

The Changing landscape of **The Americas**



Shifting Paradigms

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with or without borders

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From the Chairman



At this exciting time for the Bahamas financial services industry, the Bahamas Financial Services Board (BFSB) is pleased to introduce “Gateway – The Bahamas Financial Review”, a publication that reflects “The Bahamas Advantage”, the new branding that has been developed and adopted by the industry.

We invite readers to explore the many sections of the publication covering industry issues, business development, professional perspectives and factors that create The Bahamas Advantage; and trust you will find our content informative and entertaining.

We also welcome and look forward to your comments on the publication and areas that

you would like us to explore in future issues. We encourage you to learn more about our services and those companies that make us “The Better Choice”. Please visit www.bfsb-bahamas.com/providers.php where you can see the leading companies that support BFSB.

Finally, a word of thanks to the many individuals who sponsored and provided articles to the first issue of “Gateway – The Bahamas Financial Review”. Your contributions are greatly appreciated. ::

Paul Winder, *Chairman, Bahamas Financial Services Board (BFSB)*

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Enhancing the Business Environment

An Interview with The Hon. Zhivargo S. Laing, M.P., Minister of State for Finance

GW: The Government has said that enhancing the business environment is one of many multi-faceted initiatives it is implementing to grow the Bahamian economy. What do you consider the highlights of these various initiatives?

ZL: It is very true that the Government is focussed on strengthening its ability to promote growth and development of the Bahamian economy through competitiveness, productivity and innovation – and that the ease of doing business is a key factor. I have gone on record as saying that one of our goals is to see positive changes in the IFC/World Bank “Doing Business” ranking. In the same light, we want to see advancement in the United Nation’s “E-government” ranking; we are now ranked 65 out of 180 nations on that scale. In that connection, I would consider the recent launch of our e-services platform one of the highlights – and one that will transform The Bahamas into a more business friendly jurisdiction, with enhanced efficiency and productivity overall. We also intend to surpass some of the earlier implementations of e-government region wide.

The Government believes that by using today’s information and computer

technology it is possible to provide effective and efficient services to society. To this end, it has taken the necessary steps to upgrade the Government Wide Area Network (GWAN), and created a comprehensive platform for delivering e-government in The Bahamas.

GW: Last November when you announced the service delivery track of this project, indications were that the public could expect to see implementation of seven e-services by the end of July 2011. This was pretty much on track. What were the services introduced?

ZL: On July 28 we were very pleased to be able to introduce seven e-services as part of the initial phase. These were:

- application for business licences
- payment of business licence fees
- payment of real property tax
- payment of fines
- renewal of driver’s licence
- vendor inquiry (payments, invoices and purchase orders)
- service-wide customer service

The platform was made possible through a contract with IDA International, a consultancy arm of the Singa-

pore government. An important note: users of the e-government system will have a unique identifier for accessing government agencies, that will eliminate the need to register multiple times with different agencies.

GW: What are the next steps in the e-government initiative?

ZL: More e-services will be introduced and we are undergoing a consultative process to determine priorities. It is anticipated that within the fiscal year on-line services will be available for new and renewal work permit applications, payment of customs duties; payment of police character certificates; payment of passport applications; and payment of post office box rentals. There will continue to be improvements of the government website to make it more user driven and to ensure richer and current content. Additionally, a data warehouse will allow for much more efficient collation of information and more robust use of that information for analysis and policy making.

GW: What are some of the other business enhancing initiatives?

ZL: Our aim is to create that total en-

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“The Government is focussed on strengthening its ability to promote growth and development of the Bahamian economy through competitiveness, productivity and innovation – and the ease of doing business is a key factor.”

vironment in which business development and economic prospects flourish. So, there have been many other efforts undertaken. For example, we have:

- Brought into force a new Business Licence Act to streamline the process of doing business in the country;
- Created a comprehensive legal framework for fully liberalized, globally competitive telecommunications to facilitate lower prices, improved services and greater economic empowerment for all, and to position our economy to produce more jobs and business profits through increased competitiveness.

It should be noted that the overriding purpose of the new Business Licence Act was to simplify the legal and regulatory requirements to start (and) operate a business. The Act repealed the Liquor Licences Act, the Shop Licences Act and the Registration of Business Names Act, effectively eliminating the need for separate business license applications to the Licensing Authority. This piece of legislation served as a pivotal component of the government’s comprehensive and integrated economic growth strategy, facilitating a one-stop shop approach to business licensing, and reflecting a commitment to timeframes. Importantly, existing businesses will be deemed licenced for a period of 90 days from the commencement date of the act. A new Business Licence Review Board

has been established to hear appeals by persons aggrieved by the secretary’s decisions regarding applications for business licences or approval of business names. You will know that the new regulatory regime that came into effect for the Utilities Regulation and Competition Authority (URCA) also established a Utilities Appeal Tribunal (UTA) to facilitate an appeals process specific to the electronic communications sector – and to ensure a rapid and specialized appeals process. We felt it was important to have a similar process for Business Licences.

GW: And from a financial services perspective, were there targeted steps here too?

ZL: I believe we have repositioned our financial services industry by partnering with the private sector to produce a new strategic framework for financial services going forward. The jointly agreed Vision speaks to business development:

“The Bahamas is a globally competitive international business jurisdiction for private wealth management, international investment into the Americas and emerging markets, and residency for HNWIs, creating high value jobs and business opportunities on a sustainable basis.”

We have tabled new securities regulations to fully modernize our securities industry and to prepare the way for The Bahamas to become an IOSCO A-sig-

natory country; additionally, new domestic and international insurance legislation was enacted to modernize our laws in relation to this sub sector.

GW: You don’t mention regulatory reform? Can this not be considered a business enhancement measure?

ZL: Most definitely. We intend to merge the Securities Commission, the Office of the Registrar of Insurance Companies and the Compliance Commission to create a new Financial Services Authority. The goal is to reduce burdens on the regulated financial sector by simplifying authorization requirements and data reporting requirements. As well, efficiency gains will be achieved by ensuring joint operations in terms of on-site inspections, authorizations, information technology and human resources. Already, the physical consolidation of the three agencies has been achieved, advancing their ability to cooperate on some administrative and regulatory levels. A detailed plan of implementation is being developed.

GW: Is this vision of positively changing the business environment supported at all levels of Government?

ZL: The Prime Minister says constantly that there is an “infrastructure” which encourages and facilitates development and growth, and that it is one of the principal objectives of the Government to create that infrastructure. Such an infrastructure involves many elements

and virtually every aspect of Government. In this connection, other business enhancement measures have included:

- Modernizing all aspects of Customs operations to bring them up to international standards and place the service in a position to better serve the needs of the private sector and facilitate international trade;
- Initiating fundamental structural reforms, including results-based management, within the public service to provide more effective and efficient services to citizens and enterprises;
- An amendment to the National Investment Policy to provide accelerated permanent residency consideration for substantial investors and individuals purchasing a residence of \$1.5 million or more. There also is a commitment by the Government to respond to a completed application with all of the required documentation within 21 days.

GW: Finally, what would you say prompted this focus on the business environment?

ZL: Whether your view of the local or world economy is positive or negative, I believe this much remains true: That the old landmarks remained unchanged. That the constancy of value, service, adaptation, vigilance and responsiveness play a significant role in achieving success in any environment actually, but especially in a dynamic and challenged environment such as the one we now find ourselves.

In The Bahamas, we as a government believe firmly that we are making deliberate haste in reforming ourselves so that we make these landmark characteristics features of the Bahamian economic and societal circumstances. If you look around us, whether you look at our physical infrastructure, our legislative framework, our administrative procedures or our policy developments on the immigration front and on the investment policy front, the reality is that The Bahamas is trying to change to make itself more adaptable, more responsive, more dynamic in the 21st century. ❖❖



The Hon. Zhivargo S. Laing, M.P.

Minister of State for Finance

In May 1997, Mr. Laing was elected to the House of Assembly as the FNM representative for the Fort Charlotte Constituency. He was appointed Minister of State in Youth, Sports and Culture, Minister of State in Education and Minister of Economic Development. Currently, he is the Minister of State in the Ministry of Finance and Minister of State for Public Service.

Minister Laing is the author of three books: “College, Career and Money – A Guide for Teens and Young Adults”, “A Trust Out of this World” and “Who Moved My Conch – Understanding How Free Trade will affect the Bahamian Economy”. He has written a weekly Column “Straight up Talk” for the Tribune and was the host of “Public Affairs Corner”, a radio talk show on Mix 102.1 FM. He was the proprietor of Pro-Life Development Systems, a motivational speaker, training and business consulting firm.

He completed tertiary studies leading to a Bachelor of Arts Degree in Economics from the University of Western Ontario in Canada. Later he undertook graduate studies at the George Washington University. He also received training in foreign investment promotion in Taiwan and Japan.

Shifting Paradigms

By Jürg Zeltner

We are witnessing a paradigm shift in the financial industry. It is brought about and dominated primarily by the interdependent changes in the regulatory environment, the challenging market outlook and post-crisis client behaviour. These changes impose on us the necessity to rethink and act upon the altering framework in which the wealth management industry is operating, and to enforce sensible measures.



Wealth Management with and without Borders

With respect to the regulatory challenges, compliance is the foundation of any cross-border wealth management business activity. Hence, global financial service providers have little choice but to carry out in-depth reviews of the terms under which they do business in the individual countries and, if required, to adjust them. What is more, banks can no longer afford to rely solely on the specific and local advantages of the relatively small number of global financial centres. If they want to run a

viable and successful business, they will have to increase their efforts in differentiating their business model from that of their competitors; plus they will have to adopt more flexibility vis-à-vis the shifting conditions that have been prevailing in the markets and which, presumably, will keep doing so well into the future. Expertise and execution that live up to the requirements of an increasingly globalised clientele are paramount. Focusing on seamless execution of cross-border orders across all time zones, the success of global banks is knotted tightly to their ability to provide services on

a level comparable or, ideally, superior to those of the banks in the client's home country. Accordingly, banks need to make the appropriate conditions for client advisors so they gain and apply a precise knowledge of the appropriate products and services and their regulatory compliance. Obviously, the complexity entailed generates significant costs for banks in areas such as legal & compliance, training, further education and operations infrastructure. Only banks of a critical size are able to viably run a cross-border business on a global level.

Challenging Markets and Geopolitical Factors

The economic crisis revealed that some countries were structurally weaker than assumed while other economies turned out to be surprisingly resilient over the last few years. Governments and central banks all around the world are taking far-reaching political and economic decisions causing mutual trigger effects across the entire globe. The need for orientation is getting greater as ubiquitous uncertainty makes reliable market forecasts difficult. This requires some sound intuition and the ability to capitalise on specific opportunities across markets, not only in the short- but also the long-term. Global banks can no longer count on market performance to increase their clients' assets. They have to build and maintain an infrastructure that reflects and is up to dealing with the diversity of both markets and investors.

In particular, to cover emerging markets profitably and make full use of their potential calls for a broad range of regularised products and services that meet the need for collective, international invest-

ment solutions and the corresponding platforms. In order to be able to fulfil all of these complex and capital-intensive requirements, however, companies need to apply economies of scale cleverly. Long-term success also demands that financial service providers are well familiarized with the respective markets and that they have proven themselves as

“Clients demand an active relationship with their investment advisors and a strategy tailored to their own personal situation. They are looking for certainty that the advisor will put the customers’ long-term interests before the ones of the bank.”

competent local partners on the ground. Achieving a dependable local anchoring is expensive and time-consuming. Moreover, the option of waiting and buying up local competitors has proven a poor alternative so far. The only lasting winners in emerging markets are those banks willing to establish a presence from scratch, i.e. those who lay the foundations for a business, build up a local network, strengthen their own franchise, develop their own competencies and grow trust. This is also why UBS

recently has re-opened its representations in Bogota and Lima which had to be temporarily shut down during the financial crisis. Further, it repositioned its Bahamas platform to target the Latin American market. The Bahamas, being in the same time zone, and with a particular emphasis on the trading platform, is ideal for servicing sophisticated Latin American clients.

Discerning Clients, Demanding Investors

Today's economic challenges are more complex than they have been for many decades now. In these circumstances, investors have a greater need for guidance and expertise than ever before. Firstly, investors expect a client advisor to actively help them protect their portfolio from risks. Secondly, their relationship manager is supposed to seek to achieve a sustainable, positive return. Thirdly, investors increasingly expect to be given the opportunity to diversify into new, promising investment opportunities on a global level. Clients demand an active relationship with their investment advisors and a strategy tailored to their own personal situation. They are looking for certainty that the advisor will put the customers' long-term interests before the ones of the bank. As a consequence, banks have to educate their clients soundly, so they understand the investment processes they opt for. After all, even with the best advice in the world, markets sometimes move differently from how we expect or hope. And clients increasingly will need to appreciate this in order to avoid the risk of getting caught up in unrealistic expectations or suffering from preventable losses they are unable to cope with.

“Active investment advisors are the way forward, and this type of advisor eventually will replace the administrator type.”

At UBS, given the altered expectations of our clients, we have decided to focus our wealth management organization completely on an active investment process that is highly responsive to the movements in the markets. Clients are prepared to pay a fair price for added value and for sustainable return on their investments.

An Altered Profile

The concept and role of a private banker are changing. Under current conditions, he or she must be much more than merely a relationship manager; as investment advisors, they must have their finger on the pulse of the markets, provide the client with prompt, appropriate and easily comprehensible investment recommendations, and be able to implement these quickly. Financial institutions depend heavily on knowledgeable advisors who enjoy dealing with people, understand the markets, and bring along a passion for identifying opportunities. Active investment advisors are the way forward, and this type of advisor eventually will replace the administrator type. With advisors enjoying the full support of product specialists, clients can expect risks and a negative portfolio performance to be dealt with swiftly and in a transparent fashion. This approach will mark the quality and success of a client relationship in the future.

The Way Forward

Safety from risks, sustainable return, cross-border diversification and access

to new investment opportunities call for in-depth knowledge and the ability to act rapidly. To satisfy these increasing client demands, a functioning integrated business model is essential and, if applied successfully, will make providers of banking services stand out from among the wealth of competitors. In effect, next to having the relevant qualifications, investment advisors need to have permanent access to specialists from all areas of an integrated bank. The combination of wealth management, investment banking and asset management capabilities from a single source enables integrated banks to meet these requirements. Even more so, if it is complemented by an investment process drawing on market-based research to respond quickly to the markets' oscillations.

Wealth management companies that can combine the necessary expertise and execution abilities have a significant advantage over those financial institutions which are geared primarily towards domestic markets in a classical and rather narrow boutique style of private banking. After all, even while the wealth management industry is subject to major tectonic shifts, one thing remains unchanged: the most successful financial institutions ultimately will be those that best anticipate and satisfy client needs. ■■



Jürg Zeltner

Jürg Zeltner was appointed CEO, UBS Wealth Management and co-CEO of Wealth Management & Swiss Bank, and became a member of the GEB in February 2009. In November 2007, he was appointed Head of Wealth Management North, East & Central Europe. From 2005 to 2007, he was CEO of UBS Deutschland, Frankfurt, and prior to that, he held various management positions in the former Wealth Management division of UBS. Between 1987 and 1998, Mr. Zeltner was with SBC in various roles within the Private and Corporate Client division in Berne, New York and Zurich. He graduated from the School of Economics and Business Administration in Berne, and completed the Advanced Management Program at Harvard Business School. He was born on 4 May 1967 and is a Swiss citizen.

Mr. Zeltner is a board member of the German-Swiss Chamber of Commerce and the UBS Optimus Foundation.

