THE BAHAMAS FINANCIAL REVIEW

gateway

Summer 2012

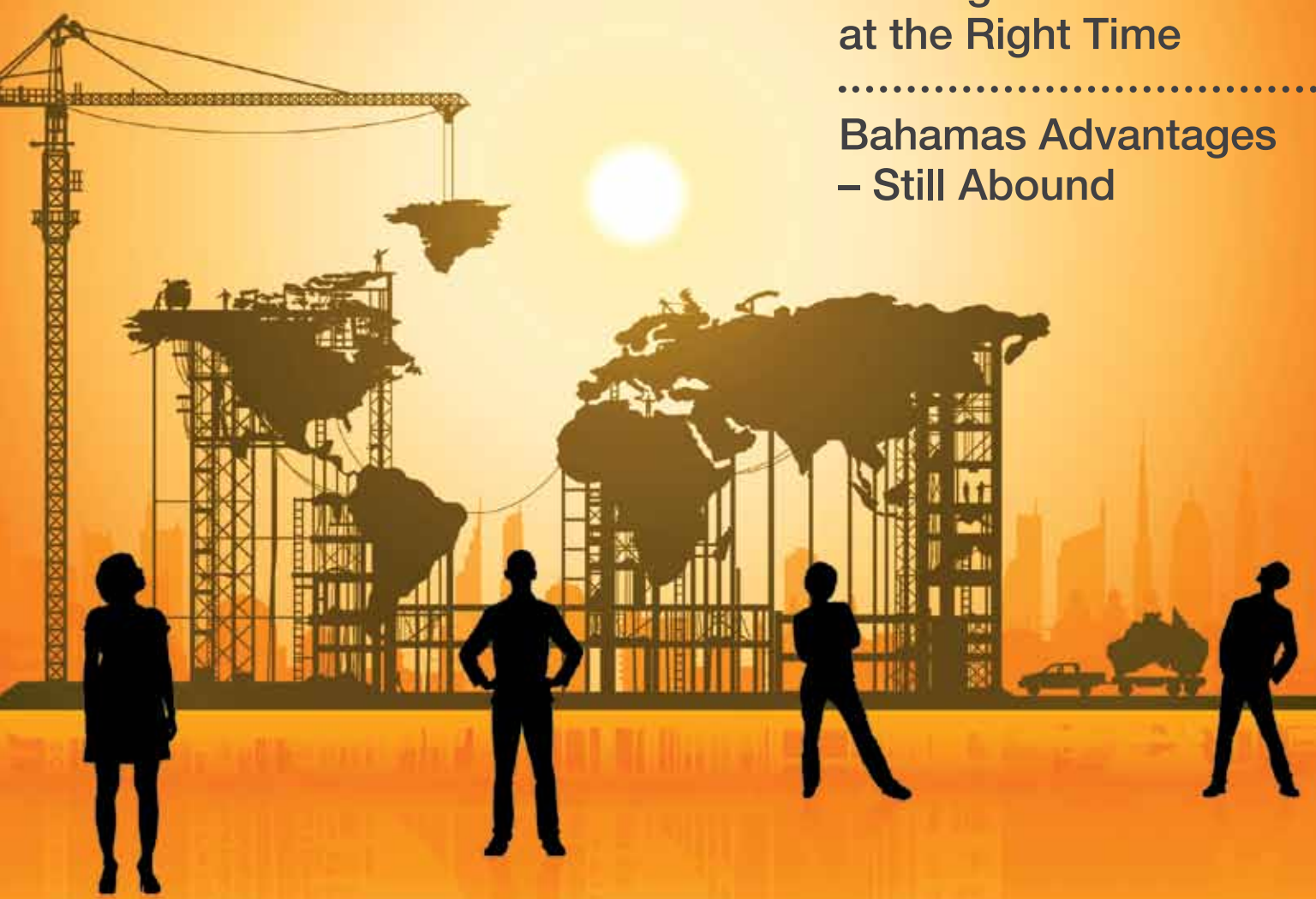
Regulatory Landscapes

are Shaping Global Financial Services

The Client Revolution

The Right Markets at the Right Time

Bahamas Advantages – Still Abound



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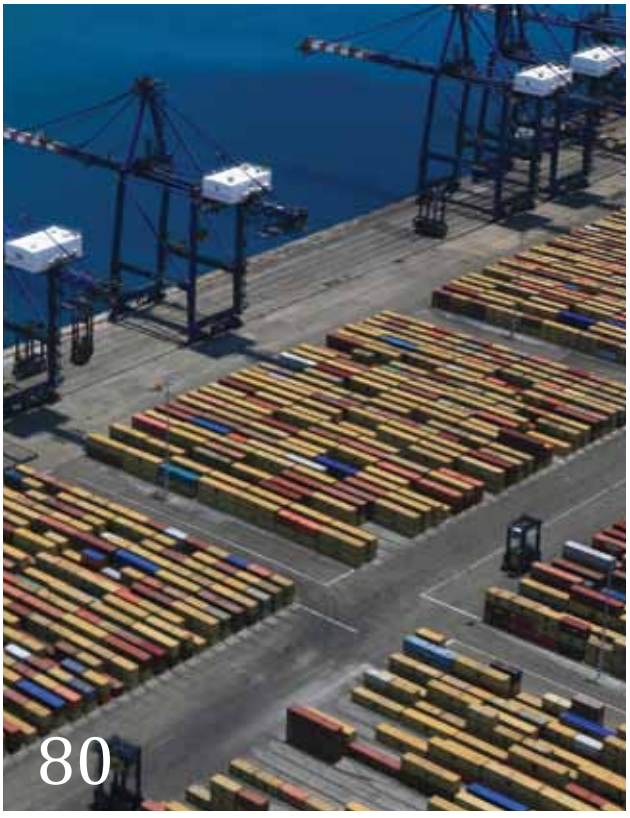
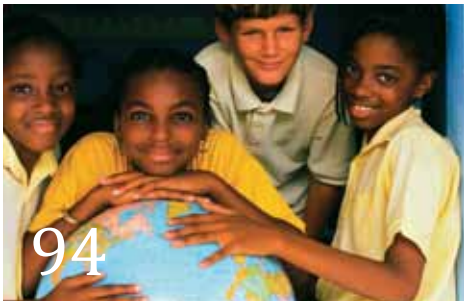
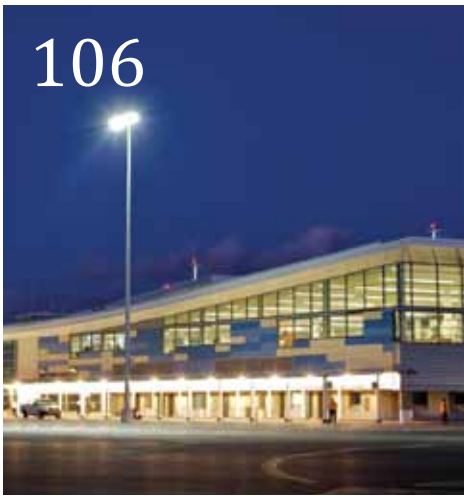
Professional Perspectives







Business Development

Bahamas Advantages

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Print Production
PRINT MASTERS

From the Chairman

"The Bahamas Advantage", the new branding programme for the financial services, positions the industry as the "Wealth and Asset Management Gateway of the Caribbean since 1930". Through this new brand we are continuing to target the HNWI bracket as well as intermediaries and institutional business.

Gateway magazine is a key brand delivery vehicle for the industry and its new design launched in fall 2011 reflects the character of The Bahamas as a preferred international financial centre: sophisticated, contemporary, quality-driven and high end. It mirrors the objectives of the brand by specifically (i) differentiating The Bahamas from its regional competitors; (ii) communicating the high standard of financial services available in the jurisdiction; and (iii) increasing awareness of and reminding our client base of the advantages and benefits of doing business and living in The Bahamas.

Content for this second edition of Gateway was contributed by BFSB members and other industry experts, retaining a high standard and in-depth focus on industry issues and global perspectives. Through Gateway we also highlight other aspects that contribute to the cosmopolitan image that we wish to portray through the brand. We are delighted to showcase the many advantages that The Bahamas has to offer which, combined, indeed position it as a high-end proposition on all levels. In addition to our guest authors we also thank our advertisers who are integral to the "The Bahamas Advantage" brand; after all, it is the comprehensive range of the services and products on offer that contributes to clients making The Bahamas their jurisdiction of choice.

As we go to press we also take the opportunity to congratulate the new Government of The Bahamas. The Rt. Hon. Perry G. Christie, M.P. was sworn in as Prime Minister on May 8, following National Elections on May 7, and is heading a new administration over the next 5 years. Particularly exciting is the establishment of the Ministry of Financial Services under the Hon. L. Ryan Pinder, M.P. BFSB looks forward to working with both the Prime Minister, who also serves as Minister of Finance, and Minister Pinder on ensuring sustained growth within our sector.

