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**2021**

**THE BAHAMAS:  
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## INTRODUCTION A RAPIDLY-EVOLVING JURISDICTION, LODGED BETWEEN TWO WORLDS

In the past few years, international financial centres have had to respond to concerns raised by the European Union's demands to enhance tax-transparency and co-operation measures. They have required IFCs to address economic substance, preferential tax regimes and access to beneficial owner information. The Bahamas, situated off the eastern coast of the United States, have successfully met a complex set of requirements with flying colours and have been 'whitelisted' by the trading bloc. A suite of legislation and economic planning has led to a revitalisation of their financial services, both in the well-established field of wealth management and in other areas. Most recently The Bahamas has expressed its support for the proposals of the G20/OECD Inclusive Framework on Base Erosion and Profit Shifting to reform the global taxation system.

The Bahamas are well-positioned to grow as a financial hub because they lie athwart the air lanes, linking New York with the financial centres of the Caribbean. The Bahamas are proving to be more agile in adapting to changes in the world's economy than their competitors. Straightforward and practical structures such as the Bahamas Executive Entity, the Investment Condominium or ICON, Bahamian trusts and SMART funds are used to great effect every day. Meanwhile, Grand Bahama is poised to become a mini Silicon Valley of the Caribbean. Business and lifestyle opportunities abound, as this informative study will demonstrate.

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# THE BAHAMAS PROVIDES A 360° OFFERING

\* by Wendy Warren, Partner, Founder and Managing Partner, Caystone Solutions

We have all become quite familiar with the concept of “KYC” (Know Your Customer). However, we should attach equal importance to “KYJ,” that is Know Your Jurisdiction! The problem for international financial centres after a year of the pandemic – and after years of scrutiny by international bodies – is one of retaining the trust and confidence of the clients that they serve. Knowing your jurisdiction – its essence, character and offerings – should lead to a clear choice of where you should do business, and perhaps even settle down, for the rest of your life.



## THE BAHAMAS 360

When one scrutinizes The Bahamas from a KYJ perspective, one sees an international financial centre with a culture based on experience, innovation, government commitment, an ideal location, an exceptional lifestyle and a diverse product portfolio. It is a 360-degree offering with interweaving elements that support each other, creating a strong, sustainable platform that can solve problems at any level.

Any country heavily engaged in financial services bears a responsibility to the international community in which it is intricately involved, to the financial institutions operating within its borders, to the clients whom it serves and to its citizens who rely on the industry for continual economic development. The Bahamas is such a country. The Bahamas has always sought to provide clients with superior financial products and services and a world-class experience. It has proven itself to be nimble and responsive to global changes – always mindful of the need to adhere to international standards with respect to compliance, co-operation and transparency.

The Bahamas is the leading international financial centre in the Latin America and Caribbean region. It is respected for its expertise in fiduciary services. The financial services sector has been impressively resilient and progressive in the face of events such as Hurricane Dorian, the current COVID-19 pandemic, scrutiny from international bodies and the continuous and some-

times challenging evolution of the international financial scene.

None of these tribulations has stopped the country's financial services industry from conducting business and providing bespoke services that meet the changing and diverse needs of its clients. Robust business continuity plans are in place at all financial institutions. These have allowed firms to continue doing business during Hurricane Dorian last fall and during the COVID-19 crisis. The far-sightedness of The Bahamas' business-continuity measures has been clearly evident and has shielded firms from the fallout from these events. This is why so many people see the country as an ideal location for financial institutions and the services that they provide to their international client base.

This adaptability has been especially evident in The Bahamas' success in adhering to the highest standards of compliance with every internationally-agreed standard of conduct.

Financial services represent the second most important industry in the Bahamas after tourism. With this in mind, successive governments have realized that the industry is important for the country's continual economic and social development. The financial sector's viability is therefore a priority for both public and private sectors alike.

## THE BAHAMAS 360: EXPERTISE AND INNOVATION

With a track record in financial services that goes back 80 years, The

Anyone who considers moving to – or doing business in – a jurisdiction should gauge its character and inherent nature as well as its suite of product-and-service offerings, its overall governance and its regulatory regime. When you put The Bahamas under the lens and examine it for these conditions, you will inevitably find that its strong and well-established platform of services, its value proposition as a jurisdiction and its strategic risk management have not only enabled it to survive but have made it even stronger than it was before the pandemic. More than ever, it is a compelling financial jurisdiction.

Here is a case in point. The Central Bank of The Bahamas has released summary results from a survey of internationally active banks and trusts. The survey looks at the effect of the COVID-19 pandemic on those firms' operations from March 2020 onwards.

The results are reassuring. Institutions in The Bahamas have been able to keep operating effectively in the new environment and the pandemic's financial effects have, to date, been trifling.



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Bahamas can offer customers a wealth-management experience that few jurisdictions can rival. A strong body of law has grown up in the financial services sector, creating a climate for investment that has matured over many years and creating a stable and predictable business environment in which thousands of Bahamian wealth-management professionals work side-by-side with their expatriate colleagues in the 250+ financial institutions that call The Bahamas their home.

The Bahamas is a forward-thinking international financial centre that adapts swiftly to fresh demands from the market. This adaptability, which is written into its DNA, often finds its expression in legislation that creates innovative, client-centric products and services. Such innovation can be seen in the country's evolving and often ground-breaking trust laws. It has led The Bahamas to become the first major common-law jurisdiction to introduce foundations. It has sparked the creation of the Bahamas Executive Entity and has strengthened the islands' position at the forefront of the investment funds industry with the introduction of SMART Funds and the Investment Condominium (ICON) fund. The same innovative spirit is also reviving the country's once-dormant insurance sector, making it a destination for captives.

The recently-enacted *Digital Assets and Regulatory Exchange Act (DARE)* – another great innovation – brings private banking and funds together and unites them with Fintech. It is just the latest example of the jurisdiction's strength and flexibility as it weaves its attributes together to respond to the demands of the market and create something durable.

**THE BAHAMAS 360: THE PLACE**

The unique geographical location of The Bahamas, a sovereign parliamentary democracy just 50 miles off the coast of Florida, makes it a gateway through which Americans can pass to the wider Americas. This gives the jurisdiction an undeniable advantage. Its proximity to the United States, Central and South America places it in an enviable position, allowing

it to serve both its traditional and emerging markets with ease. Many scheduled airlines pass through The Bahamas.

In recent years, as more and more individuals have chosen to 'follow their money' with respect to where they live and work, these tropical islands have become the preferred choice for many who yearn for an excellent quality of life while being able to manage their global affairs.

***"The Bahamas are a sovereign parliamentary democracy just 50 miles off the coast of Florida."***

The Bahamian lifestyle, however, goes beyond world-class real-estate developments, restaurants and marinas and includes high-quality medical and dental facilities. Although the sheer number of such amenities cannot match London or New York, they are certainly of equal quality. What cannot be matched is the warmth and friendliness that is inherently Bahamian, and which is especially evident in the level and quality of service provided in the financial services community. We see the client as a person first, not as a transaction. We are not here just for the business but to provide bespoke client services that meet individual needs. The Bahamas is a place that has an enviable perspective on what should be cherished and enjoyed in life and business.

**THE BAHAMAS 360:  
A DIVERSE PORTFOLIO  
OF CLIENT SOLUTIONS**

The Bahamas offers investors a broad choice of financial institutions that perform a myriad of services including banking, private banking and trust services, investment fund administration, capital market operations, investment advisory services, accountancy, legal services, e-commerce, insurance and corporate and shipping registries. There are plenty of bespoke products and services, especially with respect to family offices. Here are a few of them.