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The Bahamas - Kind to Capital

By Robert Jensen

We live in an age where capital is able to travel freely around the globe. It can be invested from almost anywhere, to almost anywhere. Capital is always looking to first, protect itself and, second, to grow and expand. As long as exchange controls are not involved and capital can move freely, it typically has little regard for borders. If it is able, capital will always go where it is treated best - kept safe, with the ability to increase. The Bahamas has all the right features as a jurisdiction, and should continue to expand as a hub for international capital flows. The Bahamas is kind to capital.

Capital Treated Best

The Bahamas has one unique feature which is the main reason why it ranks as one of the jurisdictions which is most kind to capital. It has one of the simplest tax systems in the world. The Bahamas collects its primary taxes based on consumption. Almost everything that comes into the country is assigned a duty rate; that tax is then passed onto the consumer in the form of a higher price for that item. There are no individual taxes, corporate taxes (except where revenue is generated from Bahamian-based customers), estate taxes, transaction taxes, or any of the typical taxes that are found in most other countries. There are stamp taxes relating to property and mortgage transactions. This means that most dealings through The Bahamas begin from a tax neutral base. There likely will be tax consequences in any other jurisdiction that is party to the exchange. The Bahamas did not structure its taxation system in an effort to attract commerce; this is the way taxation has always been in The Bahamas. International businesses are welcome to take advantage of this.

Kept Safe

Capital is safe in The Bahamas. The Bahamas has almost 300

years of uninterrupted parliamentary democracy, and as an independent sovereign nation since 1973, The Bahamas is committed to the financial services sector. The sector is the second largest in the country, after tourism. All political parties are dedicated to the financial services sector, with new progressive legislation passed on a regular basis.

The Bahamas enjoys long-standing good relations with its closest neighbour; the United States of America. More recently, it has benefited from excellent relations with China.

“The Bahamas has almost 300 years of uninterrupted parliamentary democracy, and as an independent sovereign nation since 1973.”

The Chinese government recently gifted a substantial national stadium to The Bahamas, and Chinese capital is flowing into many other areas of the economy.

The Bahamas will continue to enjoy its strong position amidst these two powerful countries.

Ability to Increase

There are over 250 banks and trust companies licensed in The Bahamas, most of which are internationally recognised. In addition, combined there are almost 200 investment fund managers, broker dealers, and securities investment advisors. There is a reason for this; the breadth of products and services

“The Bahamas has all the right features as a jurisdiction, and should continue to expand as a hub for international capital flows. The Bahamas is kind to capital.”

available in The Bahamas is impressive. These products and services are offered without the expense and red-tape associated with many other jurisdictions. All of this gives capital a head start in its endeavour to multiply.

In Practice

The Bahamas offers interesting opportunities for the creation of investment products. After the financial crisis of 2008 and the Bernard Madoff affair, many US institutions got spooked and were afraid of anything they did not fully understand. For many institutions, this affected how they dealt with their non-US clients. Some firms pared back their “exposure” to the non-US clients, many quit dealing with non-US clients altogether.

This left many financial consultants (FCs), who had built their business around servicing non-US citizens, without the resources that they had become accustomed to; and in many cases, without a home altogether.

Enlightened firms have used the crisis to their advantage and, one by one, many of these FCs have been hired anew. In this migration, FCs are often left without sufficient financial prod-

ucts to service their non-US clientele. This void can be filled by using what is on offer in The Bahamas and products can be created for these financial consultants.

More specifically, Bahamian investment funds allow the products demanded to be freely created. Establishing an investment fund is quick and inexpensive and strategies can be incubated without fear. Funds can be put together without a large outlay of capital, thereby allowing them to flourish without the encumbrance of large set-up and administration fees dragging down the net asset value.

Through Bahamian funds, focus can be placed on ‘Emerging Managers’, giving them access to an international client base that they would not normally have exposure to. As other jurisdictions continue to raise their fees and restrictions on fund set-up, we see a lot of opportunity for growth through The Bahamas.

Setting up an investment fund certainly is not the only reason to consider The Bahamas. Our experience has been that it is a pro-business, well regulated, financial jurisdiction that will endure; a place where capital can prosper. ::



Robert Jensen, Managing Director – The Accuvest Group

Mr. Jensen serves as Managing Director for The Accuvest Group and its affiliated companies. Rob has traveled extensively in this role and has gained expertise internationally in private banking, estate planning, wealth management, and legal structuring. Rob’s previous engagements were as Managing Director of Aegis International in The Bahamas starting in the early ‘90s where he resided with his family until 2002 when he moved his primary residence to Switzerland for several years before returning to The Bahamas. Prior to accepting these offshore posts, Rob was involved in portfolio management, including management responsibility for several large mutual funds and was a broker at Merrill Lynch in the United States.



Administration of Estates in The Bahamas

By B. Andrea Williams

Where a person dies domiciled in The Bahamas possessed of real and/or personal estate, it is necessary for a Personal Representative (i.e. Executor or Administrator) to be appointed by the Supreme Court of The Bahamas in order to administer the deceased's Estate. If a person dies testate, that is having made a Last Will and Testament, the named Executor must apply to the Supreme Court for a Grant of Probate in order to deal with the estate assets. Probate is the Certificate granted by the Probate Division of the Supreme Court of The Bahamas to the effect that the Last Will and Testament of the deceased person has been proved and registered in the Court and that administration of his real and personal estates has been granted to the Executor(s) proving the Will, and whereby the Executor is empowered to administer the effects of the deceased and to exhibit a true inventory and render a just account of such when called on. A copy of the Will is attached to the Certificate of Probate by the Court.

On the other hand, if a person dies intestate, i.e. without having made a Last Will and Testament, it will be necessary to apply for a Grant of Letters of Administration in order to deal with his assets. Letters of Administration are issued by the Court where a person in possession of Bahamian assets dies intestate or in the case of an invalid Will, the Court

will grant Letters of Administration to the surviving spouse in the first instance or to such other person approved by the Court and, by which Grant, the Administrator becomes clothed with powers and duties similar to those of an Executor. There are several other types of Grants for administration of estates for which one can apply; however, the attorney must ascertain and advise the client as to the correct Grant for which an application should be made.

Expectations of expeditious administration of one's estate for beneficiaries can be a key – and comforting – component in the overall matter of estate planning and choice of domicile.

Bahamas Legislation

A new Probate and Administration of Estates Act was enacted by the Government of The Bahamas and came into effect on the 1st June, 2011. The Act's main purpose was the consolidation of existing legislation with the practices derived from the English Probate law and also those procedures which always have been a part of the Bahamian probate practice but which, in fact, never were enacted as part of the jurisdiction's Probate law. As a result of the new Act, the Administration of Estates Act, 2002, Part V and Part II of the Supreme Court Act, Order 68 of the Supreme Court Rules and Section 341 of the Penal Code have been repealed. It should be

noted, however, that most of the general provisions and rules in respect of applications for Grants of Representations remain unchanged.

The Act expresses the new procedure for making applications for grants of representation and facilitates a clearer understanding of Bahamian Probate law. Effectively, it has introduced several new provisions to facilitate the administration of estates in The Bahamas and the expeditious issuing of Grants of Representation by the Court.

Jurisdiction of the Court

One of the foremost provisions of the Act is the provision in respect of the Jurisdiction of the Court. The Court has jurisdiction to make grants of representation in respect of deceased persons who were ordinarily resident in The Bahamas or whose estate consists of property in The Bahamas. The Court has jurisdiction with respect to eligibility of persons who are entitled to obtain a Grant of Representation in respect of the estate of a deceased person and the Court has jurisdiction in respect of the various types of grants of representation for which a person can apply. All of these Grants are detailed specifically in the Act, and the requisite Forms in respect of each type of application for a Grant also are set out in detail in the new Rules.



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Return

Another important factor to be noted is that provision is made in the Act for filing of the Return by the Personal Representative of an Estate within a prescribed time; that is a period of six months after the issue of Grants in New Providence and a prescribed period of nine months in respect of Grants issued in a Family Island. As the correct value of the deceased's personal estate must be included in this Return by the Personal Representative, very often it is virtually impossible to complete a Return for filing with the application due to the non-disclosure policies of banks relative to existing accounts until the Grant is issued. Accordingly, the Bank upon issue of a Grant will disclose to the Personal Representative the value of estate asset held by it on behalf of the deceased and thereafter the Personal Representative must file the Return within the above-mentioned prescribed time. Neglect of the Personal Representative to file the Return will amount to a summary offence with a fine not exceeding B\$3,000.

Of particular note is the absence of a Bond for Making Return in the Registry; effectively, it is no longer necessary to file a Bond for Making Return in the Registry with an application.

The Act includes provisions for summary convictions by the Court where false declarations are made in an application or where the Personal Representative fails to file the requisite Return and accounting relative to his administration of the estate assets.

Also of Important Note

Before dealing with the matter of Grants of Representation, there are several

other concepts and provisions of the new legislative framework of particular note:

- **Publication of Notices:** The requirement for publication of a Notice to the world at large in the Official Gazette is no longer required in respect of an intended application for a Grant of Representation. For the purpose of public notice, the Registrar will post on a weekly basis on the Notice Board located in a conspicuous position at the Probate Registry notice of all applications received by the Registry. This provision is of benefit to those persons who may not be inclined to have any particulars in respect of an intended application for administration of an estate published in the newspapers.
- **Depository:** Provision is made for the establishment of a depository for the safe custody and preservation of original Wills and other testamentary documents of living persons in The Bahamas for a minimal fee. This depository is under the sole control of the Chief Justice of The Bahamas. Upon deposit of a Will or such testamentary documents, they will be placed in a sealed envelope immediately and placed in the depository and strict regulations will be in force relative to the deposit in and or withdrawal from the depository of such Will or testamentary documents. However, upon the death of a testator or testatrix, the executor, the attorney or a beneficiary therein named may inspect the Will upon proof of death of the testator or testatrix. It should be noted that registration of a Will

in the depository will not prevent a testator from making a new Will as the general rule is that the last Will executed by a testator is, in fact, his last Will (whether it is registered in the depository or not).

Grants of Representation

In framing the Act, much consideration was given to the need to expedite the issue of Grants of Representation by the Court and the necessity to alleviate as much as possible the financial burden that family members often encounter upon the death of a family member. For these reasons, there are several new provisions in the Act to facilitate such consideration.

For example, it is now possible for a Bank to deliver to the proper person from funds held by them on behalf of a deceased client, upon production of proof of death of a deceased client of the Bank, the sum of B\$2,500 for payment to assist with the funeral and related expenses without a Grant from the Court. Once the Bank has ascertained that the person to whom the funds are paid is the proper person, there is no liability against the Bank for releasing these funds and further these funds are no longer a part of the Estate's assets.

Under the new Act, upon the death of an employee and without the production of a Grant of Representation, an employer is authorized to pay any funds which he is holding to the credit of such deceased employee to the person entitled to the same, upon production of proof of death of the deceased employee and upon the employer's satisfaction that the person to whom the funds are paid is in fact the proper person entitled to the same. There is no liability against the employ-

er for releasing these funds and the said funds do not form a part of the Estate's assets.

Also of public interest is the provision for issue of Grants in respect of small estates. Where the value of an estate does not exceed B\$10,000, the Registrar has authority to interview the petitioner in order to ascertain the true financial status of the deceased and having determined that the estate assets are under the value of B\$10,000, the Grant of Representation will be issued.

Sub-Registries

Another new concept is that the Act provides for the establishment of sub-Registries in the Family Islands and it is intended that applications for Grants will be filed and dealt with at these sub-Registries, thereby avoiding the necessity of an applicant having to come to Nassau in order to attend the Registrar for signing of the application. The Assistant Registrar at each sub-Registry will issue the Grant in respect of an application. This procedure certainly will alleviate the loss of time which one often encounters in coming to Nassau and also the related financial expenses. At present there is only one sub-Registry existing in Freeport in the Island of Grand Bahama. However, it is envisioned with the establishment of these sub-Registries, the volume of work undertaken by the Probate Registry in Nassau would be significantly reduced and Grants will be issued more expeditiously both in Nassau and the Family Islands.

Conclusion

The previous procedure required to process applications for Grants occasioned lengthy delays; it is envisioned that the new Act will alleviate such delays which will be most beneficial in finalising the administration of estates of not only residents of The Bahamas but also the estates of those international persons who own property in The Bahamas. The Act also will be beneficial to the financial service community at large as it will allow service providers representing clients in matters of estate administration to deal with the assets immediately upon issue of a Grant.

It may be said that the most important purpose of the Act is to assist in the expeditious issue of Grants of Representation by the Probate Court and, generally, to facilitate the administration of estates. ::



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Beryl Andrea Williams was introduced to the legal profession in the law firm of the Honourable Paul L. Adderley. In 1967 she joined the Callenders law firm, later became an Articled Clerk of Bradley W. Callender, Esquire and was called to The Bahamas Bar in 1991. In 1998 she became a member of the Society for Trust and Estate Practitioners, London, England. During her 40-year tenure at Callenders she became very knowledgeable in the Law of Probate and Administration of Estates, the Law of International Succession, Wills and Trusts and Land Law. One of the early highlights of her career was writing a 14-week Legal Secretary Syllabus for training of Bahamian legal secretaries.

Mrs. Williams joined Halsbury Chambers in 2010 as a Senior Associate. Her area of practice includes Probate and Administration of Estates, Wills and Trusts, Conveyancing and Mortgages and Intellectual Properties. At present she also lectures in these areas of the law. She has attended several International Conferences and Seminars and her travels have taken her through North America, Jamaica and parts of Central America, England, Europe and as far as Hong Kong, China and Honolulu.

In 2010 Attorney Williams achieved international recognition when a paper she co-authored with Attorney Petra Weeks on International Succession in The Bahamas was accepted and published together with submissions from 49 other jurisdictions in the Third Edition of the Oxford University Press.



buying a piece of paradise

By Kenred M. A. Dorsett

Have you ever considered building a vacation home or perhaps investing in real estate in a country that offers tranquility, a stable economy, comprehensive investment policies and sound governance? Although there may be a natural apprehension when thinking about investing in a developing nation, consider investing in The Bahamas. With a stable and peaceful democracy since 1729, a structured legislative regime, clear policy considerations and traditional practices all make it relatively easy for interested international investors to purchase property for residential or commercial use in The Bahamas. The archipelagic nature of The Bahamas provides interested investors with a plethora of real estate choices consisting of over 700 islands and cays.

This article will provide a general legislative overview and practical tips for those who may be interested in buying a piece of Paradise!

The Government of the Commonwealth of The Bahamas is committed to the furtherance of developing economic stability and growth through its National Investment Policy and initiatives which are designed to support an investment-friendly climate and promote the acquisition and construction of Second Homes for international persons.

Holding Property

Under the provisions of the International Persons Landholding Act, a non-Bahamian, (other than a permanent resident or a non-Bahamian acquiring land or an interest in land under a devise or by inheritance) may acquire residential properties in The Bahamas, to be owner-occupied, of up to two acres without prior Government approval. Subsequent to completing the acquisition, the Second Home Buyer must apply for the registration of the purchase with the Secretary of the Investments Board, who will issue a Certificate of Registration.

Permanent Residents or non-Bahamians who acquire land or an interest in land under a devise or by inheritance must also apply to the Secretary of the Investment Board for the issuance of a Certificate.

Conversely, for properties acquired for commercial use, or of more than two acres, or residential use which is intended for use as rental property, whether the acquisition is a freehold or by way of a leasehold interest, a Permit must be obtained from the Investments Board prior to the acquisition. The issuance of a Permit is at the absolute discretion of the Investments Board who may grant or refuse the same. Failure to obtain the requisite Permit will make the acquisition null and void and without effect for all purposes of law and therefore unenforceable.

