment management services under section 2(2)(l) of the IFA Act. As the activities under section 2(2)(r) are specifically excluded under section 13(1)(a) of the IFA Act, an employee that specializes in these activities is not eligible for registration as an IFA specialist under the IFA Act.

Furthermore, it is our view that where the functions between Administrator and Investment Manager are clearly separated, as noted in the above definition, only an employee who was an Investment Manager would qualify for purposes of registering an IFA specialist under section 13(1) of the IFA Act. An employee who is an Investment Manager, who also performs some or all of the administrative functions noted in Item 4 of the “Facts” above,

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<sup>3</sup> Custom House Administration & Corporate Services Limited, Ireland,  
<http://www.customhousegroup.com/custom.house.group.news.offshore.investment.php?number=73>

would not be precluded from registration as an IFA specialist, so long as at least 70% of the work performed relates to the qualifying investment management duties.

We trust that the above comments are of assistance. This letter is not a ruling and consequently is not binding on the Ministry of Finance.

Yours truly,

Jeffrey S. Krasnick, CA  
Director  
Income Tax Advisory and Intergovernmental Relations  
Ministry of Finance