**1. Trusts**

Trust legislation in The Bahamas is

robust and in many cases has set precedents for the rest of the world. It provides wealthy families with the benefits of asset protection, control, succession planning and confidentiality.

**2. Foundations**

Like a trust, a foundation helps families with various important things and protects them from many financial dangers. People often refer to it as the "hybrid vehicle" of the estate-planning world because it is a halfway house between a trust and a company.

**3. The Bahamas Executive Entity**

The first of its kind, the Bahamas Executive Entity (BEE) has been designed to perform governance-related tasks for wealth structures. The BEE has no shareholders or beneficiaries because its purpose is not to hold assets but to perform various "administrative functions" of an executive, administrative, supervisory, fiduciary or office-holding nature.

**4. Private Trust Companies**

A private trust company (PTC) is usually a limited-liability company formed for the express purpose of acting as a trustee of a specific trust, or of a group of trusts, for members of a family. Its board of directors is usually comprised of the patriarch of the family and other relatives, allowing the family to retain control over the strategic management of the underlying assets without prejudicing the validity of the trust. A PTC takes a long-term approach to the governance of family wealth, raising the possibility of the next generation of the family moving onto its board at an appropriate time.

**5. Asset Management**

Much of the growth in Bahamian funds has come from family offices but, increasingly, large institutional investors are starting to look at The Bahamas as well. This is because there is a solid body of law in place to support larger funds and, along with them, larger institutional investors. The legal regime that governs investment funds is efficient, innovative and flexible.

*\* Wendy Warren can be reached on +1 242 397 6506*

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# RESILIENCE MARKS THE BAHAMAS' FINANCIAL SERVICES INDUSTRY

\* by Tanya McCartney, CEO and Executive Director of the Bahamas Financial Services Board

The Bahamas is the leading international financial centre in the Latin American and Caribbean region and is respected the world over for its expertise in fiduciary services. The financial services sector has been impressively resilient and has even continued to develop in the face of various international initiatives, events such as Hurricane Dorian and the COVID-19 pandemic and the continuing and sometimes challenging evolution of the global financial industry.

None of these tribulations has stopped the country's financial services industry from conducting business and providing bespoke services that meet the changing and diverse needs of its clients. Robust business continuity plans are in place at all financial institutions. These have allowed firms to continue doing business during Hurricane Dorian last fall and during the COVID-19 crisis.

*"The far-sightedness of The Bahamas' business-continuity measures has shielded firms."*

The far-sightedness of The Bahamas' business-continuity measures has been clearly evident and has shielded firms from the fallout from these events. This is why so many people see the country as an ideal location for financial institutions and the services that they provide to their international client base.

This adaptability has been especially evident in The Bahamas' success in adhering to the highest standards of compliance with every internationally-agreed standard of conduct.

## A SHARED COMMITMENT

Financial services represent the second most important industry in the Bahamas after tourism. With this in mind, successive governments have realized that the industry is important for the country's continual economic and social development. The financial sector's viability is therefore

a priority for both public and private sectors alike.

Because of this, the legislature and regulators are very responsive to the needs and demands of the market and are swift in their responses. Regulators have to strike a fine balance, ensuring that the financial services industry keeps its integrity while still encouraging lively competition. What is more, The Bahamas has a government ministry dedicated solely to financial services. The public and private sectors share a strong commitment to promote and develop the industry together.

## A LONG HISTORY IN FINANCIAL SERVICES

With a history of financial services dating back to the 1930s, The Bahamas ranks among the world's most significant international financial centres (IFCs). The jurisdiction is one of the world's leading international banking centres, alongside New York City, Miami, London, Switzerland, Toronto, Dubai, Hong Kong and Singapore. It is the preeminent banking jurisdiction of the Caribbean region. Sectors include private banking, trust services, mutual funds, capital markets, investment advisory services, accountancy, legal services, insurance, corporate services and a shipping registry. The financial centre contains the largest collection of international banks – from the US, Europe, Asia and Latin America – in the region.

Wealth management accounts for a large part of the jurisdiction's financial sector. For many high-net-worth individuals (HNWIs), the use of

banks and wealth managers outside one's home country is simply good business and a wise avenue for investment. There are several reasons for this.

Multi-national and multi-generational families and family businesses find that they can preserve their wealth for the long term and transmit it to younger generations with ease when they site some of their assets in a jurisdiction with trust laws. Their home jurisdiction might be subject to civil unrest or have a history of political or financial instability. Its government might want to expropriate their wealth and subject them to capital controls. It is therefore important for such HNWIs to offset these risks by keeping at least some of their assets in a jurisdiction that does not suffer from those disadvantages. Furthermore, international banking and wealth-management centres often possess financial products and services that are superior to the ones in their home countries.

## A RESPONSIBLE INTERNATIONAL PLAYER

The jurisdiction has been and remains demonstrably and effectively unwelcoming to anyone who wants to engage in questionable and illegal activities. Its removal from the Financial Action Task Force's "increased monitoring" process on December 18th 2020 is evidence of this. The FATF congratulated The Bahamas for the "significant progress" it had made in improving its anti-money-laundering and counter-financing-of-terrorism and counter-proliferation regimes.



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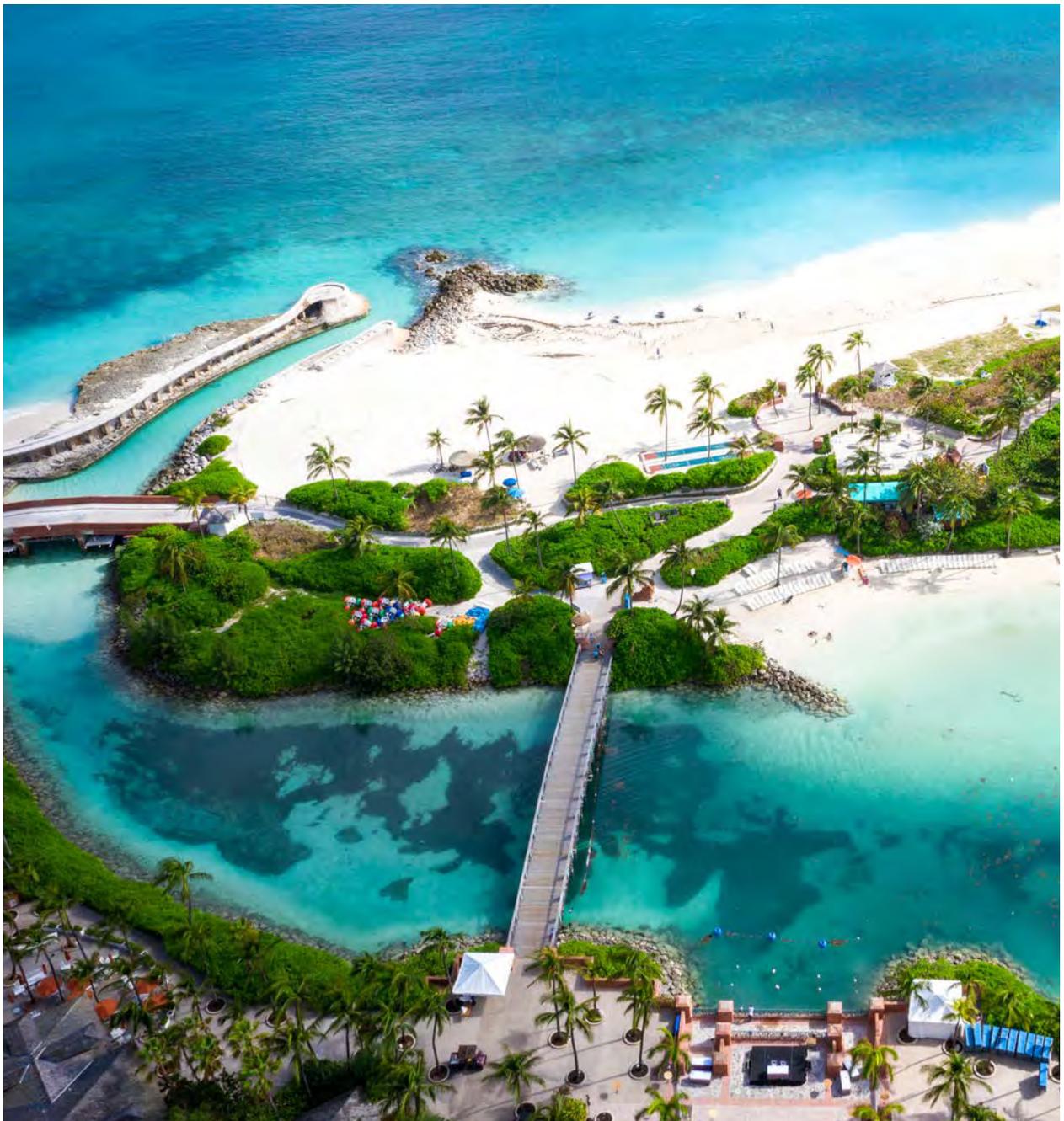
An FATF press release noted that “The Bahamas has strengthened the effectiveness of its AML/CFT system and addressed related technical deficiencies to meet the commitments in its action plan and remedy the strategic deficiencies identified by the FATF in October 2018.”