The schedule of fees for a certificate of registration and permit under the International Persons Landholding Act is as follows:

| | |
|-------------------------------|------|
| Application for registration: | \$25 |
| Application for a permit: | \$25 |

Upon the issuance of a certificate of registration or permit, the fees are based on the value of the property as follows:

| | |
|---|-------|
| \$50,000.00 and under: | \$50 |
| More than \$50,000.00 and less than \$101,000.00: | \$75 |
| More than \$101,000.00: | \$100 |

Residence Cards and Permits

Under Section 11 of the International Persons Landholding Act, Second Home Owners are eligible for a Home Owners Residence Card, which is renewable annually. This enables the Second Home Owner, spouse and dependent children to

return to The Bahamas as often as they would like and remain for the duration of the validity of the Card, in compliance with Immigration laws and provisions.

For an annual residence permit, the applicant must pay \$1,000.00 and for each dependent, \$25.00. As the category implies, this permit has to be renewed annually.

Under the provisions of The Immigra-

tion Act of The Bahamas a Certificate of Permanent Residence may be granted to any person who is over the age of 18 years, is of good character and has in the application stated the intention to permanently reside in The Bahamas. For permanent residence permits, there is a one-time fee of \$10,000.00; for an additional fee of \$100, an individual with a certificate of permanent residence may have a spouse or dependent child under the age of 18 endorsed on the certificate. A Certificate of Permanent Residence allows the holder to pass hassle free through Immigration.

Policy also provides for “accelerated consideration” of applications for permanent residence for major international investors and fit and proper owners of a residence valued at \$1,500,000.00 or more. With respect to investors involved in an enterprise which creates employment and business opportunities for Bahamian citizens and who own or acquire a residence in The Bahamas, Permanent Residency status may be granted to these individuals with the right to work in their own business.

and surveyors who can assist regarding boundary encroachments and confirming boundary dimensions and legal descriptions. Bahamian attorneys usually are instructed to provide an opinion on title, which is supported by Professional Indemnity Insurance to protect the Second Home Buyer. Title Insurance is also available in The Bahamas and a few law firms have their own title insurance companies or act as agents for the major title insurance companies in North America. In accordance with Bar Scale



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In addition to the provision under Section 11 as aforementioned, the Government of the Commonwealth of The Bahamas through its National Investment

Permanent Residency with the right to work in one’s own business also is suited to the individual with a family office or one who simply wants to manage his or her own investments and does not interact with the Bahamian economy.

Other Helpful Hints

Before purchasing property in The Bahamas, it is important to deal with a licensed realtor, accredited by the Bahamas Real Estate Association, and a Bahamian attorney in good standing with the Bahamas Bar Association. Bahamian attorneys, knowledgeable in the area of real estate, can guide and advise you through the entire process of acquiring property and also assist in recommending banks that are prepared to consider offering loans to non-Bahamians,

recommended fees, Bahamian lawyers typically charge a fee of 2.5% of the sale price or a minimum fee, whichever is greater.

Many local banks offer mortgages to non-Bahamian home buyers. It is always advisable for a prospective home buyer to conduct due diligence and “shop around” to find the best terms available as such terms vary considerably. It is customary for interest rates to be tied to the US prime rate or the London Interbank Offered Rate (LIBOR) and these may be adjusted according to the Bank’s assessment of the home buyer’s creditworthiness. Property Appraisals prepared by locally accredited and qualified individuals, legal fees, creditor life insurance premiums, com-

prehensive all-risk property insurance, stamp duty, registration and recording and bank commitment fees are other costs that should be taken into consideration when obtaining financing for purchasing property in The Bahamas.

Of note, the Government of The Bahamas imposes a stamp duty on all conveyances and transfers of property in The Bahamas in accordance with the schedule below:

| | | | |
|-----------------------------|----|------------------------------|-----|
| \$0 - \$20,000.00: | 4% | \$100,000.01 - \$250,000.00: | 10% |
| \$20,000.01 - \$50,000.00: | 6% | Over \$250,000.00: | 12% |
| \$50,000.01 - \$100,000.00: | 8% | | |

Stamp duty also is imposed on all Mortgages at a 1% rate.

In addition to the above, real property tax also is levied on real estate in The Bahamas, by virtue of the Real Property Tax Act, and must be paid by Bahamians and non-Bahamians, unless exempted. Real Property Taxes “run with the land” and is a first charge on the land. It is due on or before the 31st December in each year. Annual Returns are required to be filed with the Chief Valuation Officer in the Real Property Tax Department and taxes paid to the Public Treasury.

Real Property Tax rates are based on “market value” and are calculated as follows:

| | |
|--|--------|
| Vacant Land owned by non-Bahamians: | |
| First \$7,000.00: | \$100 |
| Over \$7,000.00: | 1½ % |
| Owner-occupied property (residential and licensed rental homes): | |
| The first \$250,000.00 of market value: | Exempt |
| \$250,000.01 up to \$500,000.00: | ¾% |
| \$500,000.01 up to \$5,000,000.00: | 1% |
| Over \$5,000,000.00: | ¾% |
| All other properties/commercial: | |
| First \$500,000.00 | 1% |
| Over \$500,000.00 | 2% |

It should be noted that on the island of Grand Bahama, one of the Islands in the Commonwealth of The Bahamas, no property taxes are collected with respect to properties located within the Grand Bahama Port Authority area of Freeport/Lucaya. Instead, the Grand Bahama Port Authority imposes an annual service charge for trash removal, street maintenance and landscaping services. ::



Mr. Kenred M. A. Dorsett

Kenred Dorsett is Managing Director of Chancellors Corporate Services Limited. He also is Founder and Managing Partner of Chancellors Chambers, Attorneys-at-law. He heads the firm’s Real Estate & Private Wealth Practice Group, and specialises in real estate, private client and wealth and commercial law. Mr. Dorsett is Publisher of Chancellors Law Review and a former part-time Lecturer in Mortgages & Real Estate Law at NSB Education Group and former Part-time Lecturer in respect of The International Capital Markets Qualification of The Securities Institute, London, England. Professional affiliations include The Bahamas Bar Association and The Society of Trust & Estate Practitioners, while civic affiliations include the Housing Commission (former Chairman), The Clifton Heritage Authority (former Deputy Chairman); Legal-Aid Revision Communion (former member); The Education Loan Authority (former member), and the Meritas Law Firms Worldwide (Membership Committee member).

He received a B.A. (Hons) Law/Politics degree from University of Keele, Staffordshire, England and is a Barrister of the Honourable Society of Middle Temple. He is admitted to the Bar of England and Wales and The Bahamas. He is a former Associate of Graham, Thompson & Company and a former Partner of Lennox Paton and Halsbury Chambers.

Enforcing foreign freezing orders and final judgments in The Bahamas



By Shasta Treco-Moxey

The Bahamas, as a Commonwealth Country, has a legal system which is based on English Common Law and Principles of Equity. Due to the size and importance of The Bahamas as an international financial centre, with vast sums in trust funds and other asset protection vehicles managed in The Bahamas, the standard of the commercial litigation practised locally¹ and Bahamian jurisprudence match that of any common law jurisdiction worldwide.

As such, the Bahamian Courts have a wide latitude and complement of discre-

tionary remedies available to it which include the ability to grant various forms of interlocutory Orders, such as, injunctive relief to a claimant, including the Mareva injunction (also known as a freezing order, Mareva order or Mareva regime) to a claimant seeking to recover assets or enforce a judgment or award from a defendant.

Often times the first step in the enforcement of a judgment of award is ascertaining which set of rules apply which will depend on the country where the original order or judgment was ob-

tained, and what pre-trial or interim processes are available to the claimant until a final award has been granted and/or enforcement of the judgment of award.

There always is a risk that the defendant to the enforcement proceedings will look to dispose of or remove assets from within the jurisdiction, or assets held in other jurisdictions. In such circumstances, and where the risk may be proved to be real and not fanciful, it is open to the claimant/judgment creditor to apply for a freezing order to freeze the assets of the judgment debtor, including bank ac-

counts, personal and real property, and any other assets subject to further order of the court.

Preliminary Relief Freezing Orders or Worldwide Freezing Orders

Let's start with a claimant's attempt to obtain a pre-trial freezing Order or injunction. A freezing injunction can be sought at any time, before proceedings are issued (including arbitration proceedings), during the course of proceedings or after a judgment has been obtained (to prevent the disposal of assets before the judgment is satisfied).

The Mareva Injunction is aptly named for the *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509, decided in 1975. The Order is recognised widely in common law jurisdictions and such orders can be made to have world-wide effect. It is construed as part of a court's inherent jurisdiction to restrain breaches of its process; therefore, the Mareva Injunction is an interim court order which freezes assets so that a defendant to an action cannot dissipate his assets from beyond the jurisdiction of a court so as to frustrate a judgment. Alternatively, a worldwide Mareva or freezing order is an interim order restraining the defendant from disposing of or dealing with his assets anywhere in the world. Such an order can provide a claimant with the means of preventing a defendant from acting in a way which would render any judgment obtained against him worthless. A Mareva injunction often is combined with an Anton Piller order, or search order.

The freezing Order/injunction has been described as one of the two nuclear

weapons (i.e. the second being the Anton Piller Order as aforementioned) in the commercial court's armoury. A freezing order usually will only be made where the claimant can show that there was at least a good arguable case that the claimant would succeed on, at trial, and that the refusal of an injunction would involve a real risk that a judgment or award in the claimant's favour would remain unsatisfied (*Ninemia Maritime Corporation v Trave Schiffahrtgesellschaft m.b.H und Co.K.G* [1983] 1 WLR 1412). A court therefore may be reluctant to grant a worldwide freezing order if it is inexpedient to do so. Accordingly, a claimant must still show: (i) a good, arguable case against the defendant on the merits of the case; (ii) a serious risk that an eventual judgment will not be satisfied because of the defendant's likely dissipation of his assets; and (iii) that it is just and convenient in the circumstances of the case to grant the relief.

If granted, a freezing order must be served promptly after the hearing and served personally on the defendant/respondent to make sure that it can be enforced by committal proceedings. It also must commence with a 'penal notice' which states the penalty for breaching the Order.

In some cases where the injunction includes assets held by third parties, the order may be served on a third party prior to being served on the respondent. For example, a bank will be served ahead of the respondent so that funds can be frozen by the bank before any attempt by the respondent to transfer funds from his bank account.

Implications for Third Parties

Where a freezing order is made in support of foreign proceedings, this also will have a direct effect on third parties notified of the order. The penal notice is a standard part of any freezing order, which puts not only the defendant, who is within the reach of the Foreign/Ordering court, at risk of proceedings for contempt of court if the defendant breaches the order but, also, third parties with notice of the freezing order, who aid and abet a defendant in a breach of, or knowingly frustrate the purpose of the freezing order. Accordingly, once a third party has been notified of the order, they should examine the order's precise terms and regard themselves as bound not to take any steps inconsistent with the order, subject of course to any exceptions, such as living expenses and legal fees.

In the case of third parties holding assets that are located abroad, and are therefore outside the jurisdiction of the foreign court granting the order, their rights and liabilities will be determined according to the laws of the jurisdiction in which they are located. The freezing order will not prevent a third party, for example in The Bahamas, from complying with what they reasonably believe to be their legal obligations in The Bahamas. To take account of this, a worldwide freezing order is required to contain what is referred to as a *Babanaft proviso* (taken from *Babanaft International Co SA v Bassatne*). This means that the freezing order must state expressly that it will not affect third parties outside the jurisdiction until it has been recognised, registered or enforced by the relevant foreign court.

“The Bahamas, as a Commonwealth Country, has a legal system which is based on English Common Law and Principles of Equity.”

Enforcement of Foreign Order/Judgment in The Bahamas

A foreign order/judgment (collectively the “Foreign Order”) of any competent foreign court can be enforced in a Bahamian Court, so long as it conforms to the rules of natural justice and is not repugnant to Bahamian Law. Generally, there are two avenues by which a foreign order may be enforced in The Bahamas; that is (i) the Common Law starting point of issuing or commencing fresh proceedings in the Supreme Court of The Bahamas or (ii) to register the foreign Order in The Bahamas through an application under our Reciprocal Enforcement of Judgments Act (“the Act”), which enables enforcement to proceed as if the foreign order had been obtained in a Bahamian Court (i.e. without the need to commence new proceedings).

In order to determine if the Act is applicable to the Foreign Order, the first step is to identify the country in which the Foreign Order was obtained. The foreign order would have had to be granted by a United Kingdom Court, a Court of one of the Commonwealth Countries to which the Act has been extended, namely those countries listed under Section 6 of the Act. Additionally, there must be bi-lateral agreements in place between these countries and The Bahamas for the reciprocal enforcement of judgments.

The Act makes provision for the registration and enforcement of the Foreign Order in The Bahamas, provided that not more than twelve (12) months has expired from the date of the original Foreign Order although in limited circumstances the Bahamian court can extend this period on application by the party seeking to enforce the Foreign Order.

Commencing Proceedings – The Common Law Approach

In the vast majority of cases, the general procedure to enforce a Foreign Order will be to issue a Writ of Summons commencing, as indicated above, new proceedings in the Bahamian Court, relying on the Common Law. The fresh action must be brought within 6 years from the date of the original judgment.

In most cases, the claimant will rely upon the foreign order as the cause of action for the proceedings, with the result that this process can be concluded speedily through the summary procedure provided for under Order 14 of the Bahamian Rules of the Supreme Court. It is important for the success of the claimant that the foreign order must be definite, meaning for a fixed sum of money or quantified sum, [Note, that for non-money foreign judgments, the claimant will need to bring a fresh action for the claimant’s original claim] and the defendant must have been present in the jurisdiction of the Foreign

Court or submitted to the jurisdiction of that court (i.e. by voluntary appearance). Unless the defendant (i.e. Judgment Debtor) alleges fraud, there will not be a re-examination of the merits of the case in the Bahamian Court and the usual step as indicated above is for the claimant to make application for summary judgment on the basis that there is no defence to the claim.

In actual fact, summary judgment is a written procedural device whereby the court is asked to enter judgment without the need for a trial based on the fact that there is no legal defence to the claim, or that there is no other compelling reason why the matter should proceed to trial. Unless the judgment debtor has a credible challenge to the validity of the original judgment, that is (i) an assertion that the foreign court did not have jurisdiction to try the case, (ii) the judgment is not for a liquidated sum of money (iii) the judgment is not final and conclusive, summary judgment applications normally are successful and largely a formality. ❖

(Note: The author has developed a comprehensive Paper on the subject of Enforcing Foreign Freezing Orders and Final Judgments in The Bahamas; contact BFSB for a copy)

¹ The Legal System of the Bahamas – Colin E. Callender of Callenders & Co./Legal Media Group



Shasta Treco-Moxey

Mrs. Treco-Moxey has broad expertise in numerous areas of the law including Corporate, Commercial, Banking and Financial Services, Real Property and Conveyancing, Wills and Estate. As a former in-house counsel and legal advisor to well respected international financial institutions based in The Bahamas, she performed duties pertaining to financial services, compliance, risk management and the administration of companies and trusts.

Mrs. Treco-Moxey earned a Bachelor of Laws (LL.B) degree from the University of Wales at Aberystwyth in 1993 before beginning two years of pupillage through Articles of Clerkship in The Bahamas and was called to the Bahamas Bar in 1995. Mrs. Treco-Moxey has continued her professional development, gaining certifications in Private Banking, Trust and Company Management, Money Laundering and Compliance Structures; US and International Trust, Tax and Generation Planning and the University of Oxford/Euromoney Summer Program for Financial Lawyers. From the Securities Training Institute, she secured Series 7 and Mutual Funds accreditations.

Mrs. Treco-Moxey now serves as Legal Counsel at The Private Trust Corporation Limited and its group of companies and is a key member of the corporation’s management team.