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

From the CEO

In this second issue of the rebranded Gateway magazine we explore key challenges and opportunities facing financial services globally. In fact, our main theme highlights a fairly obvious but important statement "Regulatory Landscapes are Shaping Global Financial Services". According to a Thomson Reuters report, in 2011 regulators around the world announced 14,215 changes – and with the number of regulatory announcements already made thus far in 2012 I don't think I would be especially adept at fortune telling if I predicted that the number of regulatory announcements this year will manage to keep pace. Bruce Zagaris' article on US initiatives and Rowena Bethel's article on International standards for transparency and exchange of information should provide a compelling, if sobering portrait of what's on the horizon. And at the time of publication, as we await the final regulations for FATCA there were additional developments as further intergovernmental arrangements were concluded with the likes of Switzerland and Japan.

Even with the dizzying amount of regulation, to say this only presents a challenge would be too simplistic – it also presents opportunities and in this issue some of these are explored.

With the state of financial services in constant flux, this issue also focuses on what we'll call, perhaps a little dramatically, "The Client Revolution". Sebastian Dovey's rallying cry to wealth managers everywhere is that there still is opportunity for the firms that are truly in touch with HNW needs and which appreciate the power and persuasiveness of brand even though today's generation of HNW are more involved and generally less impressed than generations before them.

Finally, if there is one consistent theme throughout this issue, it is that the "Bahamas Advantages – Still Abound" We see this echoed in the articles by Tim Colclough and Brian Jones on innovative products such as The Bahamas Executive Entity and the new SMART Fund Template 007, and in the profile of Sir John Templeton who discovered these advantages in the 1960s.

We are proud to present this Summer Edition 2012 of the Bahamas Financial Review. We hope you'll find reading it as exciting as it was for The Bahamas Financial Services Board to produce it and when you put it on your coffee tables, we hope you continue to refer to it for information and insightful points of view, until we produce our next issue in 2013.

Aliya Allen *CEO & Executive Director, Bahamas Financial Services Board (BFSB)*

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What is the Future of Worldwide Wealth Management?

By Sebastian Dovey

The world of wealth and wealth management is a hot topic. It has been a hot topic for more than a decade. Some might not have thought that possible. The interesting question is why. Typically, an article of this kind would follow the usual pattern of citing a list of much publicised statistics, giving an insight into a few regional variations on the wealth theme and indicate that private banks and wealth managers are awash with business and opportunity. This article is going to be different. If you are intrigued, read on.

In this article there will be stats, there will be references to regional issues and there will be commentary on the industry players. No difference there. However, the big difference is this article will not look backward, it will project forward. After all, any reader of this article is most likely interested by the headline and wants to garner ideas on how thinking on the future of wealth is changing and what this means for businesses. The majority of other copy I see on this topic just regurgitates and reflects. Personally, I would rather spend more time on my blackberry. I guess you are the same.

To achieve this future looking objective there are three main points. First, the world of wealth is very concentrated and today's providers are struggling. Second, the projected evolution of wealth management is going to force adjustments in the way suppliers meet demand. Third, client investment behaviour is shifting in ways the industry is not properly anticipating. Now, these three main points may paint a grim picture. Actually it is the opposite for those that are bold enough to grasp the opportunity of transition. These are exciting times. Still with me?

Before truly getting into this article there is one literary health warning – this article promises to have a point of view and it may not be one that is agreeable to the reader. However, we take the attitude that points of view are essential to stimulating development; particularly when these views are founded in facts, figures and over a decade of direct insight into thousands upon thousands of HNW consumer needs rather than assessments based on hearsay and anecdote which we read all too often. Otherwise, this industry would continue to live in a world where it chases shadows. Currently, in fact, much of it still does and this is exciting for those who can work out a new way of navigation.

In relation to the first main point, the legend goes that the global wealth management industry is a very fragmented one. Strictly speaking, this is incorrect and we have evidence to prove it. Our view is this "discovery" has consequences for the lens the industry's kingmakers use to examine itself and plan for the future. In essence the opinion of fragmentation has led to a sense that the wealth universe is the sum of cottage industry parts and can just evolve peacefully within its various miniature wealth galaxies. No one really needs to adjust to wider issues, but can just drift blissfully along.

To prove this, for almost a decade our firm has been progressively benchmarking the hundreds of wealth operators in terms of their business activities and profitability. Today, we now know the top 20 financial institutions offering wealth management services control just over 80%, which amounts to just over USD13 trillion, of all the HNW (defined as individuals with over USD1m in net investable assets) assets in the industry. In fact, the top 10 institutions manage over 50% of this industry's private client assets.

Therefore, the market share actually is highly concentrated among a small number of global financial franchises. Naturally, there is a long tail of other providers but they really are focusing on a relatively small sum of the total asset base overall – around USD3.5 trillion.

The riposte we usually receive is we are wrong and the fragmentation is very clear at a local market level. The argument is the Swiss, German, US or British markets are very broadly distributed among the local operators and no one firm controls over 3%. The numbers, however, tell us a very different story. For example, just consider the US market. Four of the top 10 private banks in the world by AUM source as much as 90% of their business volume from the US market and a further five in this global league generate around 20% of their business

	2011 World's leading wealth managers	AUM (USD bn)
1	Bank of America	1,945
2	Morgan Stanley	1,628
3	UBS	1,560
4	Wells Fargo	1,398
5	Credit Suisse	865
6	Royal Bank of Canada	570
7	HSBC	390
8	Deutsche Bank	369
9	BNP Paribas	340
10	JP Morgan	284

Source: Scorpio Partnership 2011 Global Private Banking Benchmark

from the US. Therefore, in the US alone the market is concentrated. The picture from our benchmarking is very similar in other market regions.

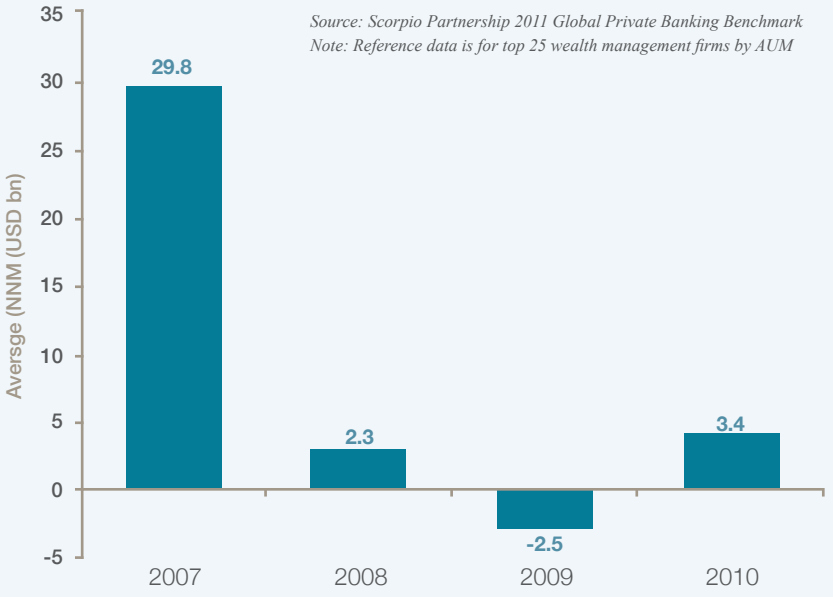
So, what does this statistical blizzard mean?

This comes on to our second main point. In absolute terms, wealth is concentrated among a relatively consistent group of financial institutions. This is interesting enough. However, for the future an even more interesting picture is that the relative performance of the private banking is a mixed bag. While profits at the top 25 global wealth institutions - a strong bell weather for the industry at large - has surged by 16.6% it still is substantially below 2007 levels. Crucially, although revenue moved up by almost 24%, ordinary costs at the same time increased by nearly 32%, such that the industry's overall cost-income ratio has actually stayed the same as last year at around 74%.

When assessing the performance numbers many senior executives (not including us) argue the cost-income ratio is unnaturally high and they remain focused on moving this back toward 60-65% as quickly as possible. So far this seems to be handled by increasing costs more than revenues. Setting this rather perverse logic to one side, the reason why we are less optimistic about the ambition that cost-income ratios will improve is one critical data point - the flow of new money into the industry.

Over the last three years, the numbers are not good. While last year the top 25 amassed collectively USD3.4 billion in new funds it is in stark contrast to 2007 when it booked nearly USD30 billion and the previous five years had equally strong double digit inflows. However, although 2010 was a moderate uptick, in 2008 and 2009 the fund inflows were effectively flat.

Net new asset inflows into the private banking industry



This could be, and usually is, explained away as a markets issue by industry leaders and even much larger management consultants (until they get hold of our data). They point to the fact that clients are not ready to bring their money back or clients do not have the money to bring back. They feel, it seems, there is no way to disprove this claim.