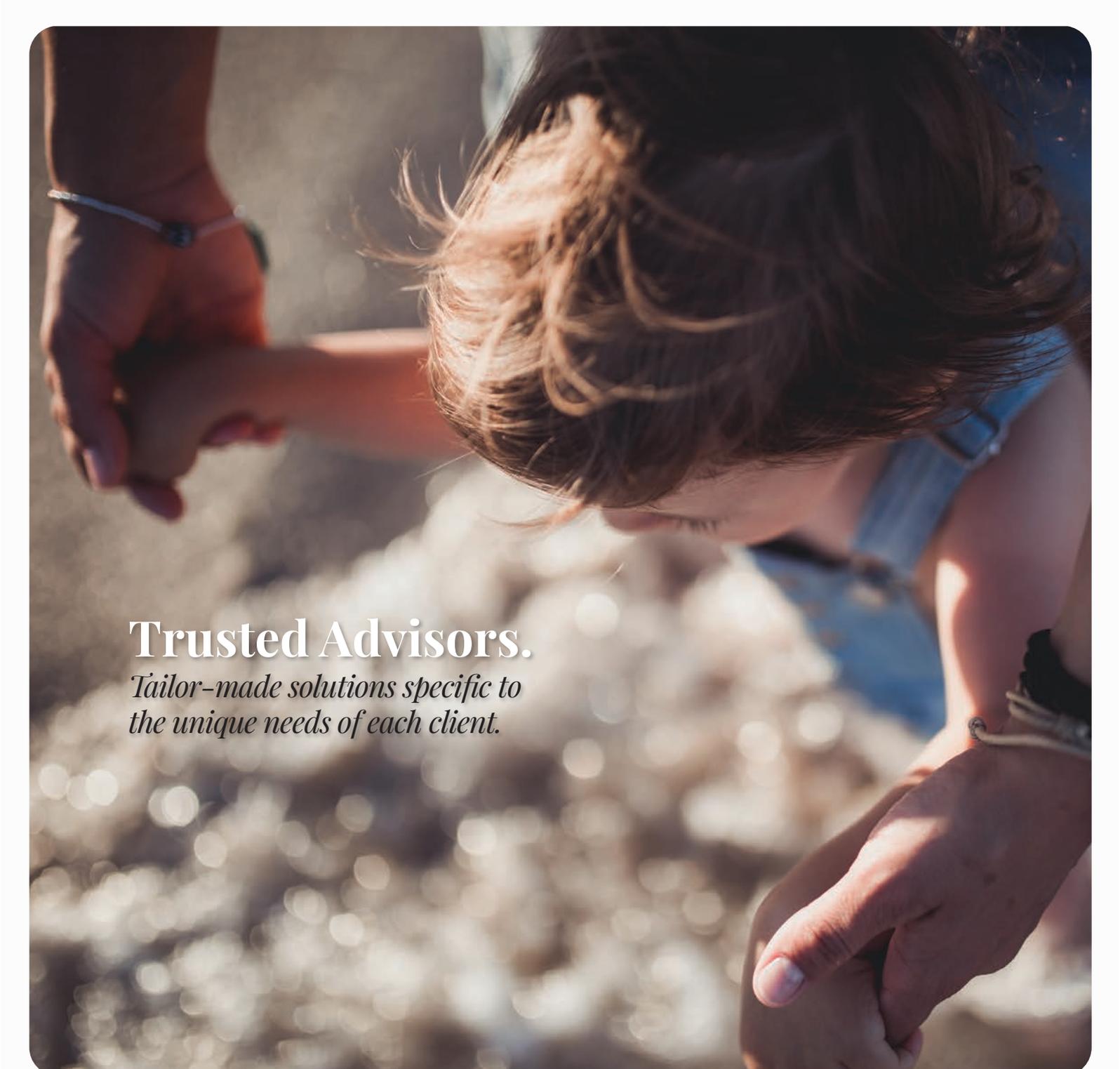
The Bahamas is a cooperative and transparent actor on the international stage. On July 1st 2021, having consulted important stakeholders

and the leaders of industry associations, the Government of The Bahamas expressed its support for the proposals of the *G20/OECD Inclusive Framework on Base Erosion and Profit Shifting* to reform the global taxation system. These proposals and the accompanying rules for international taxation are intended to solve tax-related problems that have arisen from the digitalization of the global economy. The support of The Bahamas for the Inclusive Frame-

work’s two-tier reform proposal (referred to as Pillar 1 and Pillar 2) is consistent with, and informed by, the stated policy principles of the government with respect to fairness and equity in tax-related matters.

When one considers the attributes of The Bahamas, its full range of services and its commitment to international standards, the case for it as a financial jurisdiction is most compelling.





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# ESTATE PLANNING – CERTAINTY IN UNCERTAIN TIMES

\* by Sharmon Ingraham, senior associate at Higgs & Johnson

In the wake of the uncertainty generated by the pandemic, people have taken greater interest in obtaining certainty in other aspects of life. In particular, they have made it a priority to organise their affairs and take steps to ensure that their wishes are documented and can be effected if necessary. Many people consider the only necessary documents in the organisation of their estates to be wills. Although the creation of a will is always a prudent step, the will is effective from the date of death until the estate is wound up. If anyone wants to influence any future period in which people cannot determine his wishes effectively, he must have recourse to other documents. In particular, he should consider the creation of powers of attorney, enduring powers of attorney and declarations about health care or personal welfare as a part of proper estate planning.

With its foundation in the law of agency, a power of attorney gives a person appointed by its terms authority to deal with the financial and business affairs of another person. That person could use such a power to complete a business transaction or perform some other financial task without having to be there personally. A court can grant a power of attorney generally or limit it to a specific transaction or timeframe. A power of attorney, in its original format and usage, is terminated by any period of mental incapacity of the donor, which might be a mental disorder, dementia or Alzheimer's disease.