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Boardroom Responsibilities

By Linda Beidler-D'Aguilar



In the wake of the catastrophic financial reverses suffered by many investment funds in 2008, and in the aftermath of an extended recession, corporate governance has gone from being an occasional buzzword to a topic of extraordinary interest in boardrooms, among investors and at regulatory agencies. This note looks at two specific elements of corporate governance that have garnered particular attention: directors and their qualifications, and compliance and oversight programs.

Directors and Director Qualifications

As investment instruments become increasingly complex and markets move faster than ever before, rising concern about directors' qualifications for their role and their commitment to their role is evident across a diverse range of entities, from private investment companies to global powerhouses. Increasingly, questions are raised regarding directors' prior experience with investment

funds and investment modalities as well as the extent of their knowledge of the industry. Even boutique funds with limited numbers of investors are undertaking substantive reviews of the qualifications of persons sitting on their boards, often with a view to determining whether enhancements are desirable or necessary. At the same time, there is an increased focus on responsibility for investment strategy, risk management, ac-

“The job of a director must be seen as ‘hands on’ and must be filled by persons with sufficient knowledge and skill so as to understand the business of investment. These directors must be expected to have at least a rudimentary understanding of the investment markets.”

counting treatments and compensation, leading to pressure for decision-making at the highest levels of the company rather than delegation to others, no matter how specialized their services or roles may be.

Unsurprisingly, cases addressing these points often arise in the course of a liquidation. In a prescient decision handed down in December 2005, Justice Lyons of the Supreme Court of The Bahamas set forth a standard for directors of investment funds in The Bahamas:

“The job of a director must be seen as ‘hands on’ and must be filled by persons with sufficient knowledge and skill so as to understand the business of investment. These directors must be expected to have at least a rudimentary understanding of the investment markets. They simply cannot rely on others (including trade advisors and investment managers) by leaving everything to those persons without checking on them. ...[T]he directors are expected to inquire of those persons who are directly handling the fund investments in such a way that it can reasonably be seen that they are overseeing these persons and service providers.”

Oceanic Bank & Trust Limited v. M J Select Global Limited (in compulsory liquidation) [2005] 5 BHS J No. 520, ¶199.

A recent decision from the Grand Court

of the Cayman Islands, Financial Services Division, addresses in detail expectations regarding supervisory obligations and decision-making at the board level, including, inter alia, the supervisory role expected to be exercised at meetings of the board of directors. In *Weaving Macro Fixed Income Fund Limited (In liquidation) v Stefan Peterson and Hans Ekstrom*, Cause No. FSD 113 of 2010 (26 August 2011), an action was brought by the liquidators of the fund against its two directors, who were closely related to its promoter and principal investment manager, though deemed independent for purposes of ISE registration. After considering the directors’ role in the establishment of a fund, Justice Andrew J. Jones QC proceeded to address their obligations in the fund’s course of business, including the duty to exercise a high level supervisory role. He was critical of the conduct of their quarterly meetings, stating:

“One would ordinarily expect an agenda to be prepared and circulated in advance of each meeting, reflecting input from the investment manager, the administrator and the directors themselves. I would expect the agenda to specify the matters for discussion, the reports to be presented and the individual officers of [the investment manager] or [the administrator] who will participate, either in person or by telephone. In particular, I would expect the agenda to provide for a representative of [the administrator] to attend (at least oc-

asionally) for the purpose of reviewing the [fund’s] monthly or quarterly management accounts with the Directors. The evidence reflects that the Directors never in fact asked for any reports to be prepared or for [any such representatives] to attend board meetings, which points to the conclusion that they never attempted to perform their supervisory duty, let alone do anything on their own initiative.” ¶22

Justice Weaver proceeded to decry the directors’ lack of independent judgment, their failure to review financial results and consider the fund’s financial condition even at quarterly board meetings and the failure to make even cursory inquiry as to compliance with the fund’s investment restrictions, along with a host of further omissions and oversights, notably in connection with the service provider contracts. Viewed as a whole, he determined that the conscious choice not to perform duties owed to the fund in any meaningful way constituted willful neglect or default by the directors, and caused a loss of at least US\$111 million to the fund and gave judgment against the directors accordingly.

A further question arising is the extent to which directors, and in particular professional directors, are able to properly focus on their duties to the fund. Many directors serve as such for a number of funds, not just one; the question then becomes whether they are spread too

thin to regularly undertake the level of inquiry dictated by the Oceanic and Weaving decisions. Discussions as to restricting the number of funds for which a single person may act as director are underway in many jurisdictions, both on a regulatory level and within industry to consider best practice. Indeed, it behooves the directors themselves to examine their circumstances and practices, and to take steps in regard to their obligations accordingly.

Compliance and Oversight Programs

Corporate governance is not solely the purview of the directors, notwithstanding that they may have the ultimate obligation to oversee it; there are substantive functions taking place at other levels of corporate operations.

There is no question that effective communications with investors and regulators has become a critical component of successful corporate governance; it is often a critical factor in investor and regulatory perceptions of a fund. Managing the obtaining and retention of records for AML and KYC purposes often requires the dedicated efforts of qualified staff members, as does the production of performance and management reports. Unsurprisingly, use of third party consultants to review compliance and risk management procedures, as well as to hone reporting skills, is on the rise in order to ensure satisfaction of increasingly sophisticated and detailed requirements.

The oversight and review of disbursed operations and responsibilities is a further aspect of proper governance that has come under additional scrutiny: for a variety of reasons, many functions of a fund are spread across a number of entities, not all of which are necessarily in a single location. Most, in fact, are not, which considerably complicates effective oversight on a comprehensive basis. As the dispersal of functions is unlikely to reverse itself, the manner and means of undertaking regular and sufficient reviews of the manner in which they are addressed is now a critical feature of the governance system.

The evolution of corporate governance must now keep pace with the rapid changes in industry, in the markets and even in regulation, all of which are moving faster than ever before. It is quite clear that professional attention – educated and undivided – is the minimum effort that will be deemed acceptable in the current environment. ❖



Linda Beidler-D'Aguilar

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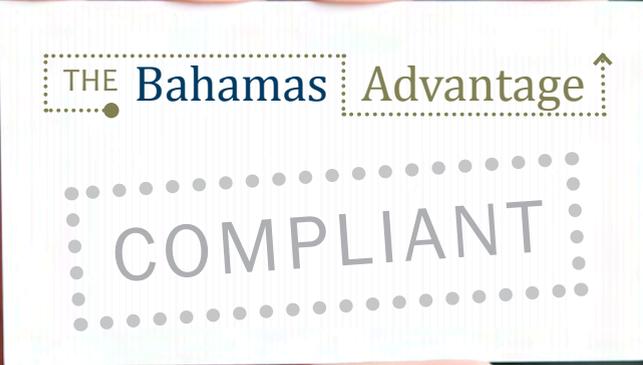
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Prudence & Compliance as branding tools

By Emmanuel Komolafe

A common phrase in the world of sports is “defence is your best offence”. The rationale behind this phrase is that as long as a team defends and prevents its opponent from scoring, it stands a good chance of winning a game. Offence in team sports often comes and goes; however, consistency in defence can be achieved by ongoing and focused commitment on the other end of the floor. This holds true for financial institutions as well, vis-à-vis the achievement of their objectives and, ultimately, their successes.



In strategic planning, financial institutions often devise ways and initiatives to boost and sustain profitability, minimize operational costs, increase assets under management and launch innovative products to remain competitive. A major component of this process which has been neglected for so long is the publicising and selling of effective compliance and risk management practices within financial institutions. This omission is not unconnected to the fact that compliance and risk management were not seen as catchphrases for investors and prospective clients to warrant their inclusion in the strategic planning process. The recent financial crisis may have changed this corporate behaviour for good, and has put the spotlight on how prudent financial institutions have been and are in the management of their operations. This consequently points directly to whether a financial institution has an effective risk management framework and remains compliant with applicable laws, regulations and best practices. It was particularly interesting to see financial institutions use their conservative style of asset management and low risk tolerances to woo and retain clients at the height of the financial crisis.

Several large financial institutions have been penalized and/or fined by their regulators across the globe and have seen corresponding damage done to their brand. In certain cases, these enormous fines were levied for failure to implement adequate Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) systems and

codes of conduct to prevent market abuse. As there are two sides to a coin, it would seem logical to state that if non-compliance can damage a financial institution's brand, compliance should be able to boost the strength of a financial institution's brand as well. Financial institutions should incorporate the robustness of their internal compliance and risk management systems into an enterprise-wide overall marketing plan. This approach requires a paradigm shift and change in philosophy of financial institutions in relation to their perspectives on risk management, compliance and consequently prudential management. In this regard, a financial institution's philosophy should be one that views compliance and risk management as critical components of its operations and identity, which is imperative if the overall objectives of the organization are to be achieved, rather than as necessary evils.

The radical reforms and significant revisions to financial services legislation following the adverse listing of The Bahamas by the Financial Action Task Force (FATF) in 2000 ushered in a new era of a more robust legislative and regulatory regime for the Bahamian financial services industry. Indeed the compliance requirements emanating from the aforesaid reforms and legislation are quite substantial and seen by some as being onerous. There is no doubt, however, that these compliance requirements, which are here to stay, have propelled The Bahamas to international standards and best practices with respect to AML/CFT practices. This is a success

story that must be told and echoed far and wide. Bahamian financial institutions have over the last decade gained prominence for their prudent and concise approach to customer due diligence including "Know-Your-Customer" requirements. This has distinguished The Bahamas as an International Financial Centre (IFC) of repute, which creates

“It would seem logical to state that if non-compliance can damage a financial institution's brand, compliance should be able to boost the strength of a financial institution's brand as well.”

a competitive advantage when considered in conjunction with the quality of professionals available within the jurisdiction to maintain the integrity of the financial services industry.

Considering the current landscape of the global financial services industry, it is no longer news that the profile of the typical investor has gone through a complete overhaul and metamorphosis. The investor and international client in today's environment has evolved from



one that embraced extensive risk-taking with concentration on maximizing returns on investment which may involve significant speculation in sophisticated financial instruments/products to one with the utmost circumspection and a deliberate focus on the preservation of capital. The primary objective of the investor and international client of today is the sustenance and effective management of wealth albeit he/she would settle for moderate or modest returns on investment. The recent turbulence in financial markets has prima facie shut the door at least in the short term, on imprudence by financial institutions and has ushered in a new era of prudence and compliance.

Financial institutions operating within and from within the archipelago of The Bahamas are well positioned to reap the benefits of a “Compliant” and “Prudent” Brand that The Bahamas represents. A simplified example of selling compliance and risk management could highlight the quality of a financial institution’s:

- Corporate governance framework with specific reference to the governance structure, code of ethics, corporate social responsibility, role of Independent Non-Executive

Directors and Board Committees in ensuring that the entity is properly governed.

- Risk management framework with references to its capital management standards and practices, asset and liability management, operational risk management, credit risk management policies, stress testing and scenario analysis and business continuity management.
- Investment management guidelines and targeted asset allocations to obtain maximum returns while preserving principal.
- AML/CFT policies and procedures which provide for adequate customer due diligence, screening, risk rating of clients and ongoing monitoring of clients and transactions.

The aforementioned should then be packaged together and communicated in a manner that assures investors, existing clients and prospective customers that the financial institution is being properly managed and is operating in a safe and sound manner. The underlying message is one that gives comfort to stakeholders that the financial institution will continue to be a going concern and will remain the institution of choice.

Robust compliance practices within a financial institution should be interpreted as confirmation that such an institution subscribes to international best practices and therefore is a world class entity. Appropriate, adequate and comprehensive compliance practices are positives which must be communicated in the same light. Effective risk management which encompasses the management of AML/CFT risk by obtaining adequate and requisite KYC documents is imperative to protect the integrity and reputation of a financial institution whilst providing reassurance to existing and prospective clients on the overall strength of such an entity. The screening and risk rating of prospective clients in this regard should be translated as a system to maintain oversight of and ensure that the overall risk profile of the financial institution and its client base is under ongoing review.

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“The Bahamas remains at the forefront by devoting considerable resources and channeling significant manpower to reinforce its longstanding commitment to compliance with FATF and OECD standards.”

It would be helpful to consider the approach adopted by Canada in utilising risk management as a branding tool. In the aftermath of the financial crisis, the Canadian financial services industry became known as a model to be studied and perhaps emulated due to its resilience to the shocks created by the crisis. Noteworthy are the accolades showered on the regulatory framework for Canada’s financial services industry as this is believed to have been largely responsible for the shielding of Canada’s banking sector from the global financial turbulence. In seeking to build on its growing reputation in relation to financial risk management, the Canadian government in conjunction with financial industry participants announced in September 2010 plans to launch a Global Risk Institute (GRI) in Financial Services in Toronto.

This initiative was designed to brand Canada as a jurisdiction with significant expertise and talent pool in the field of risk management. Additionally, it seeks to highlight Canada’s commitment to financial risk management and endeavours to strengthen its standing in the global community of countries. In particular, this initiative also is intended to separate Canada as an international financial centre which takes risk management seriously in ensuring the stability

of its financial industry and economy.

Bermuda, like other financial centres, continues to publicise its efforts in complying with international best practices and standards. More recently, Bermuda noted its achievement of equivalence status under the European Union Alternative Investment Fund Managers Directive, whilst emphasising that it was one of the first non-European jurisdictions to achieve this feat. Qatar was also quoted as having implemented robust insurance rules which focus on effective risk management strategies by companies domiciled within that jurisdiction and promotes captives as viable risk management structures.

The mutual evaluation report issued by the Caribbean Financial Action Task Force (CFATF) serves as evidence that The Bahamas has excelled in its codification and implementation of the FATF 40+9 recommendations – a commendable achievement. The Bahamas remains at the forefront by devoting considerable resources and channelling significant manpower to reinforce its longstanding commitment to compliance with FATF and OECD standards. Significant efforts were put into signing twenty-eight Tax Information Exchange Agreements (TIEAs) and implementing the 40+9 Recommendations of the

FATF. The Bahamas remains on the white list of the OECD due to its tax compliance. This further highlights The Bahamas as a jurisdiction which promotes tax transparency and hence the preferred destination for investors and clients.

Besides the robust AML/CFT framework within The Bahamas, it is noteworthy to highlight the jurisdiction’s ongoing commitment to the adoption as well as implementation of best practices in prudential regulation, based on standards issued by the Basel Committee on Banking Supervision (BCBS), International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS), with emphasis on core principles and guidelines issued by these international bodies. The quality of regulation within The Bahamas was evidenced by the performance and resilience of the local banking industry during the financial crisis which has been termed in some circles as the “great recession”. Domestic banks remained stable during the crisis, primarily due to their risk management practices and adherence to established prudential norms under the oversight of the Central Bank of The Bahamas. It is not surprising, therefore, that with an average capital ratio of 26%, domestic banks within

The Bahamas did not require any intervention or bailouts by the government and neither was there a resort to public funds. With a score of 59.43 on the Euromoney Country Risk Barometer, above the global average of 57.6, The Bahamas continues to climb the ladder in relation to the ease of doing business due to initiatives implemented by successive governments.

There is no doubt that The Bahamas possesses a huge pool of talent in fields such as estate planning, wealth management, accounting, law and compliance. A major strength of this jurisdiction remains the professionalism, experience and expertise of its workforce. It is widely known in the community of nations and the story must be told of the knowledge centre that The Bahamas is and the commensurate skill set of its people which ensures proper implementation of international best practices. The Bahamas also has established and continues to reinforce its reputation by taking definitive positions on international standards issued in fields such as compliance, risk management, corporate governance, estate planning and wealth management.