Actually, there is. Firstly, during this period we interviewed thousands of actively wealthy clients and even while their total net wealth will have declined in many cases they still looked for financial opportunity. Indeed, just moving back to evidence-based statistics, during the same period the world of private investable wealth was increasing by between 8-15% per annum depending on different research outputs. In fact, by our accounts there is USD10 trillion in potential fee-based HNW business currently available to the industry that has not come to the industry.

So, in our view, the bigger question is if the personal wealth level is growing and there is a sizeable amount of funds not yet booked by the industry why is it not flowing into the private banking industry? This is the central debate our industry must answer. And quickly, given the financials. And this is probably why we, and firms like us that care to think about the future of wealth, are so busy.

This moves on to our third main point. Actually, looking at the numbers another way, what an opportunity! USD10 trillion to play for! The issue to our mind is what the industry must do to attract this type of business.

The usual pundits commenting on our work or innovation as well as the naysayers in the market generally

remark that this type of money is never likely to be transitioned to the wealth management industry. Or, if they are being a touch more positive, they indicate that these clients are not converting just yet because they have not been approached by one of the amazing salesmen (also known as relationship managers or client advisors or for the blue blood seekers, private bankers) in this industry who will touch them with the magic of the proposition.

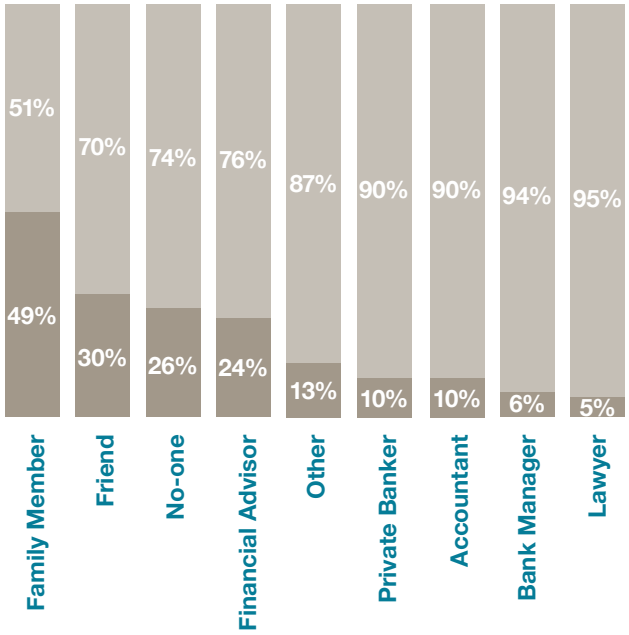
Remember these are the same salesmen who currently are not delivering sufficient new money to the business to keep the wheels spinning. Remember also we talk to these same relationship managers regularly and actually they continue to remark they are overstretched and under-supported by corporate tools. They add that their clients are not really shifting their funds and they are shell shocked; in fact, they are no longer that hungry for premium margin product. In essence, these advisors are told every year to pedal faster while their coaches are not introducing any new gears. We feel for them massively and we want to help. And the reality is a huge number of these professionals are absolutely fantastic but they are just being pointed the wrong way.

Again, in response to the armchair naysayers, we are pushing the debate by examining customer demands globally in the world of wealth. In our view, pedal fast is not the sustainable answer. The industry must begin to understand exactly why wealthy consumers choose one provider over another. Further, the industry must start to recognise that these same consumers, particularly those that are not currently using the services of the wealth industry, are judging its merits against not just other financial institutions but also against spending (sorry, investing) the money in other industries. For example, they might choose instead to buy art worth a million dollars instead of buying a portfolio, or they might invest directly in a business, or they might spend it on a new home, or they might buy a bar of gold and bury it. Anything, in fact, than put it back into the financial system that already has taken so much away. Once the industry understands this it can design a new, more competitive bike.

Indeed, the real competition for the wealth industry today is widening. It is not just the challenge of other banks in the field, but it is the challenge of every other interest for the private client. Again, the industry observers typically remark that the professional discipline of wealth and the requirement of having personal money managed by professionals trumps all other forms of savings and expenditure. Clients always will find a place in their mind and their wallet for the private bank. It is a nice thought. It is not always a reality. If it were, then the USD10 trillion would not be in play. So, wake up.

The reality is the generation of wealth holders today have become more active in a relative sense. They also have the possibility to access more information than previously. The role of the individual financial advisor being the oracle of wealth matters is in need of a major re-adjustment. In plenty of client research, including our own, questions of who the private client will turn to for advice on financial issues rank the professional below the family member, the friend and even no-one. To its credit, after this group, the private banker is typically the next best thing.

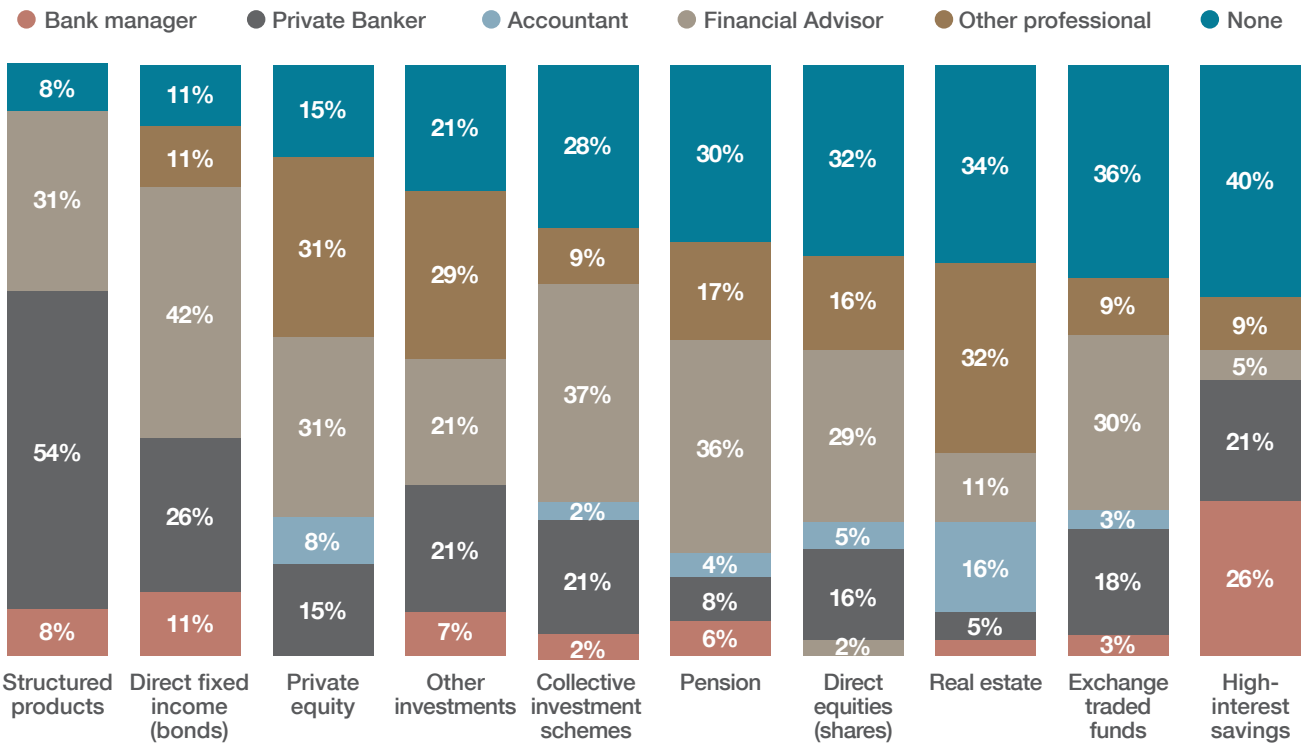
The primary HNW choice for support on achieving wealth goals



Source: Scorpio Partnership, SEI

Actually, it is not as grim as that since the specific question we test with clients across the globe is when it comes to more complex investment information and advice where would the average individual go for support. Here, the private banker is an overwhelming favourite. Hooray! This is obviously good news in the sense that it underscores the expertise of the role and also promises to the private banking model better potential fees given that complexity and expense are closely related.