## *"A power of attorney is terminated by any period of mental incapacity."*

An enduring power of attorney, created by the *Powers of Attorney Act, Chapter 81, Statute Law of The Bahamas*, makes it possible for a power of attorney to remain in existence and valid after a person has become mentally incapacitated. The use of powers of attorney and enduring powers of attorney permits the financial and business affairs of a person to continue uninterrupted during periods of absence, confinement or quarantine. It enables the donee of the power to act on someone's behalf. A "healthcare or personal welfare" declaration enables a person to convey her wishes and desires regarding her medical treatment, the extent of any medical

intervention that she might require and her personal care. When the donor is faced with periods of confinement or quarantine, whether as a result of health concerns, restricted movement or otherwise, these additional documents can fulfil her plans and aspirations.

## **AN ENDURING POWER OF ATTORNEY**

Section 4 of the Act, which introduced enduring powers of attorney into the law of The Bahamas, states the following.

"(1) The authority of a donee given by an instrument creating a power of attorney that –  
(a) provides that the authority is to continue notwithstanding any mental incapacity of the donor; and  
(b) is signed by the donor and a witness to the signature of the donor, other than the donee or the spouse of the donee, is not terminated by reason only of the subsequent mental incapacity of the donor that would but for this Act terminate the authority."

In addition to the provisions of the Act, the Powers of Attorney Rules, which the Government enacted in accordance with the Act, dictate conditions for the valid and effective execution of enduring powers of attorney.

To ensure the validity of an enduring power of attorney created in accordance with the Act, the instrument

must, with certain permissible deletions and adaptations provided for in the Act and its accompanying rules, be in the form that the statute prescribes. To the extent that the instrument creating the enduring power of attorney purports to exclude any required provision of the Act or its rules, the instrument would be invalid as an enduring power of attorney under the statute. In that event, if such instrument becomes necessary upon a person becoming mentally incapacitated, the invalid document would be ineffective. The Act and its rules also say that both the person appointing another to deal with her financial and business affairs and the person being appointed must sign the instrument. They must then lodge the duly-executed and properly-witnessed instrument at the Supreme Court Registry.

Once this is done, the person(s) appointed to deal with the financial and business affairs of the appointor may rely on it and use it.

## *"There are no formal requirements for a valid advance directive."*

If, however, decisions about healthcare and personal care are to be made, or will probably have to be made, a power of attorney or an enduring power of attorney is inapplicable. Under section 2 of the Act, mental incapacity happens in relation to the "person that the person is incapable ... of managing



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and administering his property and affairs." On that basis, considering the definition of "mental incapacity," the scope of the authority derived from an enduring power of attorney thereunder would be limited to property, business and financial matters. The authors of *Butterworths Wills, Probate & Administration Service* (issue 119, June 2021) note at paragraph 2.3 that the English Court of Protection has deleted from enduring powers of attorney provisions directed at matters involving healthcare or personal care. Accordingly, if it is desirable for someone to convey wishes or instructions for medical or healthcare decisions or other personal matters, he ought to set them out in a statement.

#### A "HEALTHCARE AND PERSONAL WELFARE" DECLARATION

Many people consider it unthinkable and/or inhumane to be placed on machines or other methods of treatment whose aim it is to sustain their bodily functions if there is no detectable brain function. Other people want to see every medical resource available used to sustain life for as long as possible. A "healthcare and personal welfare" statement or declaration could help the members of someone's family to determine his position on the matter. In some jurisdictions such statements are termed 'living wills' or 'advanced directives' and laws exist to give force to these documents specifically. The Bahamas have no such legislation, but members of a family can create a declaration of their loved one's wishes in accordance with the *Oaths Act, Chapter 60, Statute law of The Bahamas*. By doing this they might avoid conflict between each other.

When drafting up a healthcare declaration, one may derive guidance from decisions of the courts in the UK. Considering the application of such instruments to medical treatment, the English Court of Appeal in *In Re T. (adult: Refusal of Treatment)* [1993] Fam 95, per Lord Donaldson of Lynton MR, held the following.

"An adult patient who, like Miss T, suffers from no mental incapacity,

has an absolute right to choose whether to consent to medical treatment, to refuse it or to choose one rather than another of the treatments being offered. ... This right of choice is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are rational, irrational, unknown or even non-existent."

#### "Members of a family can create a declaration of their loved one's wishes."

In another English case, *Re C (adult: refusal of medical treatment)* [1994] 1 All ER 819, it was held that the court, exercising its inherent jurisdiction, may use an injunction or declaration to rule that an individual is capable of refusing or consenting to medical treatment. The court also held that this could include future medical treatment. Finally, Mr. Justice Munby in *HE v A Hospital NHS Trust and another* [2003] EWHC 1017 (Fam) summarised the law at paragraph 46 thereof as follows.

"... I can summarise the law as follows:

- (i) There are no formal requirements for a valid advance directive. An advance directive need not be either in or evidenced in writing. An advance directive may be oral or in writing.
- (ii) There are no formal requirements for the revocation of an advanced directive. ...
- (iii) An advance directive is inherently revocable. Any condition in an advance directive purporting to make it irrevocable ... and any provision in an advance directive purporting to impose formal or other conditions upon its revocation, is contrary to public policy and void. ...
- (iv) The existence and continuing validity and applicability of an advance directive is a question of fact. Whether an advance directive has been revoked or has for some other reason ceased to be operative is a question of fact.
- (v) The burden of proof is on those

who seek to establish the existence and continuing validity and applicability of an advance directive. (vi) Where life is at stake, the evidence must be scrutinised with especial care. Clear and convincing proof is required. ... (vii) If there is doubt, that doubt falls to be resolved in favour of the preservation of life."

In view of the above, it is clearly permissible for someone to set out directions in some form for her medical care, healthcare and personal care. To make the process definite and easy to refer to, she ought to write them down. There is no reported Bahamian case law on the issue so far, but an official document that sets out the person's wishes, instructions and directions for her medical treatment – and the treatment that she ought to receive if she has lost the power of speech – is bound to provide guidance for members of her family and for medical professionals when they draft up a treatment plan. If the declaration refers to personal care, the person's wishes regarding living arrangements and the choice between home care and a residential institution would be useful. Conflicts might otherwise arise between relatives over the place where grandma should live.

The creation of a will, an enduring power of attorney and a "healthcare and personal care" declaration are all signs of good estate planning. These devices can help members of a family to avoid arguments when their loved one has been absent for a prolonged period, or has difficulty in communicating, or cannot move about freely.

The combination of these estate-planning documents makes it easy for everyone to discern a person's wishes and directions during any periods of physical or mental incapacity. The existence of such documents can also rescue families from conflict and discord, instead giving them comfort and certainty during difficult and unsettling times.

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# SUBSTANCE REQUIREMENTS AND ECONOMIC PERMANENT RESIDENCY IN THE BAHAMAS

\* by Kevin AC Moree, Partner at McKinney, Bancroft & Hughes

As in many other jurisdictions, The Bahamas now has 'substance' legislation in the form of the *Commercial Entities (Substance Requirements) Act (CESRA)* which came into force on 31 December 2018. The general purpose of substance legislation is to ensure that entities are engaged in real economic activity in the jurisdiction in which they are deemed to be resident for tax purposes.

## THE COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT

Under CESRA, all Bahamian entities incorporated, registered or continued under the *Companies Act* (including foreign entities which have been registered under that Act), the *International Business Companies Act*, the *Partnership Act*, the *Partnership Limited Liability Act* and the *Exempted Partnership Act* are required to submit annual substance reports to the Minister of Finance to demonstrate that they are either tax-compliant in the relevant jurisdiction if they claim to be tax resident in a jurisdiction other than The Bahamas or, if they are not tax-resident outside The Bahamas, compliant with the requisite substance requirements, if any, in The Bahamas.