The Bahamas easily could be termed as the compliance capital of the world, especially within the global financial services industry. The story of our success in wealth preservation for several generations, and the demonstrated commitment to compliance must be continuously articulated and communicated. The Bahamas' position as an IFC of choice having earned the trust of international clients is a testament, indeed, to the fact that this jurisdiction is reaping the benefits from significant investments in its financial services legislative and regulatory framework. The storytellers must tell the tales not just under the moonlight but while the sun is shining, that The Bahamas effectively has used its prudence and compliance as branding tools. ••

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Emmanuel Komolafe

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Private equity funds for the Latin American market

By Pedro Ramírez

As globalization has become a fact in the financial world, today's worldwide market opportunities offer an extensive range of options involving different investment schemes. Latin American investors, including Mexicans, have been seeking new investment options which provide more advantages than the traditional financial investments and, certainly, are looking for more yields than those generated by debt instruments.

From this perspective, Private Equity Funds ("PEFs") have gained popularity around the Latin American market. This is due to a number of facts and opportunities, including:

- PEFs generally are formed as limited liability partnerships.
- PEFs offer wide possibilities for both the investors and the investment managers of the fund.

Previously, PEFs have been formed for the institutional investors in the Latin American market; however, recently there have been more PEFs - with different risk levels - aimed at mid-sized investors looking for investment opportunities within a depressing level of interest rates. This is due also to the fact that even small investors are more used to investing in collective investment vehicles (as mutual funds). According to the Mexican equivalent of the S.E.C., by 2009 in Mexico 57 per cent of the mutual funds' clients were individuals investing in debt mutual funds.

Additionally, confidentiality these days is an important consideration in the region. By investing through this kind of vehicle, investors achieve a certain degree of comfort in this area.

The return is expected to be higher than the average obtained in the debt market and has proven to be higher in well-managed equity funds with good port-

folio companies. The portfolio of these funds can be restricted to one jurisdiction or to several, and the investment terms are usually mid to long term.

One of the downsides is the higher risk that is taken compared with other conservative investments with lower returns. Also, as investment professionals are in charge of the fund administration, generally investors' corporate rights are limited and their participation within the administration of the fund is immaterial. If the fund is formed to obtain liquidity from several investors (as is usually the case), none of them will control the fund.

Another fact which may be seen as a disadvantage is that investors in these funds commonly do not have the right to receive dividends or will not have such right until a particular portfolio company is monetized. Therefore, their only alternative to obtain liquidity on their investment in a long period may be

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| World | \$ 16,152,911 | \$ 17,757,360 | \$ 21,808,884 | \$ 26,132,316 | \$ 18,920,012 | \$ 22,952,849 | \$ 24,698,642 |
| Americas | 8,780,593 | 9,750,205 | 11,470,489 | 13,423,909 | 10,581,943 | 12,585,819 | 13,586,869 |
| Argentina | 2,355 | 3,626 | 6,153 | 6,789 | 3,867 | 4,470 | 5,179 |
| Brazil | 220,586 | 302,927 | 418,771 | 615,365 | 479,321 | 783,970 | 980,448 |
| Canada | 413,772 | 490,518 | 566,298 | 698,397 | 416,031 | 565,156 | 636,947 |
| Chile | 12,588 | 13,969 | 17,700 | 24,444 | 17,587 | 34,227 | 38,243 |
| Costa Rica | 1,053 | 804 | 1,018 | 1,203 | 1,098 | 1,309 | 1,470 |
| Mexico | 35,157 | 47,253 | 62,614 | 75,428 | 60,435 | 70,659 | 98,094 |
| Trinidad & Tobago | N/A | N/A | N/A | N/A | N/A | 5,832 | 5,812 |
| United States | 8,095,082 | 8,891,108 | 10,397,935 | 12,002,283 | 9,603,604 | 11,120,196 | 11,820,677 |

Millions of U.S. dollars, year-end. Funds of funds are not included. Data include home-domiciled funds. *Source: Investment Company Institute*

by disposing of their participation in the fund, which may not turn out to be easy.

Investing through collective investment vehicles, though, is a practice that will

Most of the weaknesses of the private equity funds are shared with mutual funds (except for liquidity); but, in fact, they offer advantages to attain some fiscal benefits.

ated by the fund or subsidiary without the need of actual distribution to the taxpayer.

Usually under a CFC regime, indirect income is not taxed if the taxpayer does

“Confidentiality these days is an important consideration in the region. By investing through this kind of vehicle, investors achieve a certain degree of comfort in this area.”

continue to grow, including investments through private equity funds.

Unfortunately, as much of the information of these funds is not public, there is limited information on their value, but the trend to invest in collective vehicles easily can be seen in the table above depicting the Worldwide Total Net Assets of Mutual Funds.

There are countries of the region that do not have controlled foreign corporation (“CFC”) rules in force now, but expectations are that they definitively will be enacted in most of the relevant countries in the near future. Under such rules, income of indirect investments is taxed on a current basis with no need of actual distribution to the taxpayer; i.e., income is taxed at the moment that it is earned or gener-

ated by the fund or subsidiary without the need of actual distribution to the taxpayer. In such case, income is taxed upon actual distribution. Therefore, as the investors do not generally control private equity funds, they should not be caught by the CFC regime.

All of the above has been recognized by the Organization for Economic Co-op-

eration and Development (OECD) in its analysis of treaty benefits with respect to the income of collective investment vehicles.

It is true that residents of some jurisdictions are taxed on the increase of the net asset value (“NAV”) of the portfolio; however, presently such treatment is not likely to apply to private equity funds since a fair NAV is not easily obtainable, as opposed to the NAV of mutual funds having a publicly traded portfolio.

Additionally, special tax treatments are easier to impose on investments on local funds. It is not easy to impose burdens on investments in foreign funds, since generalization may affect other kind of investments; therefore, in some jurisdic-

tions it makes sense to have investments in foreign funds as opposed to local ones.

As a consequence of these operations, more and more jurisdictions are seeking to offer better options in order to be competitive from an investor’s perspective, and manage to collect more resources through direct and indirect collective investment vehicles.

Mexican Tax Law Implications

As we are Mexican tax lawyers we will make a general reference to the Mexican perspective of having an investment in a foreign equity fund. This should not be perceived or taken as tax advice, since there are details of each case that must be taken into consideration and may alter the particular circumstance.

One of the most relevant issues to be considered when investing through a foreign PEF in Mexico relates to avoiding the treatment imposed by the CFC rules.

Under the Mexican CFC rules, Mexican residents are taxed on (i) income obtained by them through foreign vehicles in which they have a direct or indirect participation, in the proportion corresponding to such participation, subject to preferred tax regimes (“PTRs”); and (ii) income obtained through foreign vehicles qualifying as tax transparent abroad.

For these purposes, income is considered to be subject to PTRs if it is not taxed abroad or is taxed with less than



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75 per cent of the tax that would have been triggered and paid in Mexico. Income is not considered to be subject to PTRs, however, when the Mexican taxpayer does not effectively control the foreign vehicle or its administration to such a degree as to having the right to indicate, either directly or through a third party, the moment in which the profits, income or dividends shall be distributed. In these cases, the Mexican taxpayer shall not pay the correspondent tax until the effective distribution is carried out by the foreign vehicle. In any case, there is a rebuttable presumption in the sense that the Mexican resident controls the foreign vehicle.

On the other hand, tax transparent vehicles are defined as those (i) that are not

considered as income taxpayers in the country where they are established or in which their effective place of management is established and (ii) where their income is attributed to their members, partners, shareholders or beneficiaries. Equally, under certain administrative rules, the CFC taxation is not triggered if the Mexican taxpayer does not control the foreign transparent vehicle. Also, Mexican investors are required to file specific information returns when (i) generating income subject to PTRs, (ii) receiving income from a listed jurisdiction or (iii) performing activities through foreign transparent vehicles. This filing requirement (along with the severe penalties for failure to file) is a strong disincentive, when applicable.

As a consequence of these tax rules, we will divide the tax implications in Mexico into two parts: (a) foreign PEFs directly investing in Mexico, and (b) foreign PEFs investing in foreign countries with Mexican capital, which will eventually pay profits or revenues to investors residing in Mexico.

a) Investing in Mexico

Under a certain administrative rule, if income is received by a foreign vehicle without legal personality in a jurisdiction with a tax information exchange agreement in force with Mexico, investors in such a vehicle will trigger income tax in terms of the general rules applicable to (i) resident entities, (ii) resident individuals or (iii) non-residents, as the case may be. With this rule



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the fund is disregarded and the general taxation rules will apply on income generated by the fund instead of the CFC rules. In this sense, investors are taxed on income as directly received by them when generated by the fund. The economic burden may turn out to be different in each case, since the CFC rules are more restrictive; e.g., there are restrictions on deductions, on application of losses, etc.

If the administrative rule does not apply, and assuming that the investors do not control the fund, they will be taxed on income distributed by the fund (i.e., the fund is not disregarded). This treatment may lead to (i) the achievement of tax deferral, for example, on capital gains or interest income received by the fund or (ii) to actual double taxation on dividends received by the fund.

b) Investing outside Mexico

Mexican investors not controlling foreign funds with portfolio companies located outside of Mexico will be taxed upon actual distribution of income by the fund. With this treatment Mexican resident taxpayers will achieve tax deferral and avoid the application of the CFC rules.

As a general rule, if the income is received from a listed jurisdiction Mexican residents will be obliged to file the information return. However, it is very important to note that income generated in The Bahamas since January 1, 2011 is not a reportable event on such information returns.

Depending on the type of fund, the process to get it formed, licensed and operational in The Bahamas is very competitive. Also, depending on the needs and purpose of the fund there are various alternatives in The Bahamas to form a fund, e.g., standard fund, professional fund, recognized foreign fund or SMART funds. Some of these are more restrictive than others, but there always would be an alternative offering enough flexibility to achieve the goal of almost any fund.

This fact, plus the investment opportunities which The Bahamas already offers, generates a very attractive option for Mexican and Latin American investors who seek to pursue a different investment portfolio rather than the usual operations held in Mexico. ::



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Manuel Galindo

Turanzas, Bravo & Ambrosi

FUNDS

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Sophisticated planning for wealthy Brazilian families

The benefits of offshore fund structures - in particular SMART Funds - in The Bahamas as a sophisticated, low cost and flexible wealth planning tool for Brazilian wealthy families

By William Heuseler

Currently many Brazilian wealthy families are facing similar issues when it comes to the way in which they hold their collective assets. Generally, family assets are held through various financial institutions around the globe, with many family members residing in countries other than Brazil and only a few of them actively involved in the asset investment decisions. The lack of alignment of individual and collective needs fosters opportunity for tension. Further, the interplay between the location of the assets and family members in many cases triggers different local foreign exchange controls parallel to increased reporting and payment of taxes at the individual level.

This article explores the benefits of an offshore fund structure, and in particular a SMART Fund in The Bahamas, as a sophisticated, low cost and flexible wealth planning tool for Brazilian wealthy families.

A brief background on the Brazilian tax system and foreign exchange system related to funds held abroad

The two bodies that control the currency and the tax systems in Brazil are the National Monetary Council and the Ministry of Treasury, respectively. The current Brazilian taxation system introduced by the Federal Constitution and implemented in 1988 grants power to Federal, State and Municipal Governments to collect taxes. Each of these governmental agencies enact several rules, which makes the Brazilian taxation system very complex, leading to an environment in which taxpayers are required to follow up constantly on updates to ensure that they are compliant. For purposes of the issues discussed here, references to the Federal Tax System shall be



“Over time, however, certain wealthy families had and continue to have a preference for the offshore route using personalized offshore fund structures.”

to the system that imposes capital gain taxes on offshore funds as analysed below.

The Ministry of Finance, represented by the Internal Revenue Department (“SRF”) imposes and controls such taxes on its taxpayers. For individuals, the SRF imposes a progressive taxation system under which individuals are taxed up to a maximum of 27.5% of their income. Capital gains generally are subject to tax at 15%. The sale of assets held abroad will then be subject to a 15% capital gain tax, which is due upon the sale, in accordance with SRF Normative 118/00 of December 28th, 2000.

The National Monetary Council sets Brazil’s policy regarding exchange controls through the issuance of Resolutions, and the Central Bank of Brazil is responsible for implementing them through the issuance of Circulars and Letter-Circulars. Under those rules, Brazilian nationals and residents may remit funds abroad, through financial institutions authorized by the Central Bank.

On April 10, 1996, the Central Bank issued Circular 2,677/96, which amended and consolidated the rules in connection with accounts in Brazilian currency held by individuals and/or legal entities resident, domiciled or based abroad (“non-resident accounts”) as well as determined the proceedings for the in-

ternational transfers in Reais (“TIR”) made through such accounts. In 2004, Circular 2,677/96 was revoked.

In a recent article about the particularities Brazilian wealthy families face when dealing with offshore planning¹, emphasis was given to how Brazil has demonstrated over the past 20 years some interesting developments with respect to internal rules on foreign currency controls. Among other changes, these rulings have provided for the unification of the Brazilian exchange market, which now is no longer divided into different segments. This exchange market is under control of the Brazilian Central Bank and is ruled by the International Capital and Foreign Exchange Market Regulation (“RMCCI”). In any event, both the Brazilian Government and Brazilian corporations need hard currency to pay for their foreign currency liabilities. Therefore, such exchange controls have been the pillar of Brazil’s macroeconomics policy.

Early in 2008, the Brazilian Securities Commission (“CVM”) introduced important rules to remove restrictions, subject to certain conditions, on Brazilian funds investing their capital overseas. Notwithstanding the simplification of the rules, very few Brazilian fund managers took advantage of the regulatory changes, likely given the financial instability of international markets and

Brazil’s focus on domestic investments which benefited from high fixed rate returns.

Over time, however, certain wealthy families had and continue to have a preference for the offshore route using personalized offshore fund structures, such as the Specific Mandate Alternative Regulatory Test Fund in The Bahamas, also known as the SMART Fund. In The Bahamas, funds can be set up with great efficiency, flexibility and at a low cost. Individuals investing outside of Brazil can also take advantage of The Bahamas’ neutral status, which allows for international transactions with no restrictions on the ability to transfer funds in and out of a SMART Fund.

Specific mandate alternative regulatory test fund - SMART Funds and Brazilians

In a recent conference in São Paulo, Brazil², one of the main topics was how important the offshore fund industry has grown in the past decade, thanks, especially, to the high demand from Brazilian investors. There is no doubt that the most common offshore jurisdictions for the establishment of such funds are the Cayman Islands, the British Virgin Islands and The Bahamas. Altogether, there are over 15,000 funds established in these jurisdictions. There also are significant numbers of unregulated and closed-ended funds in each of these ju-

risdictions which generally are not included in the statistics.

From a legal perspective, there are several similarities among these jurisdictions, but each also has certain distinguishing features. The Bahamian legal system, for example, is based on English Common Law, which, since 1964, has been complemented by an “Americanized” constitutionalism which declares the existence of certain fundamental principles that are to be observed and enforced. These rights are enshrined in Article 15 of the Bahamas Constitution. Finally, similar to the Cayman Islands and the British Virgin Islands, The Bahamas has the Privy Council in London, England at the top of the court hierarchy for its judicial system. The Judicial Committee of the Privy Council serves as the ultimate Court of Appeal in all matters where appeal is permissible.

Brazilian wealthy families investing in SMART Funds have access to local support and expertise from qualified lawyers and service providers in The Bahamas, including custodians and fund administrators. Investors and regulators such as the CVM also will take comfort from anti-money laundering laws and regulations in The Bahamas, which impose owner verification requirements to record the identity of investors and sources of investment commitments.