The HNW preferred choice of adviser for a range of financial products

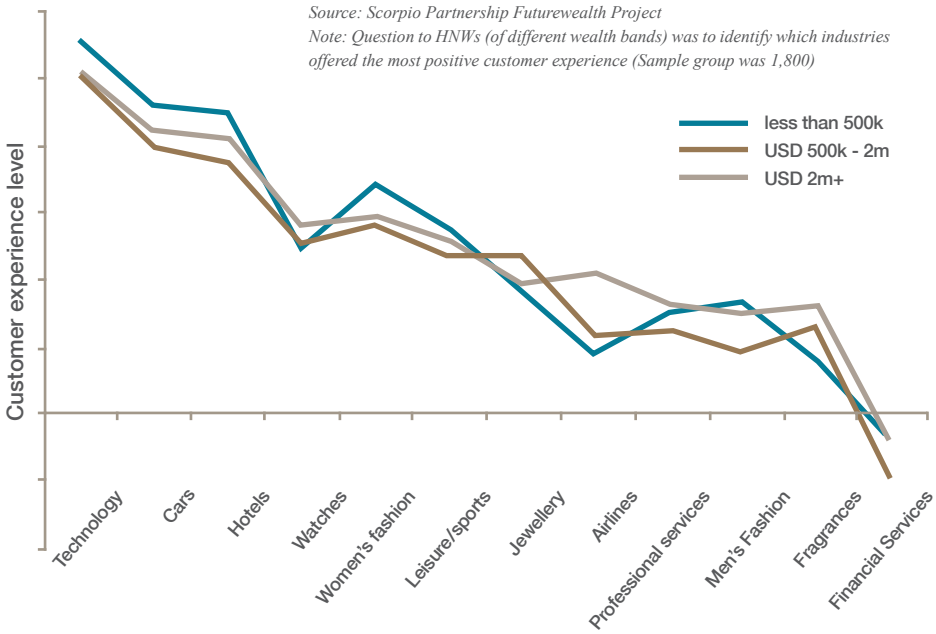


Source: Scorpio Partnership, SEI

However, the challenge is to emphasise to the potential modern client that the private bank and wealth manager is in touch with their requirements and also is not an expensive luxury they could afford to be without. Here, the industry does not do itself favours. In a recent examination of eral thousand HNWs across the globe we discovered that private clients considered the services offered by wealth managers to be overly expensive relative to results and the customer service experience (which is a core part of how they determine value) of financial services to be the worst in a basket of industries including men's fashion (this includes men's underwear…). Literally speaking, private banking's customer experience is deemed worse than men's underpants. Sobering thought.

Indeed, it is this fact that the industry is not presenting its case in a compelling manner to justify the decision by a client to do new business that is a roadblock to growth. To assess this further and identify a way forward we recently examined the attitudes of industry players that manage more than 30% of the world's wealth management leaders and the importance of brand to their growth plans was alarmingly low on the agenda.

Source: Scorpio Partnership Futurewealth Project
Note: Question to HNWs (of different wealth bands) was to identify which industries offered the most positive customer experience (Sample group was 1,800)



"Generally speaking, financial services (and particularly private banking) have been shy about promoting themselves at a corporate level. But it is the smaller institutions (and by this we mean firms managing less than USD100 billion) that must adjust their thinking the most."

From the findings it appears that most executive leadership continues to believe in the virtue that the best value (and brand demonstration) is more salesmen on the streets and does not consider that their brand identities could perhaps help them do their job better and with clever messaging actually reach out to entirely new audiences. Certainly sales points are critical. But in contrast, we often point back to the fact here that the industry's top 20 institutions - all major global brands - control 80% of the world's wealth today. So brand has an influence. Imagine if it was properly invested in and developed. Imagine if it were like Apple, Singapore Airlines or Patek Philippe?

Moving forward, this issue is going to become even more important and the winners in the industry will be those that seize this. Generally speaking, financial services (and particularly private banking) have been shy about promoting themselves at a corporate level. But it is the smaller institutions (and by this we mean firms managing less than USD100 billion) that must adjust their thinking the most. If they continue to believe that their winning approach can be the low profile antidote to the mega banks this will go only so far.

Indeed, based on customer insight, it is very likely these institutions also in effect are limiting their capacity to grow relative to more visible players. This in turn has consequences in that these firms may start to be less able to attract the better talent and with this their competency strengths will dip relative to their peers, and ultimately this will have a knock on effect to their client business too.

Such a story has been played out in other industries and adjusting to the new world order has always been critical. A good example is the Swiss watch industry which actually invented the battery operated option while leading the global industry. It rejected the innovation, however, as it did not believe the customers they typically dealt with would accept this new solution. In fact the watch making leaders felt the industry changes required would be too disruptive. So they let the initiative slip. The Japanese recognised the opportunity and within less than a decade this nation became the principal manufacturer (and distributor) of watches across the globe. More importantly, they were able to sell watches to new clients that previously could not access them. Sound familiar?

So, the clock is ticking on the world of wealth management industry development. The financials show a clear clustering of business among large operators. This does not mean the end of the boutique. On the contrary. They will continue to thrive but they must adapt and adjust to their changing landscape. Meanwhile, we are beginning now to uncover the consumer patterns of the HNW individual worldwide and it is highlighting new points of emphasis that wealth managers will need to consider to win and retain their custom.

The brand is an important element. It is not that the industry does not have any good brand attributes - some of it actually is brilliant and other industries would die for the ability to state their identity had been in existence for centuries. But the reality is that selling legacy only goes so far. And in today's age of wealth, modernity is as much of an attraction as history, if not more.

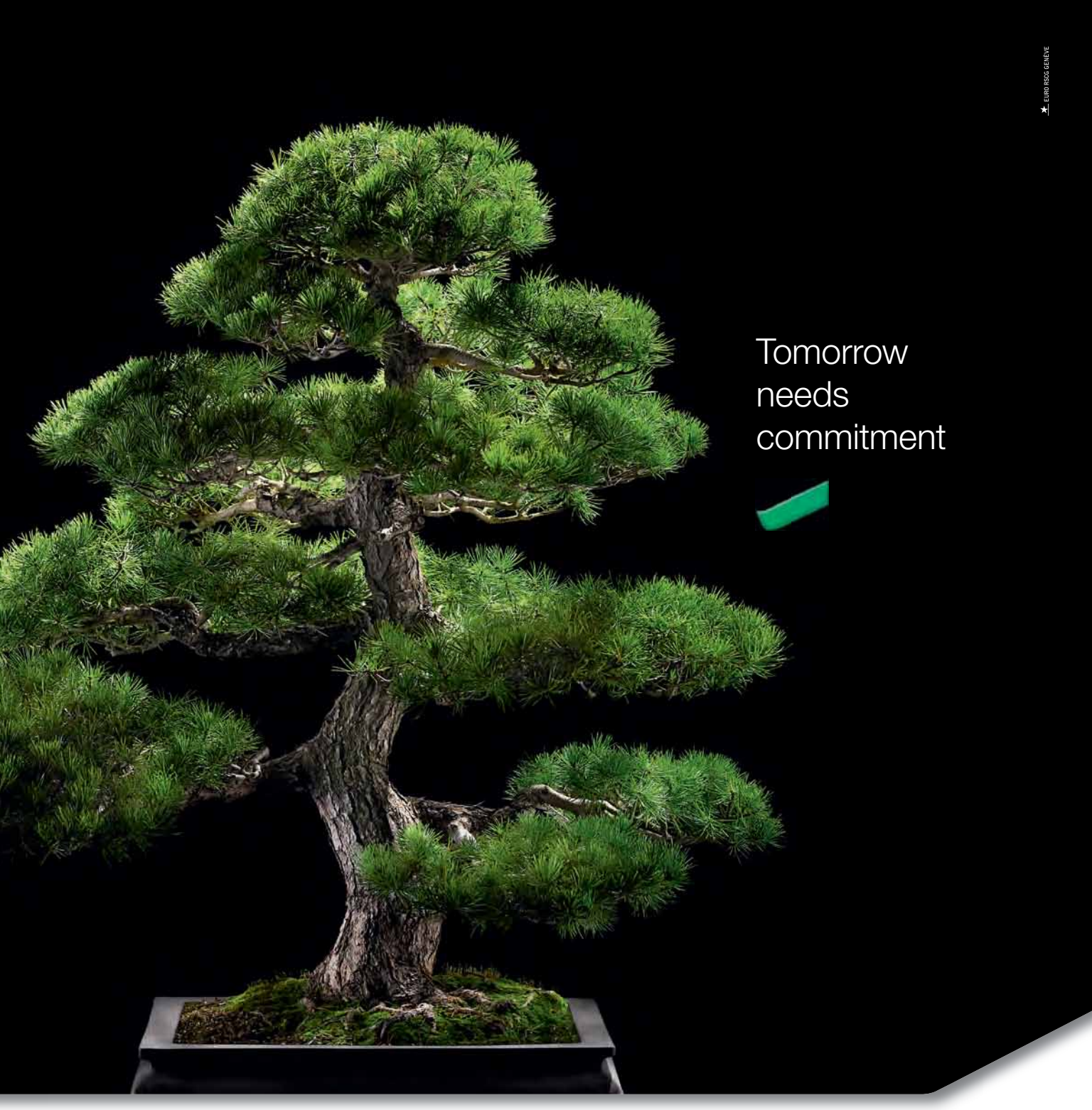
In summary, as promised, this article was intended to state a point of view. It is designed to stimulate debate and push the industry to action both on an individual institutional level as well as a collective industry level. We do that because we care. We care a great deal. So, for the wealth managers reading this, please do not take offence; rather take this as a basis on which to adapt and differentiate - commercially. The question of the consumer patterns should fascinate us all into thinking what wealth needs next. As the wealth anthropologists, it does stimulate us.