*"It can be a struggle to ascertain whether an entity is substantially economically present in a jurisdiction."*

If an entity that exists pursuant to one of the statutes listed in the paragraph above is engaged in banking, insurance, fund management, financing, leasing, headquartering, distribution, service centres, shipping or the commercial use of intellectual property, or is a holding company which has a subsidiary that engages in any of the aforementioned activities (collectively defined in CESRA as "relevant activities"), that entity is required to have a 'substantial' economic presence in The Bahamas. To satisfy that requirement, it must

conduct all of its core income-generating activities in The Bahamas and be centrally managed and controlled in The Bahamas.

However, an entity is not required to have substantial economic presence in The Bahamas if it is (i) wholly-owned, either directly or indirectly, by one or more persons who are either (a) ordinarily resident and domiciled in The Bahamas or (b) annual or permanent residents of The Bahamas who physically reside there for at least three months cumulatively each calendar year; and (ii) conducts its core income-generating activities in The Bahamas.

It can be a struggle to ascertain whether an entity is substantially economically present in a jurisdiction in certain circumstances because of the qualitative nature of the test. Consequently, individuals may prefer to avoid that uncertainty by becoming permanent residents in The Bahamas and qualifying by means of the exception detailed in the paragraph above. This is a particularly attractive option when the ultimate beneficial owner of an entity also conducts the core income-generating activities (e.g. consultancy, certain technological businesses, etc.).

## ECONOMIC PERMANENT RESIDENCY

An individual who invests at least \$750,000 in The Bahamas is entitled to apply for a certificate of permanent residency. If he invests \$1,500,000 or more, the Government expedites his application. The most common form of investment associated with appli-

cations for economic permanent residency is the purchase of a residential property to be used as either a primary or secondary home.

*"An individual who invests at least \$750,000 in The Bahamas is entitled to apply for a certificate of permanent residency."*

Economic permanent residency is not a citizenship-by-investment programme and no such programme exists in The Bahamas. Rather, permanent residency provides individuals who have invested a significant amount of money in The Bahamas with the unambiguous right to enter the jurisdiction as they please without having to observe time restrictions (which apply to people who enter as tourists) and without having to apply for renewal every year (which "annual residency holders" are required to do).

It is important to note that when an individual intends to work in The Bahamas, he can apply to have his certificate of permanent residency endorsed with the right to work; otherwise, he will require a work permit.

Furthermore, when an entity owned by a non-Bahamian intends to conduct business in The Bahamas, it may have to seek approval from the Bahamas Investment Authority/National Economic Council and obtain a business licence.

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# THE PSYCHOLOGICAL ASPECTS OF TRADING

\* by Grégory Métrailler, RBC Dominion Securities

Since March 2020, many lines and articles have been written about the COVID-19 pandemic and its consequences all over the globe. Analysts have published plenty of numbers, released and analysed plenty of data and issued plenty of forecasts. In this article we are not going to trot out any numbers and we shall neither forecast the official “end date” of the pandemic nor the date of the first interest-rate hike by the Federal Reserve. Instead, we shall concentrate on the psychological side of trading. We shall define emotional intelligence, explain the similarity in people’s behaviour during the COVID-19 pandemic and in the stock market, and look into the mind of the trader.

## WHAT IS EMOTIONAL INTELLIGENCE?

Emotions affect the decisions that we make every day. They even play an important part in situations where we believe that pure reason guides them. We need to be able to understand, use and manage our emotions if we are to escape this trap. The ability to do so is known as emotional intelligence which, according to Daniel Goleman in his book entitled *Emotional Intelligence: Why it Can Matter More Than IQ*, falls into five components: self-awareness; self-regulation; social skills; empathy; and motivation. Although it is important for us to improve ourselves in all these areas, we shall dwell mainly on the first three.

Self-awareness is crucial for us if we want to develop our emotional intelligence. To achieve it, we must be able to recognize and understand not only our own emotions but also the effects of our actions, moods and emotions on other people. Then we have self-regulation, which enables us to express the emotions that we feel appropriately. Emotional intelligence requires us to be able to regulate and manage our emotions. It is not enough to be aware of our own emotions and our effect on other people. Lastly, social skills help us to deal with other people, build meaningful relationships with them and gain a better understanding of ourselves and others.

## PSYCHOLOGICAL ASPECTS OF TRADING

Anyone who wants to trade successfully in the financial markets requires

many skills. The ability to evaluate a company’s fundamentals or to know whether a stock is going to go up or down, for example, are important technical skills to possess but they are less important than the psychology of trading. Every trader needs to contain his emotions, think quickly and discipline himself to a high degree.

There is an old saying on Wall Street that the financial market is driven by just two emotions – fear and greed. Things unfortunately are not that simple but, needless to say, these two emotions are not the easiest to manage. Both of them can cause serious harm to investors’ portfolios, the stability of financial markets and the economy as a whole.

Many investors, and people in general, are emotional and reactionary. Fear and greed are heavy hitters in these areas and, according to some researchers, these two emotions have the power to affect our brains in a way that forces us to put aside common sense and self-control, provoking irrational behaviour. In the relationships that humans maintain with money or with their own security, fear and greed can be powerful motives.

It is relatively easy to illustrate the irrational effect of fear on people’s behaviour. Remember the first lockdown announcements and the chaos that resulted from people rushing to supermarkets and fighting over toilet paper?

In the stock market, panic selling can be as irrational as a bubble caused by the greed of people who want to get rich as quickly as possible.

It is therefore extremely important for investors to understand their emotions and the ways in which they react towards certain events. They must display rigour and discipline while pursuing defined investment strategies, staying inside their comfort zones and not becoming vulnerable to these emotions, which often result in costly mistakes.

## FOMO, REDDIT AND CRYPTOCURRENCIES

Over the last year, large amounts of new retail investors have begun to use online brokerage platforms. The simplest explanation for this is that most people were at home during “lockdown” and the markets were buoyant after a major correction in March 2020. It is always a good thing when people take an interest in financial markets, but unfortunately most of the enthusiasm of these new investors stemmed from a “fear of missing out” (FOMO). There are countless examples of people proffering advice about stocks or cryptocurrencies on platforms such as Youtube and Reddit or in group chats, all bragging about the money that they have made over the last few months. Nobody likes to feel that he is missing out on a good thing but it is, once again, imperative for investors to override their emotions and behave rationally.

FOMO, along with fear and greed, can be harmful to investors. There are similarities between today’s behaviour and the way in which investors acted before the dot-com bubble burst. I recall hearing a conversation earlier this year in which a

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self-proclaimed “crypto-trader and expert” said that he did not know who Satoshi Nakamoto was. The same applies with day traders in the stock market when events like the Gamestop trade happen. The current situation reminds me of the story of John D Rockefeller and the shoeshine boy in 1928. According to the story, Rockefeller decided that it was time to get out of the market when the shoeshine boy gave him stock tips. I am not saying that the market will crash tomorrow, but rationality and discipline should be the watchwords for all investors.