Back to the similarities between these jurisdictions, each one has an upright and reliable legal regulatory system; each has a stable and business friendly government; each is tax-neutral for international fund vehicles and without exchange controls in relation to international fund vehicles; and each has a well-developed regulatory system that

is compliant with international standards. In addition, the regulatory approach in each jurisdiction in relation to funds is based primarily on the principle of full disclosure of material terms to sophisticated investors rather than on a prescriptive approach. This gives operators significant flexibility when structuring their funds. However, the SMART Fund programme, as described by the Bahamas Financial Services Board, “was designed to provide [the] industry with a new Private Wealth Management tool with the flexibility to find application within areas not traditionally associated with investment fund administration. The primary facility offered by the SMART Fund concept is an open architecture which allows practitioners to design innovative structures, akin at times to special purpose vehicles, without reference to inflexible regulatory criteria predefined in legislation”³.

There is no doubt that all offshore jurisdictions offer flexibility in the structure of investment funds, which may be established as companies, partnerships or unit trusts depending on the client’s requirements. The beauty of the SMART Funds concept, however, is that they are more often driven by clients’ needs vis-à-vis their principles and statutes. The Bahamian legislature, for example, understood that many times, without creating a “disregarded” structure for purposes of substance of form, one could still come up with a solution that would not have a mandatory requirement for a traditional lengthy offering memorandum, but merely a term sheet; and where a license may be issued by the Fund Administrator under a delegated authority of the Securities Commission of The Bahamas, to name a few of the simplified but safe procedures.

Conclusion

Notwithstanding the enormous increase in the assets managed by Brazilian domiciled hedge funds in the last several years, the Brazilian hedge funds industry faces several obstacles to greater development, especially when compared to some offshore jurisdictions. The main ones, in our view, can be summarized as follows:

- The existence of strict portfolio investment rules applicable to hedge funds in Brazil
- The complexity of the local control systems

The latter is especially so when compared to jurisdictions such as The Bahamas which, via the SMART Fund solution, can have a more simple solution, can guarantee the deferral of capital gain taxes and, even more, do not impose tax on foreign investors investing in funds domiciled in The Bahamas.

Despite the changes relating to Brazilian local funds investing abroad and the facts above mentioned, the strong appetite of Brazilian wealthy investors for sophisticated wealth planning tools, combined with the flexibility and strong regulatory framework provided in The Bahamas, make the SMART Fund an ideal vehicle choice in terms of wealth, estate and tax planning solutions. ❧

¹ The Trust concept from a Brazilian legal perspective, by William Heuseler, Wealth Management & Private Banking Review, 2011/12, Euromoney Yearbook

² Summit Brazil – Developments in the Alternative Fund Industry (May 3rd, 2011)

³ The Investment Funds Guide



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William Heuseler is a Tax, Trust and Estate Planning Attorney with over 15 years of experience dealing with high-net worth clientele. Prior to Itaú, Mr. Heuseler worked at UBS AG as country coordinator – Brazil Offshore Platform; at Smith Barney-Citigroup as a wealth planner; at Safra Group as the head of the Legal and Trust Affairs division and Citco Group as a trust officer. He started his career at Baker & McKenzie’s office in Rio de Janeiro, Brazil. William is a STEP member (Miami Branch). He is a member of the Board of Directors of BIE Bank & Trust (Bahamas) Ltd. as well as a member of the Board of Directors of the Brazilian American Chamber of Commerce of Florida. He is a former member of the Board of Trustees of the American Repertory Ballet. William has appeared as a guest speaker at several conferences and seminars in the U.S. and Latin America.

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China HNWI's

China Means New Business Opportunities for The Bahamas

By Dr. Harvey Z. Chen

China has overtaken Japan as the second largest economy in the world, and is projected to become the world's largest economy soon. The world press is full of commentaries about the opportunities and threats of China's rise.

I would like to highlight a few trends that may be specifically relevant to The Bahamas.

Investment flows into China

The unprecedented growth of the Chinese economy has attracted huge foreign investments into China. Now, against the weak economic outlook of the United States and Europe, China is seen as an even more attractive place to invest. It now has a huge foreign exchange reserve, a lot of which is represented by hot money inflows from unknown sources. A lot of the foreign direct investments are arranged through offshore SPVs. Table 1 shows that the British Virgin Islands and Cayman Islands have played significant roles in this regard. The Bahamas has a lot of potential to play a bigger role.

The globalization of Chinese corporations

To encourage Chinese companies to "go out", or globalize, has been a national strategy of China for over a decade now.

The primary reasons are the need to secure natural resources for China's rapid industrialization, to access local markets, to take advantage of local labor supplies (as Chinese labor cost increases), to be close to the latest technology innovation, and to tap into international capital markets through public listings in stock exchanges in North America, Europe, Hong Kong, Singapore, etc.

The globalization of Chinese corporations has led to a marked increase in demand for services in investment, financing, M&A, legal and accounting, tax planning, trade finance, offshore registration to avoid restrictions on direct market entry by Chinese firms in certain countries (e.g., the United States), and IPO planning.

Again, offshore financial centres have played a major role (See Table 2). About 80% of China's direct investment in the Americas is made using offshore SPVs in the Caribbean.

The growing Chinese affluent population

The remarkable economic growth of China has created one of the fastest private wealth accumulation episodes in history. Although per capita GDP is still very low, China's wealth is

TABLE 1 China: Inbound Foreign Direct Investment by Origin

| | USD (in millions) |
|------------------------|-------------------|
| Hong Kong | 41,036 |
| British Virgin Islands | 15,954 |
| Singapore | 4,435 |
| Japan | 3,652 |
| Cayman Islands | 3,145 |
| South Korea | 3,135 |
| United States | 2,944 |
| Samoa | 2,549 |
| Taiwan | 1,898 |
| Mauritius | 1,494 |

Source: China Commerce Yearbook 2009.

TABLE 2 China: Outbound Investment by Country of Destination

| | USD (in millions) |
|------------------------|-------------------|
| Hong Kong | 38,640 |
| South Africa | 4,808 |
| British Virgin Islands | 2,104 |
| Australia | 1,892 |
| Singapore | 1,551 |
| Cayman Islands | 1,524 |
| Macau | 643 |
| Kazakhstan | 496 |
| United States | 462 |
| Russia | 395 |

Source: China Commerce Yearbook 2009.

very unevenly distributed, with 8% of the population owning 80% of the wealth. This has translated into a large high net worth individual population. A recent study by Bain and China Merchants Bank revealed that there are 590,000 people with financial wealth over RMB10 million. The ultra high net worth individual population is growing at an even higher rate, and their average wealth is higher than their counterparts in the neighboring Asian countries.

Chinese banks have discovered new opportunities in wealth management, private banking, and are rushing to offer services to the high net worth population. However, they lack international capabilities, leaving plenty of room for collaboration with international financial centres like The Bahamas.

Immigration

According to the above-mentioned study by Bain and China Merchants Bank, 27% of the 590,000 high net worth individuals with financial assets over RMB10 million have completed emigration procedures, and 47% more are considering the emigration option. Among the ultra high net worth population with financial assets above RMB100 million, 60% have or are considering emigration. The main motivations for emigration are private property protection, diversification, and children's education. North America and Australia are the most desirable destinations.

The Bahamas potentially can offer an ideal service to the Chinese im-

migrants in North America; specifically, by combining and offering wealth management, estate management and permanent residence opportunities to investment immigrants who want to live close to their children studying and working in North America. Most of the wealthy individuals are first generation entrepreneurs; consequently, they also would like to have some entrepreneurial work to do while investing and living in The Bahamas. So it is important to create some special investment zones or projects to attract their investment while offering business opportunities in which they can engage themselves.

The renminbi internationalization

The dollar, the euro and the yen all have their own problems, while the Chinese renminbi is on the ascent. China has embarked on an official strategy to globalise the renminbi, and the progress has been much faster than anyone has anticipated, both in trade settlements and in renminbi denominated bond issues. Direct overseas investment in renminbi by qualified Chinese firms is also encouraged.

By positioning itself early on as an international financial centre capable of handling renminbi transactions, combined with a strategy to attract Chinese companies and wealthy individuals, The Bahamas can benefit significantly from the Chinese growth opportunities. ::



Dr. Harvey Z. Chen

Harvey Chen is Chairman and CEO of First Light Academy of Finance and Management, an executive and professional education institution based in Shanghai, China. He is a Commissioner of the China State Council Overseas Chinese Affairs Office Advisory Commission, a contributor and consultant to Oxford Analytica, UK, and an Independent Director of the Board of the Bank of Montreal (China) Co. Ltd.

Dr. Chen started his career in China in 1983 as a naval architect at Guangzhou Shipyard, a major state-owned enterprise in South China, and then joined Guangzhou Academy of Economics, a policy research arm of the city government of Guangzhou. In 1986, he went to New York to pursue his graduate studies at Columbia University. After finishing his PhD degree in Economics and Finance in 1992, he taught at the London School of Economics for three years as Jean Monnet Lecturer in the Economics of the EU, a lectureship endowed by the European Commission. Later he worked at the International Monetary Fund in Washington DC, and JP Morgan Chase in New York, before returning to China at the end of 2002 to found a couple of educational institutions.



Blending business with beauty

By Werner Gruner

There is no doubt that The Bahamas is beautiful. It is an archipelago of its own kind – home to 700 islands and oceanic wildlife seen nowhere else in the world; it is a distinctly cosmopolitan centre filled with a myriad of colours and life that is better experienced than described.

The real beauty, however, is what cannot be seen. Now, more than ever before, it is apt to say that “there is more here than meets the

eye.” The Bahamas is not only a tropical retreat, but an international platform – for business and pleasure. Located at the crossroads of the Americas, it provides access to most major destinations in the Western Hemisphere, catering to every need of today’s international entrepreneur, business professional or ex-patriate family. Building these assets has been one of the nation’s goals since its independence, and since then it has become a world leader in both finance and leisure.



A New Era of Wealth Management

In the midst of fast changing global financial regulation, The Bahamas remains firm in its prime goal of catering to the high-net-worth individual. Thus far, the country utilises its potential as an international crossroads by welcoming official representations from 43 other countries. Its infrastructure is ever-improving, with new highways currently under development, a wireless network soon to be upgraded to 4G and a government that is dedicated to expanding e-services to facilitate “doing business in The Bahamas”. Thanks to its financial regulation, it maintains a responsible and compliant reputation as an international financial hub, whilst remaining a tax neutral jurisdiction; there are no income, capital gain or inheritance taxes. In addition, much of the local workforce is degree-qualified for various business occupations, and can act as a base for the entrepreneur establishing himself in Nassau. This is all part of its larger plan of stepping into an era of Caribbean renaissance, with a never-before-seen blend of business and beauty.

It is in this new era that The Bahamas seeks to reaffirm itself as a global leader in wealth management, where the emphasis is placed on client service, discretion and compliance. As the gateway to the West, the country offers international investors a unique opportunity to access any market on the globe, though especially those in the emerging markets of Latin America, and the developed markets of North America. Nassau’s unique geographical position allows the private banking industry to highlight the human aspect of business, while offering services akin to

the globe’s developed financial centres. Such are offered by the Nassau-based subsidiaries and branches of the world’s largest financial institutions - including the more than 250 banks and trust companies (such as Julius Baer, UBS, Citigroup, JP Morgan, RBC and Scotiabank, to name a few) and more than 100 investment advisory firms and 50 fund administrators. By delicately weaving these advantages, Nassau offers a business experience rarely seen in the rest of the world.

Mixing Prosperity with Pleasure

It should be clear by now that Nassau is a busy place. A new-world cosmopolitan culture swims between its modern infrastructure, all made with a twist of Victorian era heritage. International investors build both their home and business here so they may enjoy the 21st century glitz and glam, and the 18th century-old eloquence of the Colonial era. Nassau knows it is an important financial centre, which is why there are direct flights to and from major U.S. cities, Canada, the UK, Europe, Cuba and, most recently, Panama.

Although this may portray the country as a non-stop roundabout, the opposite is often the case. The pace can sometimes be slow too. During the week, the small city of Nassau overwhelms the frequent commuter, with traffic akin to a rush hour in Manhattan. But after hours, it breathes calmly as its waters shine with a deep red sunset (for there is sun 330 days out of the year). Visitors and residents both agree that there is a real, indescribable beauty in being able to see the flat ocean horizon from your own corner of the world.



Such has made the island home to several world leading resorts and private estates (not to mention the celebrities that live in them). Nassau’s “Atlantis” and “The One and Only Ocean Club” are consistently rated as top resorts. The former was listed on Condé Nast’s 2010 Gold list, was given the award “2010 Caribbean’s Leading Casino Resort” by the World Travel Awards, and has al-

“International investors build both their home and business here so they may enjoy the 21st century glitz and glam, and the 18th century-old eloquence of the Colonial era.”

ready been the home of a Miss Universe pageant. The latter was recognized as the “2010 Caribbean’s Leading Suite Hotel” by the World Travel Awards.

In 2014, Nassau will be home to a second multi-billion dollar mega resort – “Baha Mar”. Like Atlantis, this “el-



evated experience at sea level” will likely take the Caribbean by storm, and thus far has added to the fire fuelling the country’s rapid economic developments. To prepare for the upcoming influx of visitors, Nassau’s Lynden Pindling International Airport already is midway through its 410 million dollar redevelopment. This will double the airport’s airlift capacity to 5 million passengers annually.

Despite its bustling character, Nassau stands as the centre of an oft-missed tropical serenity. The Bahamas’ 29 inhabited Family Islands give the country its unique archipelago, which from a satellite view appears to be like a scattered string of pearls. They provide a peaceful hideout for residents of the capital, particularly those who seek an alternative to buying a private island (there are still some for sale).

Andros, Eleuthera, The Abacos and the Exumas herald this tropical serenity, and in doing so remind every resident and visitor that there is a real untouched beauty rarely (or ever) found elsewhere.

Andros lures the adventurous spirit; after a 15-minute flight from Nassau, the avid fisherman can choose from reef, big-game and bone fishing. Eleuthera is the Nassau resident’s favourite getaway as an undeveloped island ripe with freedom and beauty; it offers world-famous pink sand beaches and miles of untouched landscape. The waters gracing the shores of The Abacos invite all of the world’s sailing enthusiasts, for the waters here have made this island home to many world-famous regattas. The Exumas features the largest and most pristine network of living coral reefs in the world as well as the 176-mile Exuma Cays Land and Sea Park. It is also home to Sandal’s Emerald Bay luxury resort: a 500-acre community set with an 18-hole Greg Norman-designed golf course.

These natural beauties form a mere foundation, however; they represent only a beginning of the vision that

drives the Bahamas’ Hotel Corporation. Michael Scott, head of this corporation, remarked: “there are further boutique resort developments underway in Eleuthera, Andros and in Mayaguana, which will be a relatively new player. Both Andros and Eleuthera will feature numerous multi-million dollar private estate and retreats, and will form the bedrock of what we plan to become future private, Family-island neighbourhoods.” By capitalizing on these one-of-a kind Family Islands, the country strives to show that business and pleasure, do, in fact, mix.

The Choice of Everything

Choices only matter if there are good ones. Scattered across New Providence are many upscale communities. Old Fort Bay boasts a lush wildlife that

blends delicately with multi-million, mostly custom-designed, estates each accompanied by a personal dock and a mangrove-scattered canal-way. This leads to what many consider the most beautiful beach in Nassau. Lyford Cay, the most famous of the enclaves, shines with a cosmopolitan flair as it is home to more nationalities (from Bahamians to Pan Continentals) than this writer can think of. It also boasts an 18-hole private golf course, a mile-long private beach, a full-service marina and its own, IB (international baccalaureate) accredited private school.

Newer developments arise in Nassau's most Western shores. Albany boasts a Mediterranean-designed, luxury resort community that provides an all-inclusive experience. It features a full-service marina (for up to 240 ft vessels), an 18-hole Ernie Els designed golf course, three-to-five acre equestrian ranchettes, marina residences with near 360 degree views of the ocean and a full range of resort-like amenities (simply too many to list here).