Sebastian Dovey,
Managing Partner,
Scorpio Partnership

Sebastian Dovey manages the development and execution of strategic recommendations at Scorpio Partnership. He has completed assignments around the globe for private banks, global banks, asset managers, family offices, technology firms, service providers, aggregators and start-up wealth management initiatives. He is also currently involved in creating and building education-based solutions for a number of clients.

Mr. Dovey is a regular commentator on the wealth management industry in the press and at conferences and academies, and has chaired and presented at leading industry events in Asia, Europe and the United States. He also has been a Lecturer at The Swiss Finance Institute (formerly the Swiss Banking School) for its executive MBA programme. He serves on the editorial board of Wealth Briefing and is Chairman of the advisory board of B-Hive, a network for global private client investors.

He holds a First Class BA (Hons.) degree in Modern History from University College London and was awarded an MSc (Econ.) with distinction from the London School of Economics.



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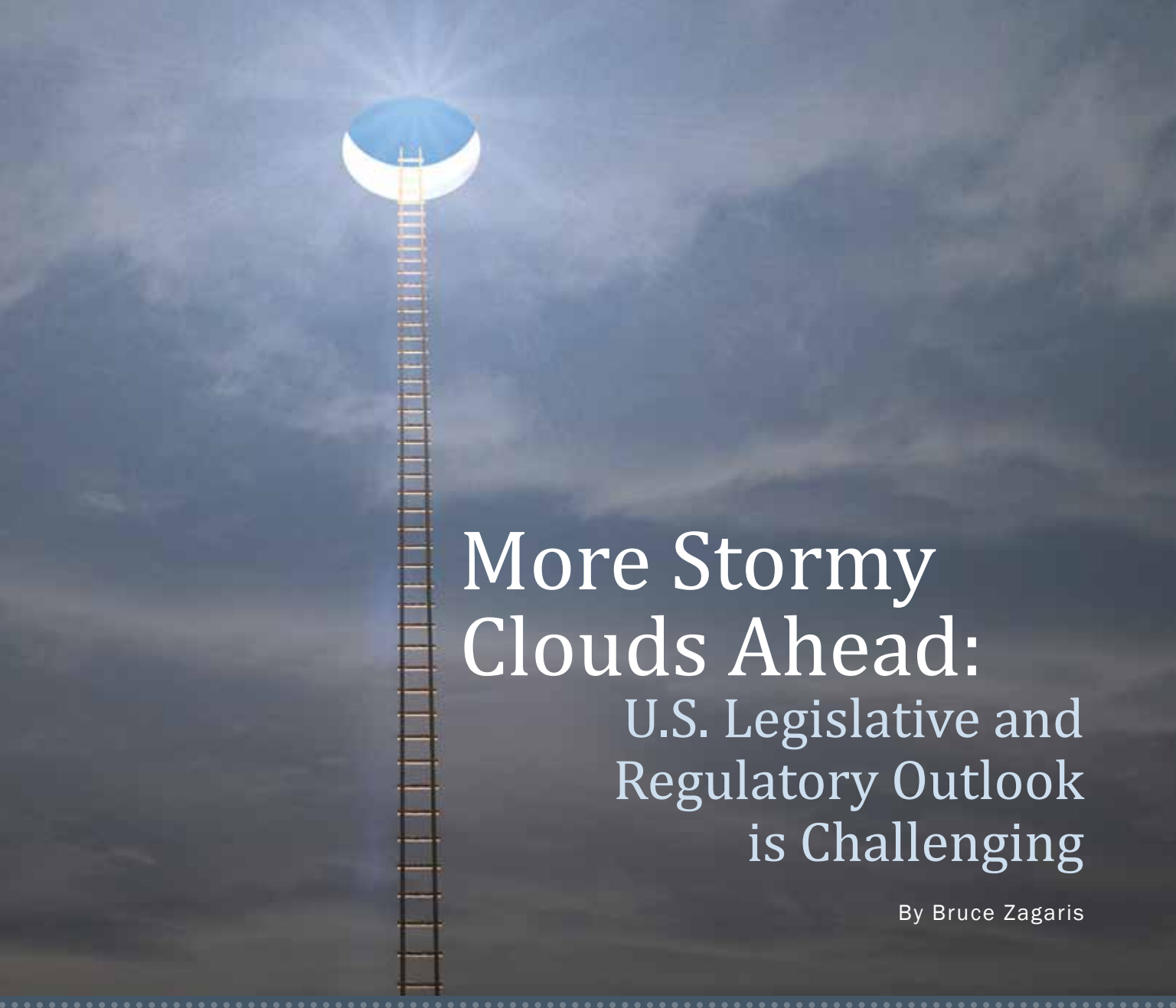

More Stormy Clouds Ahead:

U.S. Legislative and Regulatory Outlook is Challenging

By Bruce Zagaris

In the last few years, a series of bills impacting international financial centres has been pushed by members of Congress, due to U.S. budgetary problems, the pay-go system, the revenue estimates obtained for such bills, and the proclivity of certain members of Congress to focus on tax enforcement and compliance directed at U.S. taxpayers concealing money abroad.

I. NEW LEGISLATIVE AND REGULATORY DEVELOPMENTS

The Foreign Account Tax Compliance Act (FATCA)

FATCA, enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, is an important development in U.S. efforts to combat tax evasion by U.S. persons holding investments in offshore accounts. Under FATCA, certain U.S. taxpayers holding financial assets outside the United States must report those assets to the IRS. In addition, FATCA will require foreign financial institutions to report directly to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

Reporting by U.S. Taxpayers Holding Foreign Financial Assets

FATCA requires certain U.S. taxpayers holding foreign financial assets with an aggregate value exceeding $50,000 to report certain information about those assets on a new form

(Form 8938) that must be attached to the taxpayer's annual tax return. Reporting applies for assets held in taxable years beginning after March 18, 2010. For most taxpayers this will be the 2011 tax return they file during the 2012 tax filing season. Failure to report foreign financial assets on Form 8938 will result in a penalty of $10,000 (and a penalty up to $50,000 for continued failure after IRS notification). Further, underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40 percent. The Government Accountability Office has released a report criticizing the overlap and confusion created by the fact that taxpayers must file both Foreign Bank Account Reports (FBARs) and Form 8938 (Statement of Specified Foreign Financial Assets). It recommends replacing them with one form.

Reporting by Foreign Financial Institutions

FATCA also will require foreign financial institutions ("FFIs") to report directly to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The FATCA withholding and reporting rules for FFIs and other parties are very complex and long. This treatment necessarily covers only selective issues. To properly comply with these new reporting requirements, a FFI will have to enter into a special agreement with the IRS by June 30, 2013. Under this agreement a "participating" FFI (PFFI) will be obligated to:

(1) undertake certain identification and due diligence procedures with respect to its accountholders;

(2) report annually to the IRS on its accountholders who are U.S. persons or foreign entities with substantial U.S. ownership; and

(3) withhold and pay over to the IRS 30 percent of any payments of U.S. source income, as well as gross proceeds from the sale of securities that generate U.S. source income, made to (a) non-participating FFIs, (b) individual accountholders failing to provide sufficient information to determine whether or not they are a U.S. person, or (c) foreign entity accountholders failing to provide sufficient information about the identity of its substantial U.S. owners.

After issuing three Notices providing FATCA guidance, on February 8, 2012, Treasury and IRS issued proposed rules and a joint statement regarding an intergovernmental approach with five major trading partners of the U.S. with respect to improving international tax compliance and implementing FATCA.

Among the persons FATCA impacts significantly are: U.S. withholding agents; U.S. financial institutions; foreign financial institutions; non-financial foreign entities; and U.S. individual taxpayers.

Effective Dates

FATCA has many different effective dates contained first in statute and then modified by the guidance and more recently the preliminary regulations. The Joint Statement for an Intergovernmental Alternative to FATCA, which was made in response to significant criticism from foreign governments, adds more uncertainty to some of the future effective dates. FATCA's reporting and withholding rules in the statute would have applied generally to payments made after December 31, 2012. The statute had a "grandfathering" exception from the reporting and withholding rules for certain obligations outstanding on March 18, 2012.

The proposed regulations have changed reporting obligations. For calendar years 2013 and 2014, the only information that must be reported concerns the account and the account holder's identity. Entities must report income in 2016 for payments made in calendar years 2015. Entities must report gross proceeds in 2017 for asset dispositions made in calendar year 2016. The proposed regulations also allow FFIs to report amounts either in U.S. dollars or in the currency in which the account is maintained.

Entities must withhold on any passthru payment that is a withholdable payment made to a recalcitrant account holder or to a nonparticipating FFI (NPFFI) one year later. At present this withholding does not apply to any payment made before January 1, 2014.

The proposed regulations delay withholding for "foreign passthru payments" or the portion of any payment, made by a fund organized outside the U.S. that is deemed attributable to U.S. sources. Entities will not have to withhold on these payments before January 1, 2017. In lieu of withholding,

PFFIs will report annually to the IRS the aggregate amount of certain payments made to each nonparticipating FFI.