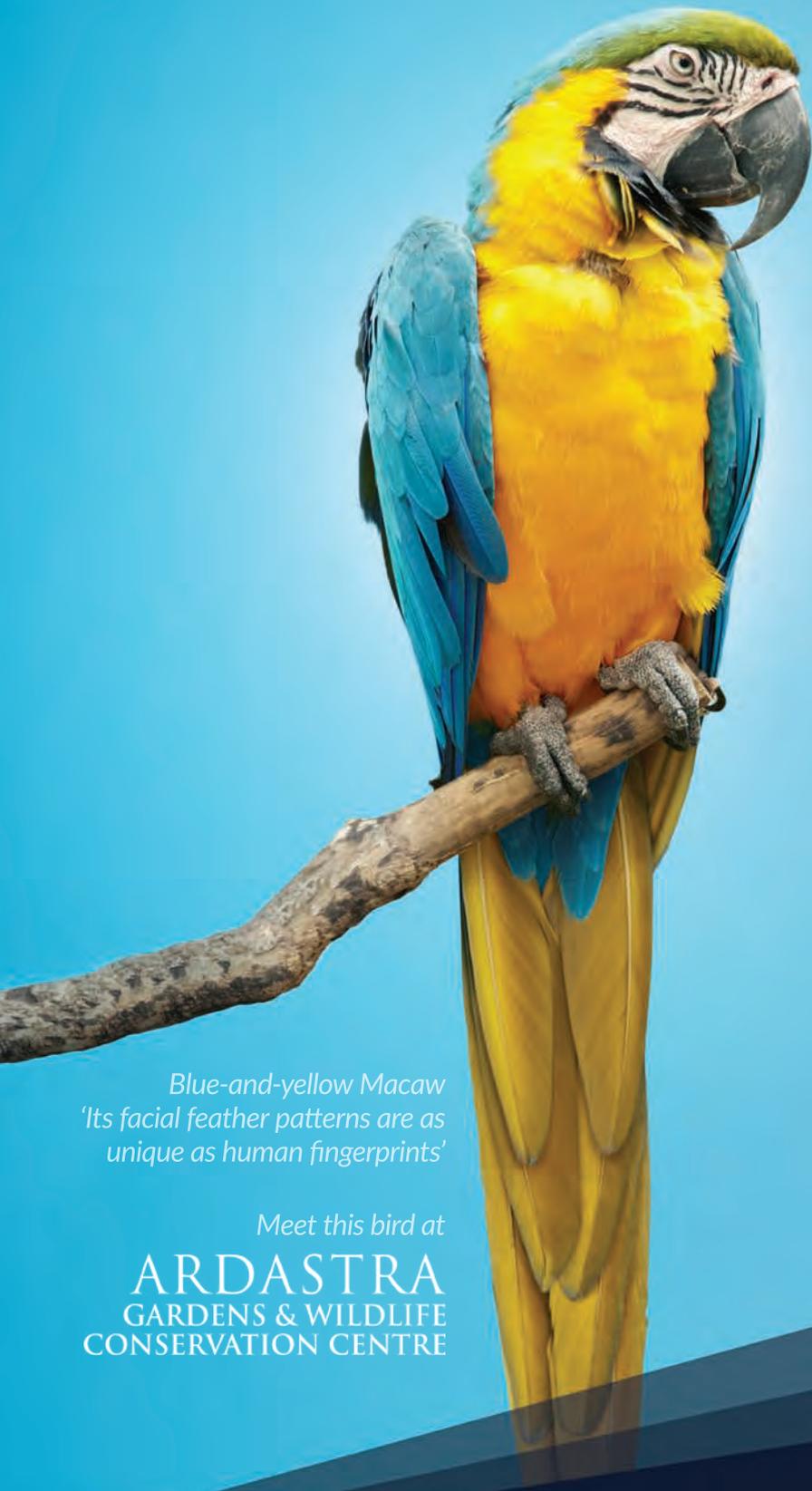
Fear and greed, once again, are the reasons why it is hard to maintain our discipline as investors during peaks and troughs in the market. During a crash, when the prices of stocks are bottoming out, fear that they could go lower is rife. It crushes investors to see the values of their portfolios plunge and makes it hard for them to keep any investments or to buy additional stocks! Peaks are also a problem, with greed filling investors’ minds as they regret not buying their stocks earlier but are afraid of missing further gains. Moreover, today’s new investors have never experienced a stock-market panic so far. They should take time to gauge their appetites for risk, even if it might sound less fun than day trading.

**WHAT NOW?**

New investors are always entering the financial market. It is important for them to understand the psychological side of trading. Emotions can affect our decision making heavily and can harm our portfolios. We must improve our emotional intelligence if we want to react well to different types of situation. We must exercise discipline when shaping our investment objectives. There will always be bull and bear markets but it is nearly impossible to predict them. Instead, every investor should look at the long-term horizon and not follow the crowd into the “hot stock story of the day.” As Warren Buffet once said: “Be fearful when others are greedy and greedy when others are fearful.”

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## 2020, A YEAR TO REMEMBER

\* by Ricardo Evangelista, *ActivTrades*

The social and technical changes through which we are living are not in themselves extraordinary. Since our distant ancestors started using technology and organising themselves in increasingly complex social groups, the history of humankind has to a large extent been the history of struggles to adapt to new dynamics that we have either created or cannot help but face. Changes are a constant, as is the need to adapt to them. Ultimately, the journey of humanity through time can only be traced by cataloguing and timestamping the evolution of knowledge and of our social dynamics. This takes in everything, ranging from science to politics, from technological advancements to wars.

The pace of change appears to be accelerating. The last 12 months could almost be described as the greatest social experiment ever to take place during a time of peace. Hundreds of millions discovered the advantages and disadvantages of working, shopping and socialising from home. At the same time, governments were forced to inject unprecedented amounts of “fiscal stimulus” money into their economies in an effort to avoid even more pronounced economic contractions. Thankfully, it appears that the worst may already be behind us. Most economies are coming back to life or preparing to do so soon. However, according to many, we shall not come out the other side looking the same as we did a year ago.

The tech sector emerged as, so far, the greatest winner of the last 12 months. Obscure companies, of which only a few of us had previously heard, are now familiar names. Zoom, for example – who had heard about it before March 2020? Who

has not been in one of its meetings since?

The relative newbies are not the only ones that have managed to ride this unstoppable wave. The business of delivering take-away meals, conveniently ordered on mobile phone apps, grew exponentially, as illustrated by the recent initial public offering of Just Eat on the London Stock Exchange. Online shopping had long been threatening to overtake traditional bricks-and-mortar retail, but the pandemic accelerated the process; the sales of Amazon, which last year became the world’s most valuable company, increased by 44% over Q4 of 2020 in relation to the homologous period of the previous year.

Despite governmental promises of a return to ‘normal life’ in the not-too-distant future, it would be naïve to expect a return to the world of December 2019. Last year’s changes will, to a still-undefined extent, stay with us and create unforeseen chal-

lenges and opportunities. The pandemic has changed every aspect of life – the way we shop, the way we work, the way we communicate with our friends and families, our travelling habits and how we consume and interact with information. The financial landscape is no exception to this.

*“Thankfully, it appears that the worst may already be behind us.”*

For many, one of the most mystifying features of 2020 has been the discrepancy between an economy operating under the strain of lockdowns and mass unemployment on the one hand and the euphoria experienced in the financial markets on the other, with the main stock indices reaching new maximum after new maximum. This unusual correlation is of course due to a combination of various factors: the massive gains of the tech sector, with both Apple and Amazon becoming the first trillion-dollar companies; gargantuan fiscal and