These enclaves give precisely what the 21st century entrepreneur needs: a thriving business environment without the added urban melodrama. From an eagle-eye view of Nassau, one imagines that the city's architectural blueprints must have been drawn by a three-year-old with crayons. But that is exactly what makes the city so intimate; it has not lost the feel of its renaissance heritage, something which is en route to return while the rest of the world is to be packed with skyscrapers. On its streets one finds a plethora of cuisines: Bahamian, French, Italian, Greek, English, Indian, Chinese, Japanese, the list goes on. Juxtaposing these restaurants (some



of which are world-renowned), the scattered industrial buildings feature a full range of health and medical services: with two hospitals, multiple dentists and orthodontists, a cardiac centre and several specialists in alternative medicine.

And while we're on the subject of surprises, let us not forget the well established education system equipped with a plethora of strong secondary schools, run predominantly by the Anglican and Catholic dioceses, including the two IB accredited schools (one already referenced above) namely St. Andrews and Lyford Cay. Their graduates often continue into further education into the United States (Harvard is not uncommon), Canada (think McGill) or the United Kingdom (Oxford, Cambridge or Durham, take your pick). Some daring graduates even have accepted full-scholarships to universities within China or South America. And, of course, at the tertiary level offerings include The College of The Bahamas, soon to transition to The University of The Bahamas.

Freedom of Expression

Situated at the crossroads of the Americas and gently resting between Cuba and Miami, Nassau itself represents a cultural movement bent on fusing 21st century modernism with a slow, Caribbean eloquence; it is a melting pot of



many of the world's cultures with an ever-present twist of island tradition. And what is this tradition? Expression. The heart of the Bahamian people lies in how they express themselves.

Nassau's passion shines through its music and its people. The city is known as the home to Junkanoo, a rhapsody built with the soul of Caribbean tradition. Each parade features over 150 dancers and musicians, who all perform 12 hours non-stop several times a year. It breathes life; dancers adorn giant headdress and costumes made from cardboard, feathers, sequins and plastic jewels; drummers proudly beat their homemade drums; trumpeters never



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Prof. Ludwig Oechslin, curator of the Musée international d'horlogerie in La Chaux-de-Fonds, Switzerland

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cease to keep the city alive. Junkanoo attracts a love that cannot be resisted, regardless of who you are or where you come from.

When Junkanoo is over though, the music certainly isn't: "The Nassau Music Society" features numerous concerts a year and often receives world-renowned classical artists. "The Bahamas National Symphony Orchestra" and "The National Youth Choir" both promote the art of music and encourage the artistic talent of the country's bright students. In the summer months, many residents try not to miss the Cuban salsa dancing nights, which even this writer can say certainly spices up the work-week.

If nothing else can, this expression explains the cosmopolitan flair and internationalism that is ubiquitous throughout The Bahamas. Every year, this comes to light in the Botanical Gardens

as the city hosts its "International Cultural Festival," whose participants represent many of the world's nations. As another yearly event, "The Bahamas International Film Festival" presents independent films from across the globe and often receives some of the globe's most famous actors.

As an economic, cultural and natural anomaly, The Bahamas leaves little else to be desired. Its location has placed it on the branches of the world's leading countries, and on them it has become a shining star in the Caribbean. Beaming with the ambition to take the 21st century head on and the passion to do so, it has become a modern gem – offering both a great future and rich past. It blends a surprisingly contemporary atmosphere with a heritage built from beautiful waters. That is the Bahamian lifestyle – limitless. ::



Werner Gruner,

Director, Julius Baer Bank & Trust (Bahamas) Ltd.

Werner Gruner is a Private Banker with 10 years of experience in the banking sector and has been living in The Bahamas for over 4 years. He joined Julius Baer Bank & Trust (Bahamas) Limited as a Director in 2010 after 9 years at Credit Suisse. During his career at Credit Suisse, Werner assumed functions in Zurich and Nassau for the Private Banking Division where he was a Relationship Manager providing comprehensive financial advice to HNWIs. Born in South Africa, he acquired a keen interest in the development of third-world nations and has done research trips to various emerging countries including Nigeria, Ethiopia, Kenya and most recently Afghanistan. He has been a guest speaker at conferences in South Africa, Kenya, the US and The Bahamas as well as appeared on motivational TV programming in South Africa. Werner holds a Banking Diploma from the Credit Suisse Business School and is fluent in English, Afrikaans and German.

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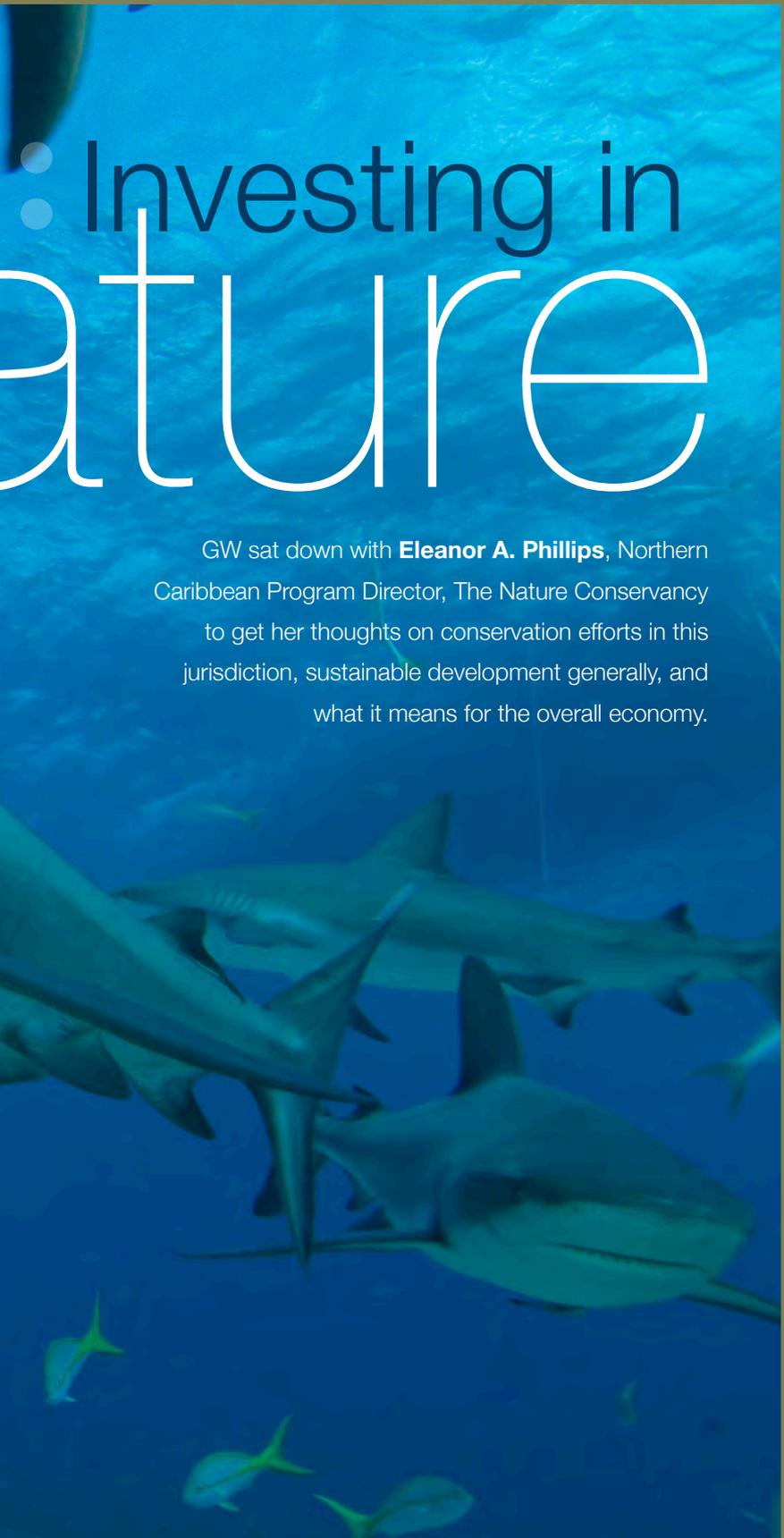
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Investing in Nature

GW sat down with **Eleanor A. Phillips**, Northern Caribbean Program Director, The Nature Conservancy to get her thoughts on conservation efforts in this jurisdiction, sustainable development generally, and what it means for the overall economy.

GW: First of all, tell us a little about the work you are doing.

EP: The Nature Conservancy (TNC) is the largest private non-profit conservation organization in the world, and the only such group working throughout the Caribbean. We are a science-driven organization based in Arlington, Virginia with state chapters in all 50 United States and in 34 countries around the globe, including The Bahamas where we established our offices in 2003. The Conservancy recognizes significant opportunity here in The Bahamas to accomplish conservation goals of global significance, working in partnership with the Bahamian government and our existing partner base that includes the Bahamas National Trust, BREEF, the Andros Conservancy and Trust, Abaco Friends of the Environment, San Salvador Living Jewels, Eleuthera Land Conservancy and Nature's Hope for Southern Andros. And our partner organizations continue to grow. TNC works with other global conservation organizations such as the World Wildlife Fund, RARE, Conservation International, and the Wildlife Conservation Society among others.

The key to a prosperous future for Bahamians is a diverse, healthy marine and coastal environment providing food security, drawing tourists and enriching the lives of our people. Our lives are intertwined inextricably with the waters and marine world that surround our islands. The Conservancy is working with governmental and nongovernmental partners to protect the best of The Bahamas in a protected area network designed using the best available science, and managed using sustainable practices that will ensure their continued health for the future. We want these protected areas to be sustainably funded and benefiting both nature AND people.

This is critical – and we must make it a national priority to safeguard the natural world that will sustain our future generations.

GW: You referenced “conservation goals of global significance”. Why would the work here have such significance?

EP: The Bahamas covers about 100,000 square miles of ocean of which only 6% is land - and most of the marine habitat is in relatively good condition when compared to the rest of the globe. Building on previous successes in protected area management by the Bahamas National Trust, today our conservation efforts are guided by the Bahamas Master Plan for Protected Areas. Drafted in partnership with the Government and local partners, the Master Plan is composed of an ecological gap analysis, a sustainable finance plan, and a capacity action plan. Together, these translate to a recipe for strategic growth, sustainable development of our ecotourism industry and diversification of the main economic drivers of our country. Many countries in the Caribbean, and around the world, have completed Protected Area Master Plans but The Bahamas is one of the furthest along towards achieving implementation. Once fully implemented, the plan and its implementation process will serve as a model for other island nations.

GW: We have heard talk about the Caribbean Challenge launched by the Conservancy. What is this?

EP: The Bahamas 2020 Declaration and a similar announcement made by Grenada in the same time period formed the underpinnings of the largest biodiversity conservation initiative in the history of the Caribbean – The Caribbean Challenge. The Caribbean Challenge integrates governments and geographies through the development of a strategic conservation agenda which seeks to protect biodiversity and preserve human livelihoods across the Caribbean through sustainably managed, adequately funded protected area systems that are resilient to climate change and degradation impacts.

The Nature Conservancy launched the Caribbean Challenge in 2008 with eight Caribbean nations endorsing the Challenge goals. The initiative is focused on advancing environmental sustainability in the Caribbean under three main components: Protected Areas, Sustainable Finance and Climate Change. As a result of the Caribbean Challenge initiative, protected marine habitats will more than double by 2020, increasing from 2.87 million hectares to 7.7 million hectares. The Caribbean Challenge has a strong sustainable finance component that will create permanent funding streams through the establishment of the Caribbean Biodiversity Fund, a \$40 million

endowment for protected area management for the countries who joined the initiative at its outset.

GW: How is The Bahamas regarded internationally in terms of its efforts in these areas?

EP: As a country, The Bahamas has been leading the way regionally and internationally with a strong environmental commitment that is manifested in the earlier-referenced Bahamas 2020 Declaration. At the risk of repeating myself, this declaration is a commitment to protect 20% of the near shore marine environment by 2020 while working to establish sustainable finance mechanisms through the Bahamas Protected Area Fund and ultimately to effectively manage the expanded network of Protected Areas. We are currently at 2 million acres under protection and need to reach 11 million to achieve our 2020 goal. The Bahamas is one of only a handful of countries to meet the global goal of 10% terrestrial protection by 2010 (we are now at 11%). With the recent enactment of the Forestry Act, the percentage of protected land will most definitely increase.

The environmental platform is further strengthened by a National Energy Policy that has made strong recommendations for overall improvement of our energy efficiency and the development of clean energy options to supplement the very high energy demands. The Grand Bahama Power Co. has plans to establish a wind farm on Grand Bahama and we are starting to see the influx of a few more wind energy projects in other areas of The Bahamas – for example privately owned islands like Over Yonder Cay, Exuma already has 10 turbines in operation and the Island School on Eleuthera combines wind/solar generation to power their facilities as well as the nearby Deep Creek Community.

GW: We hear a lot of talk about marine conservation. Does this refer mainly to coral reefs?

EP: With more than 1,400 square miles of coral reefs - approximately 2% of coral reef inventory on the planet - The Bahamas supports close to 1,500 species of fish and marine mammals. They are the lifeblood of our economy, our culture and marine world.

Increasingly, however, the reefs in our waters are at risk for irreversible damage. Studies indicate that without massive



Photo: Eleanor Phillips



Photo: Eleanor Phillips



“The Bahamas is under threat of irreversible damage. Studies indicate that without massive conservation efforts, the reefs of The Bahamas and the Caribbean could be gone within the next 50 years.”



conservation efforts, the reefs of The Bahamas and the Caribbean could be gone within the next 50 years as a direct result of impacts from unplanned coastal development, unsustainable tourism, off-shore channelling and dredging, water pollution, over-harvesting of fish and other marine species, and climate change. Without marine conservation, without protecting our reefs, sea grass beds and coastal habitats we will lose the beauty and rich natural diversity that sustains our communities, draws our tourists and enriches the lives of every Bahamian.

GW: On the same subject of coral reefs, we were excited to hear about Captain Philip Renaud, the Executive Director of The Living Oceans Foundation, being in The Bahamas as part of a Global Reef Expedition. Were you involved with this project?

EP: Yes, they were here on the Golden Shadow - the Foundation’s research ship - conducting a comprehensive analysis and satellite mapping of some of The Bahamas’ coral reefs. It has been an exciting project, and even more so because it provided for a team of Bahamian researchers to take part in a unique research opportunity. Teams of divers from the Bahamas National Trust, the Government’s Department of Marine Resources and The Nature Conservancy all participated in mapping remote reefs of the Cay Sal Bank, Inagua and Hogsty Reef. Later this year, the Golden Shadow will return to map the reefs around Andros and Abaco.

GW: What do they hope to achieve with the mapping?

EP: The end result will provide deci-

sion makers with detailed information on the status and condition of our Bahamian coral reefs and a comprehensive map that the Government can use to zone areas. The maps will identify specific areas in need of protection. Captain Renaud firmly believes that the combination of advanced satellite imagery,

“Many countries in the Caribbean, and around the world, have completed Protected Area Master Plans but The Bahamas is one of the furthest along towards achieving implementation. Once fully implemented, the plan and its implementation process will serve as a model for other island nations.”

aerial photography, and data from hundreds of research dives will yield the most comprehensive scientific survey and study of the reefs of The Bahamas. So, in addition to the maps, we will have scientific information on reef species that will help properly manage and protect our marine resources.

We are thrilled about this project! The Bahamas was the first leg of a five-year assessment of the health of coral reefs around the world. And, we were chosen because of our diverse marine resources,

the vast geographic extent of our island chain and our partner base willing to work together to support this important mission.

GW: How is the Bahamas National Trust different from the Conservancy?