The proposed regulations have special rules for dormant accounts. A PFFI that withholds on a recalcitrant account holder of a dormant account may allocate the amount into escrow rather than deposit it with the IRS. The proposed regulations have rules for obtaining documentation or remitting the tax attributable to an account once it is no longer dormant.

The proposed regulations extend the grandfathering exception. In particular, the proposed regulations modify the definitions of withholdable payment and passthru payments to exclude payments made under an obligation outstanding on January 1, 2013, and any gross proceeds from the disposition of such an obligation.

The proposed regulations define "obligation" as any legal agreement that produces or could produce passthru payments (including withholdable payments), but not including any instrument treated as equity for U.S. tax purposes or any legal agreement that lacks a definitive expiration or term.

Deemed Compliant Categories

One change in the proposed regulations that will be considered a major improvement over prior guidance is the expansion of the categories of deemed-compliant entities, which are another term of art. Notice 2011-34 gave initial guidance on categories of FFIs that would be considered deemed compliant. They would not have to enter into a FFI Agreement with the IRS in order to be relieved from FATCA withholding. The proposed regulations include broader categories of deemed-compliant entities than were in the earlier guidance and permit some types of FFIs, such as retirement plans, to self-certify that they meet the requirements to be a deemed-compliant entity.

The categories of deemed-compliant FFIs are set forth in three major categories: registered, certified, and certain owner-documented FFIs.

Passthru Payments

The proposed regulations delay withholding on passthru payments until January 1, 2017. To reduce incentives for nonparticipating FFIs to use participating FFIs to block the FATCA rules, the proposed regulations require that participating FFIs report annually to the IRS the aggregate amount of certain payments made to each nonparticipating FFI until withholding applies. The proposed regulations request comments on how to implement the passthru payment rules. The proposed regulations indicate that Treasury and the IRS are seeking to develop alternative approaches to implementing the policy objectives of the passthru payment rules with foreign governments.

At present no passthru payment withholding is required on foreign passthru payments. According to the preamble to the FATCA proposed regulations, withholding on foreign passthru payments will be required starting in 2017. However, for 2015 and 2016, PFFIs must report the aggregate amount of certain payments to NPFFIs.

"The proposed regulations define "obligation" as any legal agreement that produces or could produce passthru payments (including withholdable payments), but not including any instrument treated as equity for U.S. tax purposes or any legal agreement that lacks a definitive expiration or term."

Due Diligence Requirements

The proposed regulations would revise due diligence requirements for preexisting accounts to permit for primarily electronic reviews. Under the proposed regulations manual reviews would be limited to accounts with a balance or value of over $1 million, and would exclude individual accounts with a balance or value of $50,000 or less, and some case value insurance contracts with a value of $250,000 or less, from the due diligence procedure.

In response to comments from many financial institutions, the new due diligence requirements also would eliminate the private banking test from Notice 2011-34 that would have required banks to do paper searches for many more accounts in order to identify U.S. indicia and would have put more emphasis on information known by relationship managers. The new $1 million threshold would reduce the instances where financial institutions must perform the due diligence searches. Banks can rely on electronic searches for accounts under the $1 million threshold.

"Among the persons FATCA impacts significantly are: U.S. withholding agents; U.S. financial institutions; foreign financial institutions; non-financial foreign entities; and U.S. individual taxpayers."

Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA – Joint Statement

The preamble states that Treasury and the IRS are considering an alternative approach to implementing FATCA, based on bilateral agreements between the U.S. and foreign countries, to have FFIs collect and report information to authorities in their residence country and have those foreign authorities report the information to the IRS. In this regard, on February 8, 2012, the U.S. Treasury Department announced that the United States and five other countries (France, Germany, Italy, Spain, and the United Kingdom) are exploring a framework to share information on bank accounts across borders under a ground-breaking intergovernmental approach to implementing the Foreign Account Tax Compliance Act (FATCA).[1]

According to the Joint Statement, the U.S. and a FATCA partner would conclude an agreement pursuant to which, subject to certain terms and conditions, the FATCA partner would agree to: (1) pursue the necessary implementing legislation to require FFIs in its jurisdiction to collect and report to the authorities of the FATCA partner the required information; (2) enable FFIs established in the FATCA partner (other than FFIs that are excepted pursuant to the agreement or in U.S. guidance) to apply the necessary diligence to identify U.S. accounts; and (3) transfer to the U.S., on an automatic basis, the information reported by the FFIs.

The bilateral agreement would require the U.S. to: (1) eliminate the obligation for each FFI in the FATCA partner to enter into a separate comprehensive FFI agreement directly with the IRS, provided that each FFI is registered with the IRS or is excepted from registration pursuant to the agreement or IRS guidance; (2) allow FFIs in the FATCA partner to comply with their reporting obligations under FATCA by reporting information to the FATCA partner rather than reporting it directly to the IRS; (3) eliminate U.S. withholding under FATCA on payments to FFIs in the FATCA partner (i.e., by identifying all FFIs in the FATCA partner as participating FFIs or deemed-complaint FFIs, as appropriate); (4) identify in the agreement specific categories of FFIs established in the FATCA partner that would be treated, consistent with the IRS guidelines, as deemed compliant or presenting a low risk of tax evasion; and (5) commit to reciprocity with respect to collecting and reporting on an automatic basis to the authorities of the FATCA partner information on the U.S. accounts of residents of the FATCA partner.

Additionally, pursuant to the agreement FFIs in the FATCA partner would not have to: terminate the account of a recalcitrant account holder; impose passthru payment withholding in payments to recalcitrant account holders; and impose passthru payment withholding on payments to other FFIs organized in the FATCA treaty partner or in another jurisdiction with which the U.S. has a FATCA implementing agreement.

In return, the FATCA partner would commit to developing a practical and effective alternative approach to achieve the policy objectives of passthru payment withholding that minimizes burden, and commit to working with other FATCA partners, the OECD, and where appropriate the EU, on adapting FATCA in the medium term to a common model for automatic exchange of information, including the development of reporting and due diligence standards.

Since the current FATCA framework and rules for passthru payments are very complex and comprehensive, the ability to avoid the passthru payment regime is a significant incentive for FFIs and foreign governments both in reducing their own administrative burdens and costs and attracting investment.

[1]For the proposed regulations, the Joint Statement, and a press release, see http://www.irs.gov/newsroom/article/0..id=254068.00.html and then search FATCA. In June the US Treasury issued further Joint Statements with Switzerland and Japan.

Notwithstanding the benefits, it may be that some jurisdictions whose fundamental laws prohibit compliance and whose policies prioritize financial confidentiality may not want to conclude such arrangements, at least in the short-term. Other governments will need changes to their statutory or even fundamental laws before they have the authority to sign. For instance, the EU privacy data law, which is fundamental law, does not allow automatic exchange of information. Changing fundamental law will take time and will need to involve more than the five countries participating in the Joint Arrangement.

In order to reciprocate, the U.S. would need to finalize the proposed bank interest reporting regulations (REG-146097-09) under IRC, section 6049. Those proposed rules would extend information reporting to include bank deposit interest paid to nonresident alien individuals who are residents of any foreign country. At present the U.S. reports only on interest paid to U.S. persons and Canadian residents.

The need to conclude FATCA arrangements raises the possibility that they could require changes to tax treaties between the U.S. and its FATCA partners, or even new treaties, since FATCA partners may raises issues other than FATCA.[2]

Advanced Notice of Proposed Rulemaking – Customer Due Diligence

On February 29, 2012, the Financial Crimes Enforcement Network (FinCEN) issued an advance notice of proposed rulemaking (ANPR) to solicit public comment on a wide range of questions pertaining to the possible application of an explicit customer due diligence (CDD) obligation on financial institutions, including a requirement for financial institutions to identify beneficial ownership of their accountholders.

The FinCEN press release explained that an express CDD program rule is an aspect of a broader U.S. Department of the Treasury strategy to enhance financial transparency in order to strengthen efforts to combat financial crime. Enhancing financial transparency to address such ongoing abuse of legal entities requires a broad approach. Other key elements of this

[2]Alison Bennett, *Practitioners Say Intergovernmental FATCA Framework Carries Promise, Challenges,* BNA Snapshot, DAILY REP. FOR EXEC., March 15, 2012, at J-1, quoting from former International Tax Counsel John Harrington.

"In the background to the ANPR, FinCEN expressed concern that there exists a lack of uniformity and consistency in the way financial institutions address these implicit CDD obligations and collect beneficial ownership information within and across industries."

strategy include: (i) improving the availability of beneficial ownership information of legal entities created in the United States; and (ii) facilitating global implementation of international standards regarding CDD and beneficial ownership of legal entities. The announcement by FinCEN Director James H. Freis, Jr. was referring to the Financial Acton Task Force's revised recommendations issued on February 16, 2012. Comments on the ANPR.[3]

The ANPR considers codifying, clarifying, consolidating, and strengthening existing CDD regulatory requirements and supervisory expectations, and establishing a categorical requirement for financial institutions to identify beneficial ownership of their accountholders.