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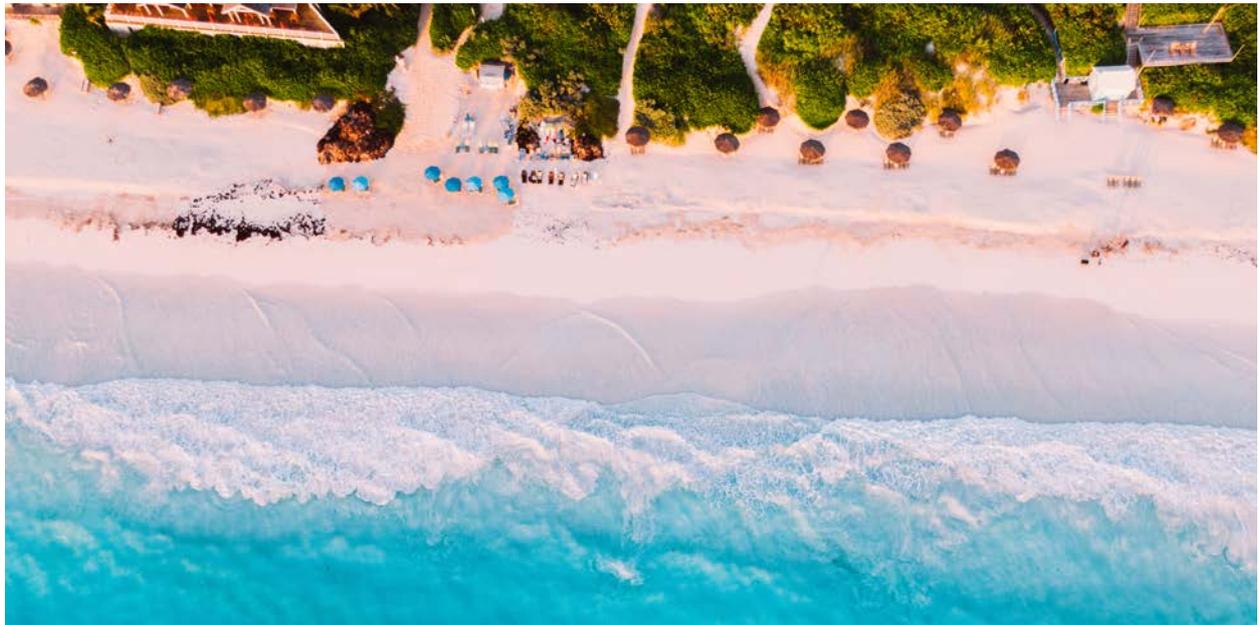
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monetary stimuli deployed by the world's governments and central banks; and, last but not least, the exponential growth of the retail trading sector, with millions of furloughed workers and recipients of stimulus cheques dabbling in financial instruments for the first time.

This last point is particularly relevant for our industry. For online brokers such as ActivTrades, 2020 ended up being a record year in terms of trading volumes and revenues, largely because of this massive influx of new retail traders.

One episode, which occurred this last January, dramatically illustrated the growing importance of the retail sector in the financial markets. Thousands of individual retail traders, communicating with each other on Reddit, an online forum, artificially inflated the share price of GameStop, a struggling games retailer. These amateur traders, using leveraged derivatives such as options and contracts for differences, successfully fought off the short-selling strategy of the Wall Street firm Melvin Capital, causing a loss of US\$7 billion to this large hedge fund. This incident captured the attention of the global media, highlighting the growing importance of a sector that an industry obsessed by the activities of large institutions had overlooked.

2020 was a year of consolidation for ActivTrades Corp. Revenues and trading volumes increased and the firm managed to maintain very high levels of customer satisfaction, which remained above 95%. These are achievements of which any firm should be proud – especially one that had to deploy its entire work force to a home-office environment while handling record volumes of client activity.

Quickly adjusting to the evolving landscape, and with the needs of this fresh wave of traders in mind, ActivTrades launched a new analysis page which is freely available on [www.activtrades.com/en/news](http://www.activtrades.com/en/news).

The company updates this new section of its website regularly, with contents that are both informative and easy to digest. The more experienced trader is bound to find the page's in-depth technical analysis and market insights useful, while anyone who wants to learn more about the underlying forces that dictate the behaviour of financial instruments is bound to welcome the weekly videos which the company produces in-house. These strive to explain, in layman's terms, the geopolitical and economic developments that make the markets move and generate trading opportunities. Meanwhile, at the group level, the big news was the launching of

ActivTrades Europe SA. The new subsidiary was set up in Luxembourg, licensed and approved by the local regulator, the CSSF, and started operating on January 1st 2021, allowing the firm to keep serving customers in the European Union after the end of the Brexit transition period.

Finally, a word to those who make all of this possible. Amidst the torrent of changes of the last 12 months, one constant remained. I am, of course, referring to the professionalism and dedication of the staff based in Nassau who, despite all challenges, kept operations running smoothly. These people contributed enormously to the success experienced by the ActivTrades group over the last year. The group chose to establish a new hub in Nassau back in 2017. One of the reasons for this, alongside the global reputation of the local regulator, was the availability of an educated and experienced workforce. The firm's senior management could not have been happier with the choice and we look forward to another year of growth, knowing that we can rely on a stable and reputable regulatory regime and on the dedication and talent of our Bahamian colleagues.

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# THE DARE LEGISLATION OPENS THE DOOR FOR A NEW INDUSTRY

\* by Christina Rolle, Executive Director, Securities Commission of The Bahamas

The passage of the *Digital Assets and Registered Exchanges (DARE) Act 2020* has set up the right legal regime for a vital, well-regulated and compliant industry in The Bahamas. It promises to benefit anyone who is interested in entering the digital asset business.

It also creates specific opportunities for entrepreneurial Bahamian financial-technology (FinTech) firms to enjoy the credibility that comes from being licensed and from functioning under a comprehensive regulatory regime. The *DARE Act* is helping to forge the FinTech industry. The *DARE* legislation facilitates the registration of digital token exchanges and the provision of services related to digital token exchanges. It also provides for the regulation of digital-assets-based payment-service businesses and for the registration of financial services related to the creation, issuance or sale of digital tokens and other digital assets.

Fidelity Digital Assets' Institutional Digital Asset Survey Report, published last summer, illustrates the explosive growth of virtual assets, including virtual currencies, and the need for a jurisdiction such as The Bahamas to equip itself with compliant and competitive legislation, the better to participate in the digital assets arena.

The survey of almost 800 institutional investors in the US and Europe indicated that 36% of respondents had already invested in digital assets and that 6 out of 10 believed that digital assets had a place in their investment portfolios. According to the report, more than 80% of investors would be interested in institutional investment products that hold digital assets. As The Bahamas is an international financial centre which specialises considerably in wealth management, this trend suggests that there is great potential for its wealth-management experts to offer financial services related to digital assets.

The Securities Commission of The Bahamas (SCB) worked in close collaboration with the financial sector

and external consultants to develop *DARE*. SCB Executive Director Christina Rolle noted that, because of the intense interest in businesses related to digital assets, it was essential for the jurisdiction to have an appropriate regulatory regime in place.

"The number of queries the jurisdiction has received from entrepreneurs interested in venturing into this form of capital raising has mandated that we ensure legislative and regulatory parameters are in place to address how operators conduct themselves and how token issues come to market," she said.

She added: "*DARE* solidifies a legislative structure with standards for entry into and participation in the digital assets space. These requirements stipulate who may participate, the level of capital required, the rules for reporting and seeking the commission's approval and the penalties for failure to comply."

The law also calls on *DARE* participants to adhere to established anti-money-laundering (AML) and countering-the-financing-of-terrorism (CFT) laws. *DARE* participants are required to implement the same AML/CFT measures as designated non-financial business professionals (DNFBPs) and financial institutions. The legislation contains data-protection measures related to the personal information of clients and takes steps to prevent data breaches that might jeopardize clients' digital assets. By establishing the legal foundation for a new industry, *DARE* expands the playing field for financial services in the country, potentially creating new businesses and providing expansive opportunities for existing financial service providers and corporate

services providers to extend their businesses into the digital space. It is also a standing invitation for new FinTech operators to set up operations in The Bahamas, or to work with firms that are already in the country. In developing the text of *DARE*, the SCB examined the status and regulatory environment of crypto-currencies in competing international financial centres such as Switzerland, Hong Kong, Malta, Gibraltar and the United States.

