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Sebas funds: No liability over 'conflicts of interest'

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INVESTORS buying into the mutual funds launched yesterday by Sebas Bastian's investment house will not be able to take legal action relating to any "conflicts of interest" it may have.

The offering memorandums for the Titan Balanced Fund and Titan Fixed Income Fund, which have been scrutinised by Tribune Business, both contain clauses stating that investors acknowledge the existence of such "conflicts" - and "agree not to assert any claim against Investar Securities or the funds" - when they execute the agreements to buy shares in them.

"Conflicts of interest" are identified as a "risk factor" in both funds' prospectuses, which state: "There

Titan investors sign away right to claim

are potential conflicts of interest between the interests of the shareholders [in the funds] and the business interests and activities of Investar. Among other reasons, these potential conflicts may result from Investar's investment activities on behalf of its other clients."

The Titan funds both pledge that their investment manager, Leno Corporate Services, "shall not enter into any such transaction on behalf of the fund that is not in the best interests of the fund" as a means to safeguard against any possibility that investors may get a raw deal.

However, a subsequent

"risk factor" identifies the fact that the Titan funds will "share a common director" with both Investar and Playtech Systems, the latter being the parent company for Mr Bastian's Island Luck web shop chain. The "common director" is likely to be Dirk Simmons, Playtech's chief financial officer.

"By executing a subscription agreement, each shareholder acknowledges that such conflicts of interest exist and agrees that both Investar and the fund will have no liability to the shareholder as a result of these conflicts," both funds' offering documents state.

"The shareholders agree not to assert any claim

against Investar or the fund arising in connection with any conflict of interest experienced by Investar, whether or not specifically set forth above."

Ansel Watson, Investar's president and chief executive, declined to comment on the level of interest that the Titan funds attracted during their first day on the market, instead referring Tribune Business to its public relations agency, Diane Phillips & Associates. No response was received to an inquiry made to the agency before press time.

But capital markets experts consulted by Tribune Business yesterday described the existence of these stipulations in both funds' prospectuses as unusual, and questioned whether they were effectively asking shareholders

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to sign away protective rights they may have as minority investors.

Both Titan funds were previously said to have been approved by the Securities Commission, the capital markets regulator, which presumably also vetted and gave its consent to the offering documents. But the Titan Balanced Fund, in particular, is targeted at the "small Bahamian" who is a relatively unsophisticated investor and may not appreciate what he/she is signing up to.

The "conflicts of interest" in question likely refer to the common directorships

between the Titan funds and Investar as their sponsor/promoter. Besides Mr Simmons, Hillary Deveaux, the former Securities Commission executive director who is also Investar's chairman, sits on the Board of both funds.

And the Titan Balanced Fund will also acquire a less than five percent equity stake in Mr Bastian's Island Luck web shop chain, thereby keeping it below the threshold where its investment needs to be approved by the Gaming Board as well.

"The fund will invest in private equity shares of Playtech Systems, trading as Island Luck, publicly-traded

equity shares listed on BISX, money market instruments, Bahamas government registered stock/bonds, Bahamian corporate bonds and the bonds of special purpose vehicles with an investment in commercial real estate," the Titan Balanced Fund's prospectus says.

"Playtech Systems is a related party to Investar. The initial investment in Playtech Systems will not equal or exceed five percent of the issued shares of Playtech Systems. If it is the desire to invest five percent or more, appropriate approvals will be sort from The Gaming Board for the Bahamas. The fund will not invest in any other company

in the gaming industry."

The offering document confirms the Titan Balanced Fund will be unable to invest more than 35 percent of its assets into Island Luck's parent company or any other single investment, while investments in a single industry will be kept to a maximum 55 percent of assets bar government securities.

The Titan Fixed Income Fund, meanwhile, is targeting a yield some 25-50 basis points above the 4.25 percent Bahamian Prime rate via its investments in fixed income securities such as government and corporate bonds plus preference shares.