In the background to the ANPR, FinCEN expressed concern that there exists a lack of uniformity and consistency in the way financial institutions address these implicit CDD obligations and collect beneficial ownership information within and across industries. According to FinCEN in the absence of a broader definition of the term "beneficial owners," in particular a definition that can be applied across lines of business and customer categories in the context of CDD, it may be difficult for a financial institution to (1) identify the risk scenarios that would require the identification of beneficial owners; and (2) collect sufficient information to adequately address identified risk. The lack of consistency and uniformity also severely limits the ability of financial institutions to rely on the CDD efforts of other financial institutions, which would promote greater efficiency and eliminate instances of duplication of effort in transactions involving multiple financial institutions.

The ANPR explains that an explicit CDD program rule codifying, clarifying and (with respect to beneficial ownership information) strengthening existing CDD expectations for U.S. financial institutions could enhance efforts to combat money laundering, terrorist financing, tax evasion and other financial crimes by: (i) strengthening the ability of financial institutions to identify and report illicit financial transactions and comply with all existing legal requirements, including FinCEN regulations implementing the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA), and related authorities; (ii) promoting consistency in the implementation of, examination for, and enforcement of CDD program requirements across and within sectors of the U.S. financial system; (iii) assisting financial investigations by law enforcement, especially by enhancing the availability of beneficial ownership and other information held by U.S. financial institutions; (iv) facilitating reporting and investigations in support of tax compliance; and (v) promoting global financial transparency and efforts to combat transnational illicit finance, consistent with international standards.

FinCEN believes an effective CDD program should provide a financial institution with enough information to develop a customer risk profile that can then be used by the financial institution to identify higher-risk customers and accounts, including customers and accounts subject to special or enhanced due diligence requirements.wThe financial institution also should apply appropriate internal controls to identify and investigate unusual and suspicious activity and make an informed decision whether or not to file a suspicious activity report (SAR). In the event that a financial institution files a SAR, CDD information collected could enhance the information included in the SAR and thereby enhance law enforcement's ability to initiate and pursue the successful investigation and prosecution of criminal activity. The failure

[3] For the FinCEN press release and the notice itself, see http://www.fincen.gov/news_room/nr/html/20120229.html.

to obtain adequate CDD information may impede a financial institution's ability to detect and report suspicious or unusual activity or impede a financial institution's ability to detect and report suspicious or unusual activity or provide information in a filing that is useful to law enforcement.

The ANPR discusses the importance of CDD in facilitating tax reporting, investigations and compliance. For instance, a variety of information may be required in a tax inquiry, including information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts. The U.S. has long been a global leader in establishing and promoting the adoption of international standards for transparency and information exchange to combat cross-border tax evasion and other financial crimes, and strengthening the CDD procedures of financial institutions is an important part of that effort. In this regard, the ANPR can help provide authority to enable Treasury to reciprocate with other revenue authorities in the context of joint arrangements for an alternative to FATCA. In the February 8, 2012 Joint Statement for a FATCA alternative, the U.S. has agreed to reciprocate in providing comprehensive financial information on taxpayers from partner countries.

The ANPR observes that recent G20 meetings have underscored the importance of CDD in promoting financial transparency and protecting the financial system from abuse consistent with international standards. Additionally CDD-related procedures are underscored in the work of other international standard setting bodies, such as the Basel Committee on Bank Supervision and the International Organization of Securities Commissions (IOSCO).

As the ANPR explains, another reason for the express CDD rule is that U.S. law enforcement has difficulty identifying criminals who hide behind shell companies and business fronts.

FinCEN states that an effective CDD program includes the following elements:

- Conducting initial due diligence on customers, which includes identifying the customer, and verifying that customer's identity as appropriate on a risk basis, at the time of account opening;
- Understanding the purpose and intended nature of the account, and expected activity associated with the account for the purpose of assessing risk and identifying and reporting suspicious activity;
- Except as otherwise provided, identifying the beneficial owner(s) of all customers, and verifying the beneficial owner(s)' identity pursuant to a risk-based approach; and
- Conducting ongoing monitoring of the customer relationship and conducting additional CDD as appropriate, based on such monitoring and scrutiny, for the purposes of identifying and reporting suspicious activity.

The ANPR reflects the impact of activities of international organizations on those of national governments in the area of law enforcement and regulation. In particular, FinCEN has explained its ANPR initiative by developments in FATF, the G-20, the Basel Committee, and IOSCO. Testimony before the House Judiciary Subcommittee Office of Terrorism Financing and Financial Crimes on February 8, 2012 said that Treasury would issue the ANPR within weeks. Jennifer Shasky Calvery, chief of the Justice Department's Asset Forfeiture and Money Laundering section, testified at the hearing that the U.S. is not fully compliant with FATF standards on the transparency of legal entities.[4]

[4] Jeff Day, *New FATF Guidance on Determining Owners of Shell Companies Imminent, Panel Told,* Daily Rep. for Exec., Feb. 10, 2012, at EE-9. In this regard, in 2006 FATF evaluated the U.S. as non-compliant with FATF standards on the transparency of legal entities. The transparency of legal entities is a principal requirement in the OECD's tax transparency initiative as well.

"The ANPR reflects the impact of activities of international organizations on those of national governments in the area of law enforcement and regulation."

Implementation of the CDD changes would be expensive and require significant changes in financial institution procedures and systems and current practices. Practical difficulties exist in implementing the likely changes: obtaining reliable and verifiable beneficial ownership information; the problem of communicating complex ownership definition to customers; and the difficulty of conducting CDD on the owner of assets when the U.S., unlike other countries, does not have reliable public sources for legal entity ownership and does not yet require states to maintain reliable ownership information (as ITLEA would do if Congress enacts it).[5] Another criticism of the ANPR is that the government should conduct a cost-benefit analysis of the costs to financial institutions of compliance with existing Bank Secrecy Act/AML requirements and the proposed changes compared to the benefits to the government.[6]

Offshore Voluntary Disclosure Program (OVDP #3)

The IRS announced on January 9, 2012 that it has reopened its voluntary disclosure initiative for the third time, in response to the US government's continuously widening investigation of foreign banks relating to unreported offshore accounts of US persons. This third special disclosure initiative follows the IRS's 2009 and 2011 Offshore Voluntary Disclosure Programs (OVDPs) and is available to those taxpayers who did not file in time for the 2009 or 2011 OVDPs.

As in the past, the OVDPs are designed to bring offshore money back into the US tax system and help individuals with undisclosed income from hidden offshore financial accounts get current with their taxes. This program allows individuals with previously unreported foreign financial accounts to significantly reduce their exposure to substantial civil tax penalties and, in many cases, to eliminate the possibility of criminal prosecution. Foreign accounts include assets held in offshore trusts, foundations, corporations and other entities.

The new initiative is similar to the 2011 program with a few key differences. First, unlike the earlier programs, there is no set deadline for people to apply. However, the IRS has stated that it may change the terms of the program at any time. For example, the IRS may increase the penalties in the program or may end the program entirely. The second key difference is that individuals will have to pay a penalty of 27.5% of the amount in the foreign bank accounts in the year with the highest aggregate account balance covering the 2003 to 2010 time period. This is increased from 20% in the 2009 program and 25% in the 2011 program. Some taxpayers will be eligible for 5% or 12.5% penalties, similar to the 2011 program. Participants also must pay back taxes and interest for up to eight years, as well as paying accuracy-related and/or delinquency penalties.

In order to qualify for the voluntary disclosure program, a taxpayer must make a disclosure that is truthful, timely and complete. The taxpayer must further show a willingness to cooperate (and does in fact cooperate) with the IRS in determining his or her correct tax liability, and makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.

A disclosure is timely if it is received before (a) the IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation, (b) the IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance, (c) the IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer, or (d) the IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).

Because of the higher penalties in OVDP #3 compared to the

[5] Department of the Treasury Issues Bank Secrecy Act Advance Notice of Proposed Rulemaking Relating to Customer Due Diligence Requirements for Financial Institutions, Gibson Dunn & Crutcher, Apr. 11, 2012.

[6] *Id.*

first two OVDPs and the inflexible and harsh implementation of the first OVDPs, not as many taxpayers have applied for the new program as applied in the first two.

II. PROPOSED LEGISLATION

Incorporation Transparency and Law Enforcement Assistance Act (ITLEA)

On August 2 and 10, 2011, this proposed legislation was introduced into the Senate and House, respectively, during the 112th Congress. It would facilitate the transparency of the financial system by making it more difficult for criminal organizations to hide behind front companies and shell corporations, an objective referenced in the President's Strategy to Combat Transnational Organized Crime announced at the end of July 2011. It is S. 1483 and H.R. 6098. In the House, Rep. Carolyn Maloney introduced the bill with three cosponsors. It was referred to the House Committee on Financial Services. S. 1483 has not yet been referred to a Committee in the Senate.