EP: Established by an Act of Parliament in 1959, the Trust has responsibility for management of the National Parks system of The Bahamas. The Conservancy is a private international non-governmental organization working with partners and communities in The Bahamas and around the globe to promote sound conservation practices and protect ecosystems for both people and nature. The Conservancy’s ongoing efforts include an opportunity to invest in nature and the ecosystem services it provides by supporting the establishment of the Bahamas Protected Area Fund (and The Caribbean Challenge generally). Though separate organizations, we absolutely work as partners on a number of common objectives.

GW: Tell us a bit more about some of the “sustainable” funding initiatives and the outreaches being made.

EP: We have the opportunity to leverage gifts by a 9:1 ratio all in support of our country’s natural heritage, providing an extraordinary investment in our grandchildren’s futures! For visionary investors who have a heart for our work, the Conservancy provides platforms to leverage transformational gifts for highest conservation impact. A recent example is our Wilson Global Giving Challenge, an initiative designed to inspire new giving to the Nature Conservancy from international donors. Effectively, the fund will match gifts or pledges

(upon receipt of payments) from individuals and family foundations. Gifts or pledges from individuals through their foundation or corporation also may be eligible.

By investing in nature we protect the ecosystem services it provides. We have to get creative and devise ways to engage individuals who have the means to make a financial impact and who already are attracted to the natural product and service offerings here in The Bahamas.

I really feel that when BFSB talks about “The Bahamas Advantage”, the sustainability of our environment and economy and, more importantly, the serious initiatives around this concept, have to be primary factors. After all, what is an advantage? “A superiority of position or condition, a factor or circumstance of benefit to its possessor, a benefit resulting from some course of action” - all very relevant!

The Bahamas is in a truly advantageous position with vast marine areas that still are relatively healthy and are still providing for our people - and to some extent for our neighbours. We as Bahamians also have an opportunity to ensure that these resources are protected to provide food and recreation for future generations of Bahamians, as well as for our visitors. This is truly groundbreaking work and the finance components of the Caribbean Challenge will ensure that permanent and dedicated funding will be available to effectively manage our protected areas and natural resources in perpetuity. Consider this as part of your legacy - invest in the Bahamas Protected Area Fund! ::



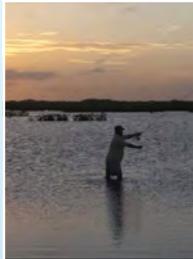
Eleanor Phillips

Eleanor Phillips is the Northern Caribbean Program Director for the Nature Conservancy Caribbean Program. Based in The Bahamas Program office in Nassau, Eleanor has led a multidisciplinary team since 2003, working in partnership with government and non-governmental organizations in The Bahamas and Turks & Caicos Islands to achieve effective conservation of natural resources for those countries. Eleanor is leading efforts to execute a Master Plan for Protected Areas for The Bahamas Protected Areas System and to further the goals of the Caribbean Challenge in The Bahamas, one of the challenge's lead countries. Prior to joining the Conservancy, Eleanor worked for The Bahamas Department of Fisheries for 11 years and prior to that managed two privately-owned tilapia fish farms in The Bahamas. Eleanor has a bachelor's degree in Aquaculture and Environmental Technology from the Florida Institute of Technology. She enjoys growing orchids and is a founding member and past president of The Bahamas Orchid Society. She also likes swimming, diving, snorkelling and being outdoors in the Bahamian bush.

For more information visit nature.org/Caribbean.




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Telecommunications

Moving at Never Before Imagined Speeds

By Geoff Houston

If ever we get complacent about the speed of change in the telecommunications industry, all we have to do is think back to that moment in 2006 when a relatively unknown hardware engineer from California named Jeff Han stood before the year's hardest-to-stun gath-

ering of techies and blew them away. There, on a stage at the annual TED conference, the trend-making technology, entertainment and design forum, Han walked up to an oversized screen and with the simple manipulation of thumb and forefinger expanded and shrunk images, shook them up, made unseen images appear and changed the size and shape of what was on the screen. He



zoomed through canyons and brought maps to life. In a single move, Han changed the way the world got its information, communicated it and made it available. He had taken the touch screen to previously unheard of heights and paved the way for what we now take for granted – the motion that lets us unlock universes on iPhones, iTouch, and iPad. As an article in Fast Company maga-

zine described it, “In this Googly age, it only takes a random genius to conceive a technology so powerful that it plows under the landscape and remakes it in its own image.”

What Han unleashed in 2006 was more than the technology instantly gobbled by Apple which jumped on its potential. He unleashed the expectation that “change that plows under the landscape” was part of the speedily evolving world of telecommunications. Today, as we address the needs of the Bahamian business and social telecom environment, we understand how fast we have to move to keep pace with those expectations. That is why the Government of The Bahamas has made establishing a fully competitive, privately-operated, well-regulated telecommunications sector a priority.

e-Commerce and other advances

Being at the cutting edge of telecom technology is a basic tenet for any company considering doing business with or in The Bahamas, but perhaps nowhere

more critical than in the financial services sector. Bankers, financial analysts, wealth and asset managers and property specialists have a right to expect the highest quality in communications at affordable rates – a daily diet of consistency, speed and reliability.

The positive news is that those expectations are being met in a revitalized telecommunications sector in The Bahamas. In April 2011, London-based Cable & Wireless Communications purchased 51% of the Bahamas Telecommunications Company (BTC). That sale and its attendant agreement, terms and conditions opened the door to a competitive environment in telecommunications. Over the next two years, an increasingly liberalized market will produce improved service, broader product selection, innovative promotions and substantially reduced rates. Even in the initial five months following privatisation, changes were being felt. There is no longer any long distance calling within The Bahamas. For the first time in more than 100 years, all calls within the 500-mile long chain of

islands are local. New cell phones, including iPhones, were being added to the suite of offerings that will soon include PDAs, Smartphones, tablets, Android and BlackBerrys. For those with pre-paid service, electronic topping up was made available.

By the time you read this, three companies will be offering fixed line service for business or residential customers, with Cable Bahamas entering the land-line market through its cable infrastructure, also making Cable Bahamas first to offer triple play bundling – TV, internet and phone. BTC will offer triple play by the end of the first quarter of 2012. Meantime, BTC remains the sole provider of mobile and fixed line service to all the islands, with mobile service boosted by an exhaustive optimization exercise conducted shortly after Cable & Wireless entered the picture. That optimization virtually eliminated dropped calls and dead spots in more than 99% of the 100,000 square miles of ocean covering The Bahamas as well as improving quality of reception.

By 2011 calendar year-end, BTC's major \$44 million investment in infrastructure and agreements will catapult the present 2.5G mobile service to 4G, with 8G under testing. To the customer, that translates into faster connectivity while unleashing a world of possibilities – watching a football game live on mobile TV, checking stock market figures in real time, reserving tickets for a show, browsing the internet while working on a document – an array of business, education and entertainment options that consumers and businesses have come to expect in a world where sophisticated technology is as much a part of everyday life as a warm shower.

Like the tail wagging the dog, competition in telecommunications is quickly catching up with where other components of communications stand. In 1992, there was one state-owned TV and radio broadcasting company. Today, there are 16 radio stations in New Providence alone, 15 of which are privately owned and operated. There are others in Grand Bahama and the Family Islands. There are three TV broadcast companies and a competitive internet environment. We are very close to total broadband saturation and by the end of the year, BTC will be able to supply broadband and voice capability to all the southeastern islands of The Bahamas through WIMAX. By year-end, BTC will roll out the first of its 40 new or renovated retail stores and in a few years time, the landscape will be dotted with other stores whose names are likely to be familiar parts of the North American mall-scape.

All the right elements are in place for the further development of telecoms in The Bahamas. A strong regulatory framework, the Utilities Regulatory and Competition Authority (URCA), established in 2010, is staffed with highly-trained professionals who deal with agreements, leasing of lines and capacities, competitive promotions and other matters relevant to a competitive telecom environment. URCA's mandate is broad and its structure sound, lending that necessary level of comfort to major internationals considering entering the mobile market when it is open for license applications in April 2013. Frankly, without a body like URCA, the naturally competitive personalities of leading telecom companies could create a cutthroat environment – a temporary boon for pricing maybe, but not sustainable.

Cable & Wireless completed the purchase knowing that the market would be liberalized with big name contenders and it would be up to us to earn continued dominant market share. We also knew that, in the end, it is the consumer – business, individual, institutional – who benefits from competition because it forces all of us to up our game and to do so at a time when continuous investment in technology is not a luxury, but a necessity.

For those who invest in the telecom market and for end users, another layer of comfort is provided by a failsafe mechanism to protect essential connection services in case of hurricanes or other natural disasters disruptive to regular service. Minister of State for Finance Zhivargo Laing has described the Bahamas Domestic Submarine Network Initiative as “a self-healing domestic fiber optical ring submarine cable that has a capacity of 10 gigabytes and 200 plus digital channels” connecting 14 islands of The Bahamas. Bimini and Grand Bahama are also connected through a high-grade, extra heavy duty underwater cable capable of withstanding almost any natural disaster.

Government has also embraced and enabled e-commerce, passing the appropriate legislation and proceeding to transform as many of its functions as possible to online facilitation from the simple transactions such as renewing business licenses to the more interesting promise of providing e-health and e-education services and products. This is a long-term objective with the ultimate goal of economic empowerment.

The BTC of the past was very much a technology-driven company. The BTC of the future will be a customer service driven company.

For the foreseeable future, most of the competition will continue to exist between Cable Bahamas, the predominant supplier of Cable TV and Internet services, and BTC, the pre-eminent provider of cellular and fixed lines services. Agreements for shared infrastructure, right down to the allowable rates, are now in place following lengthy discussion. With the platform ready for the entrance of new players in the near future, every player will have to be not just on their toes, but in this “googly world” of change, tap dancing to win valuable market share, words that never entered the telecommunications equation until this year. And that is very good news for business. ::



Geoff Houston, CEO, BTC

Geoff Houston was appointed CEO of BTC in April, 2011, following a 24-year career in the telecommunications industry, 19 with Cable & Wireless Communications (CWC). Mr. Houston, who holds degrees in history, accounting and marketing as well as an MBA from the Henley Business School in the UK, served as CEO of

CWC’s operations in the Channel Islands and Isle of Man. He was successful in turning around an incumbent operator in Guernsey to become a top three performing business amongst CWC’s global portfolio, while launching two start-up businesses in Jersey and the Isle of Man and establishing a world-leading e-gaming hosting business. He has served in integral positions in South Africa, Asia, Australia, Panama, Seychelles Islands, Kuwait, Jamaica and Cayman prior to his appointment in The Bahamas.



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Around Town

From the World of Sports

No Fish Tale ... It took three hours and seventeen minutes before a blue marlin weighing 1,119 pounds (507 kg) was finally brought in by David Albury of Man-O-War Cay, Bahamas on the second day of the Treasure Cay Championship, the fifth and final leg of the **2011 Bahamas Billfish Championship**, establishing a new Bahamas record. The previous Bahamas blue marlin record was 1060.5 pounds established by Sam Jennings of Miami, Florida in 1979 while fishing another Bahamas Billfish Championship tournament, the Bimini Summer Blue Marlin Tournament. www.bahamasbillfish.com

The Greatest Festival of Poker on Earth ... With a full schedule of events from January 5-15, the 2012 **PokerStars Caribbean Adventure** will be a poker tournament for everyone, held at the Atlantis Resort and Casino, situated on Paradise Island in The Bahamas. The stunning location is the perfect venue for PokerStars premier live event with an estimated prize

pool of \$20 million. Last year's winner collected a cool \$2,300,000 for first place. www.pokerstarscaribbeanadventure.com

Going Deep, Really Deep ... The 4th edition of the world's premier freediving event – **Vertical Blue 2011** – was held this past April at Dean's Blue Hole in Long Island, The Bahamas. Four current or ex-world record holders were among the representatives from 14 countries. How deep is deep without equipment (which is what freediving is all about)? Spanish pool champ Alfredo Roen successfully nabbed his first depth national record for Spain with a constant weight dive he made look easy to 85 meters (278 feet) in 2 minutes and 58 seconds.

For Car Lovers ... \$100 million of iconic cars will be on display and show their speed at **Speed-Week Bahamas** in Nassau from November 30 to December 4. Mini-races are set for Arawak Cay and the cars – most of them one-of-kind – will be on display at Rawson Square in downtown Nassau. www.bahamaspeedweekrevival.com

Bikers with Heart ... 550 bike riders from The Bahamas and internationally participated in **2011 Ride for Hope** in April staged in Governor's Harbour, Eleuthera. The 2012 Ride takes place on April 14, presented by Odyssey Aviation. www.rideforhopebahamas.com

The Bahamas Women's Open ... has become a stop on the international tennis circuit with a number of top players expected to serve up winners from March 12 to 17, 2012. Now in its second year the event will take place at the National Tennis Centre, Queen Elizabeth Sports Centre, in Nassau. www.thebahamasopen.com

Still on the hardcourt ... The Atlantis on Paradise Island hosts regular celebrity events. The latest – an **All Star Tennis Week** featuring Maria Sharapova and Gisela Dulko which included a clinic for junior players staying at the resort.

Entertainment, Fashion and Glamour

The fourth annual **"Islands of the World Fashion Week"** will take

place in Nassau, November 3-5, 2011, with an indigenous contingent of island-based and international designers on the runway.

Cinema in Paradise ... The eighth edition of the **Bahamas International Film Festival (BIFF)** is set for December 1 to 4, 2011 in Nassau. BIFF is a non-profit organization dedicated to providing the local Bahamian community and international visitors with a diverse presentation of films from around the world. In addition to offering films that might not otherwise be released theatrically in The Bahamas, BIFF will provide a unique cultural experience and set of educational programs and forums for exploring the past, present and future of cinema. Over the last 7 years BIFF has developed into a prestigious and well respected event throughout The Bahamas and around the world. Career Achievement Awards over the years have gone to Johnny Depp, Laurence Fishburne, Daryl Hannah, Nicolas Cage, Roger Corman, and Alan Arkin. BIFF has also had the privilege to honour Hollywood's Rising Stars,

Anna Faris, Naomie Harris, and Sophie Okonedo.

A Fox-ey Bahamian ... Bahamian actress and supermodel **Jeanene Fox** has landed a role in another Italian mini-series. Her casting as an investigative reporter in the mini-series, *The Bodyguard*, marks the second notable role she has earned in Italy. She also appeared recently in the Italian feature comedy, *AmeriQua*.

Miss Texas Teen USA, Danielle Doty, was crowned Miss Teen USA 2011 this past July at the Atlantis, on

Paradise Island. The pageant was streamed online to a worldwide audience of viewers at www.missteenus.com & www.seventeen.com

Guess who I saw today ... Star gazing is an everyday occurrence in The Bahamas when you have **Nicholas Cage, Sean Connery, Johnny Depp, Michael Jordon, Bill Gates, Tim McGraw and Faith Hill, Eddie Murphy, Chuck Norris, Oprah Winfrey** and others owning homes or islands in The Bahamas.

It's Better in The Bahamas Because ...

Abaco was named second on **Travel and Leisure Magazine's World Best Islands**.

Brides Magazine named it as one of the **top honeymoon destinations** for 2011.

The largest project of its kind in the Caribbean – **Baha Mar** a \$3.4 billion mega-resort on Cable Beach in Nassau – is now underway. The development plan calls for four hotels with a total of about 2,250 rooms, as well as

a golf course, retail space, a convention center and what will be the largest casino in the Caribbean.

Stage one of the redevelopment of **Lynden Pindling International Airport** in Nassau – the U.S. departures terminal – opened on schedule in March 2011. Stage two – a new International arrivals terminal – opens in the Fall of 2012 and Stage three – a new Domestic and International departures terminal and a new Domestic arrivals terminal – opens in the Fall 2013. ::



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