"We left no stone unturned in analysing what others are doing to ensure *DARE* creates a digital asset environment that is on a par [with] or exceeds what is being offered in other jurisdictions," said Ms Rolle.

On the same day that Parliament passed the *DARE* legislation, it approved the *Financial and Corporate Service Providers Act 2020 (FCSP)*, clarifying the law for both corporate and financial service providers. The *FCSP* repealed and replaced a previous Act that was two decades old. It has established a regime that complies with international standards, with appropriate powers vested in the SCB as regulatory authority. More important from a *DARE* perspective is the fact that the *FCSP* provides for the custody of digital assets and wallet service providers.

As with *DARE*, the SCB consulted the financial services industry extensively in its efforts to develop a modern body of law for FCSPs in keeping with international best practices and standards. With 344 financial and corporate services licensees in The Bahamas, the *FCSP Act 2020* might directly affect Bahamian entrepreneurs and operators more than any other financial services legislation.



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# CAPTIVES FIND A HOME IN THE BAHAMAS

\* by *Guilden Gilbert, CEO at CG Captive Managers Limited*

Research indicates that there are more than 6,500 captives operating worldwide and more than 1,000 global companies that use captives successfully. It is a common misconception that captives are only for – and formed by – large public companies; there is a growing trend for small private companies to own captives. Data suggests that 47% of captives are owned by private parties and this helps to dispel the myth that only Fortune 500 or Fortune 1000 companies use them. This is where jurisdictions such as The Bahamas – where the insurance sector is well-regulated and the public and private sectors collaborate – offer investors extraordinary advantages.

## A CAPTIVE INSURANCE ENVIRONMENT IN THE BAHAMAS

The Bahamas' captive environment is comprised largely of small-to-medium-sized international enterprises seeking to establish their own captive insurers through stand-alone or segregated-account entities.

The Bahamas' growth in the captive market is attributable to the use of segregated accounts (cell captives) which are more cost-effective than stand-alone captives.

*“The insurance sector is well-regulated and the public and private sectors collaborate.”*

The Insurance Commission of The Bahamas, the insurance industry's supervisory authority, continues to help the captive industry by streamlining the application process and keeping up a robust regulatory and supervisory regime which meets international standards. As a result, The Bahamas has registered captives that insure risk that emanates from such industries as medical and healthcare administration, retail and wholesale distribution, agriculture, construction and real estate.

The ICB works very closely with the private sector, consulting it often about legislation and policy. In 2005, for example, the Government completely re-wrote the *Domestic Insurance Act* to modernize it and match it to the needs of the domestic insurance market. The re-writing exercise happened through weekly round-ta-

ble dialogues and comment from the domestic insurance market, both from insurance carriers and from intermediaries. Again, in 2009, the ICB did the same thing with a review of the *External Insurance Act*.

The ICB will soon attempt to merge the two legislative regimes into one comprehensive *Bahamas Insurance Act* and it has stated its very clear intention of seeking broad involvement from the private sector in this endeavour.

The ICB has proven to be extremely flexible in its approach to insurance matters. Although it recognizes the need for prudent supervision, it also knows that it must help to make it easy to do business in the Bahamas in order to grow the domicile as an international insurance jurisdiction.

The Bahamas is a relatively low-cost captive domicile with an application fee of \$250.00 for each new captive or for each cell in a Segregated Accounts Company. There is an annual licence fee of \$2,500.00 for a restricted insurer and \$3,500.00 for an unrestricted insurer.

All captives are licensed in accordance with the *External Insurance Act, 2009*. The captive insurer application process includes:

1. A scheduled pre-application meeting to discuss the proposed business plan.
2. Submission of a completed application which includes, but is not limited to, the following.
  - a. Detailed business plan.

- b. Actuarial review or feasibility study.
  - c. Projected financial statements for three years (inclusive of balance sheet, income statement and solvency calculations).
  - d. Sample policies to be marketed and sold by the applicant.
  - e. Details of the reinsurance programme.
  - f. 'Due diligence' (necessary background information) documents for proposed shareholders, directors and senior officers.
3. Application review and consideration for approval by the Board of Commissioners. (*An approved application receives approval in principle where the applicant is given 30-60 days to meet the conditions of approval.*)

Once the conditions of approval are met, a certificate of licence is issued to the applicant.

## HOW CAPTIVES BENEFIT DOMICILES SUCH AS THE BAHAMAS

Although the primary purpose of a captive insurance company is to insure the risks of its owner(s), The Bahamas' engagement of the captive insurance sector provides a few benefits to its overall economy. These are as follows.

1. **An economic stabilizer.** Insurance, overall, is an economic stabilizer. During difficult economic times companies tend to buy more insurance, which

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results in a better return on capital for those who have put up capital in the insurance sector. When the economy grows, there tend to be more incorporations and thus a greater demand for insurance.

**2. Promotes growth in the insurance sector as a whole.**

Captives tend to experience an increase in growth through hard insurance markets, where premiums are rising and available limits are being reduced. We are seeing this trend now, with the clamping-down that Lloyd's of London began early in 2018.

**3. Creates opportunities for professionals such as accountants and attorneys.**

As the sector grows, the numbers of employed people grow. So does the revenue of existing service providers such as attorneys and accountants.

**4. Creates employment and can attract foreign direct investment.**

Many a captive ultimately becomes a full stand-alone insurance company and it often makes the switch in the same domicile. After all, it has a physical presence there already. This means investment in real property, which gives it a long-term relationship with the domicile.

**THE BAHAMAS ADVANTAGE**

It is not by chance that The Bahamas is the most diverse and successful international financial centre in the Caribbean region today. More than 80 years of thought, effort and co-op-

eration have produced ideal conditions for captives, investments by and relocations of (ultra-) high-net-worth individuals and the efficient management of wealth by families and businesses in comfort and style.

The country's mature financial services industry, established infrastructure, progressive government, tax-neutral environment and luxury lifestyle have all been carefully cultivated to satisfy the specific needs of this most exclusive clientele. The many advantages of doing business in The Bahamas are as clear as the crystal waters surrounding the 700 islands of the archipelago. These include the following.

**STRATEGIC LOCATION**

The Bahamas are situated at the crossroads of the Americas, just 65 miles off the east coast of Florida. They are an ideal hub for regional investment and business in the Eastern United States and Canada, along with much of Central and South America.

**POLITICAL AND ECONOMIC STABILITY**

The Bahamas have an outstanding record of political and economic stability, progress and stewardship. With more than 280 years of uninterrupted parliamentary democracy, they have been an independent nation since 1973. They retain a Westminster-style system of Government and an English-based legal system.

**WEALTH AND ASSET MANAGEMENT OPTIONS**

The Bahamas offer owners of capital a broad choice of financial institutions

that perform myriad services including banking, private banking and trust services, investment fund administration, capital markets investment advisory services, accounting and legal services, e-commerce, insurance and corporate and shipping registries.

**PHYSICAL RESOURCES**

The Bahamas have developed land, premises and fit-for-purpose infrastructure with the dedicated aim of facilitating international business.

**HUMAN CAPITAL**

The Bahamas have a highly educated local workforce and a long tenure in financial services excellence which has created a deep pool of skill and experience that people all over the world recognise and trust.

**INVESTMENT POLICY AND INCENTIVES**

The Bahamas' government is committed to building an economic environment in which free enterprise can flourish.

Finally, the Bahamas rank high as one of the most popular tourism destinations.

What better place is there for a captive owner to conduct board meetings and then enjoy all that The Bahamas have to offer afterwards?

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