ITLEA directs the Secretary of the Treasury to issue regulations not later than October 1, 2012, requiring corporations and limited liability companies formed in a state that does not have an incorporation system providing for the disclosure, updating, and verification of beneficial ownership information to file with the Secretary information about their beneficial ownership as required by this Act. ITLEA sets forth requirements for state incorporation systems with respect to beneficial ownership information, including: (1) identification of beneficial owners by name, current address, and non-expired passport or state-issued driver's license; (2) identification of any affiliated legal entity that will exercise control over an entity to be incorporated and the identities of the beneficial owners of such affiliated entities; (3) updating of lists of beneficial owners not later than 60 days after any change in information related to such owners; and (4) additional information and verification required for beneficial owners who are not U.S. citizens or lawful permanent residents. Under ITLEA states that adopt an incorporation system must maintain beneficial ownership information for five years after an incorporated entity terminates.

ITLEA imposes a civil penalty on any person who: (1) provides false or fraudulent beneficial ownership information; (2) fails to provide complete or updated beneficial ownership information; or (3) knowingly discloses the existence of a subpoena, summons, or other request for beneficial ownership

information without authorization. ITLEA requires the Secretary to publish a proposed and final rule to require persons who form a corporation, limited liability company, partnership, trust, or other legal entity to establish anti-money laundering programs.

"The one positive change in the current version is that it removes the provisions in §101 that named jurisdictions that already were considered to impede US Tax

The Comptroller General is required to study and report to Congress on: (1) state requirements for the disclosure of beneficial ownership information; (2) whether the lack of such information has impeded investigations into entities suspected of terrorism, money laundering, and other criminal activities; and (3) whether the failure to require beneficial ownership information for partnerships and trusts formed or registered in the United States has elicited international criticism and what steps the United States has taken or is planning to take in response.

The bill has been introduced a few times before. However, now it has the wholehearted endorsement of the executive branch. Some provisions are appearing in other bills. ITLEA is a legislative initiative with a positive impact on small international financial jurisdictions since it would finally start the U.S. to comply with the beneficial ownership requirements of the Financial Action Task Force Anti-Money Laundering Recommendations as well as the beneficial ownership and transparency requirements of the OECD's tax transparency initiative.

Stop Tax Haven Abuse Act

On July 12, 2011, Sen. Levin and five cosponsors introduced S. 1346 (The Stop Tax Haven Abuse Act). It was initially introduced in 2007. President Obama was a co-sponsor of the 2007 bill introduced by Senator Levin. Treasury Secretary Geithner was quoted as saying that he "fully supports" the prior version of the bill.[7]

The bill targets the supposed $100 billion in lost revenue each year from offshore tax dodges. For example:

§101 authorizes special measures to stop offshore tax abuse by allowing Treasury to take specified steps against foreign jurisdictions or financial institutions that impede U.S. tax enforcement.

§102 strengthens FATCA by clarifying under the Foreign Account Tax Compliance Act when foreign financial institutions and U.S. persons must report foreign financial accounts to the IRS.

§104 strengthens the detection of offshore activities by requiring U.S. financial institutions that open accounts for foreign entities controlled by U.S. clients or open foreign accounts in non-FATCA institutions for U.S. clients to report the accounts to the IRS.

§203-§204 require anti-money laundering programs for hedge funds, private equity funds, and formation agents to ensure they screen clients and offshore funds.

§205 strengthens John Doe Summons by allowing the IRS to issue summons to a class of persons that relate to a long-term project approved and overseen by a court.

§206 combats hidden foreign financial accounts by allowing IRS use of tax return information to evaluate foreign financial account reports, simplifying penalty calculations for unreported foreign accounts, and facilitating use of suspicious activity reports in civil tax enforcement.

§304 requires bank examination techniques to detect and prevent abusive tax shelter activities or the aiding and abetting of tax evasion by financial institutions.

§305 allows sharing of tax information upon request by a federal financial regulator engaged in a law enforcement effort.

[7] Tax Analysts, 92 Highlights and Documents 41, p. 1431 (March 5, 2009).

"For small international financial jurisdictions FATCA is the most important law and regulatory initiative because it is enormously broad and so administratively burdensome and costly to comply."

The one positive change in the current version is that it removes the provisions in §101 that named jurisdictions that already were considered to impede U.S. tax enforcement.

Cut Unjustified Tax (CUT) Loopholes

On February 7, 2012, Sen. Levin and Sen. Kent Conrad introduced the CUT Unjustified Tax Loopholes Act (S. 2075). The bill was divided primarily into two sections. The first section borrowed substantially from the Stop Tax Haven Abuse Act (see the discussion above), and included similar provisions affecting foreign financial institutions. The second section borrowed from the Ending Excessive Corporate Deductions for Stock Options Act (S. 1375), and would affect certain tax deductions and regulations for certain corporations.

Levin/Conrad/Whitehead Amendments

On March 8, 2012, the U.S. Senate passed an amendment to the highway bill (S. 1813) that would provide more mechanisms for the Treasury Department to act against jurisdictions, financial institutions, and persons that impede U.S. tax enforcement. The Senate agreed by voice vote to an amendment from Sen. Carl Levin, to authorize special measures against foreign jurisdictions, financial institutions, and other potential impediments to U.S. tax enforcement.[8]

The provisions of the amendment would amend 31 U.S.C. § 5318A by authorizing the U.S. Department of the Treasury to require U.S. financial institutions and U.S. financial agencies to take one or more of the special measures for jurisdictions, financial institutions, or international transactions that "impede United States tax enforcement." In making such decisions Treasury must consult with the Commissioner of the Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate.

If the Treasury Secretary finds a jurisdiction outside of the United States, one or more financial institutions operating outside of the United States, or one or more classes of transactions within or involving a jurisdiction outside of the United States to be impeding United States tax enforcement, the Treasury Secretary, in consultation with the Secretary of State, the Attorney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon the:

(1) opening or maintaining in the U.S. of a correspondent account or payable-through account; or

(2) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.

The provisions require the Treasury and other U.S. agencies to consider seven factors, four of which have been amended by the new provisions. Those jurisdictional factors are:

(1) evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles have transacted business in that jurisdiction;

(2) the extent to which that jurisdiction or financial

[8] Michael M. Gleeson, *U.S. Senate Passes Amendment to Combat Tax Havens, Other Entities,* 2012 WORLDWIDE TAX DAILY 47-1, March 9, 2012.

institutions operating in that jurisdiction offer "bank, tax, corporate, trust, or financial secrecy or regulatory advantages";

(3) the substance and quality of administration of the bank supervisory, international tax enforcement, and counter-money laundering laws of that jurisdiction;

(4) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

(5) the extent to which that jurisdiction is characterized as an offshore haven by credible international organizations or multilateral expert groups;

(6) whether the United States has a mutual legal assistance treaty, tax treaty, or tax information exchange agreement, with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

(7) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

The highway bill containing the amendment did not come up for a vote in the House of Representatives; rather, a 90-day extension for transportation funding was passed. It remains to be seen if Congress will again take up the highway bill, or instead start over with new legislation.

III. CONCLUSION

For small international financial jurisdictions FATCA is the most important law and regulatory initiative because it is enormously broad and so administratively burdensome and costly to comply. Additionally, the potential that governments can conclude an agreement as an alternative to some of the provisions requires governments and their private sector to make decisions at a very early time in the next few months. The fact that the U.S. Treasury has committed to reciprocate may have important impacts on foreign direct investment into the U.S. and indirectly on intermediary countries, such as The Bahamas. If Treasury does issue final regulations requiring the Treasury to exchange information with all treaty countries on interest paid on their investments in U.S. bank accounts, it is likely to impact decisions by some foreign investors on whether to continue to invest in U.S. banks and financial institutions and, for those who continue to invest in the U.S., they may well want to restructure their investments, especially insofar as a major goal continues to be financial confidentiality. The restructuring has important implications for private sector advisors and foreign governments.

The ANPR is likely to mean tightened rules on customer due diligence in the U.S. and these rules are likely to impact investments and transactions from small international financial jurisdictions serving as intermediaries. These rules may not come into force for one or two years, given the cycle of the ANPR, followed by a Notice of Proposed Rulemaking ("NPR"), addressing the comments received in response to the ANPR. The NPR would have the full text of the proposed regulatory language and provide another opportunity for public comment. Bahamian professionals will want to work with their affiliates in the U.S., consider making comments, monitor and anticipate these changes.

"To be able to achieve these goals, small international financial jurisdictions will have to emulate the late Bob Marley: "Get Up, Stand Up: Stand Up for Your Rights…"

The diverse anti-tax haven bills all have a common theme: raising revenue by scapegoating so-called tax havens. It is a convenient mechanism whereby legislators can posture to their constituents that they are trying furiously to raise revenue by closing loopholes, but not imposing any new taxes on people: the American grail. Small international financial jurisdictions will need to spend more efforts to educate U.S. voters, and especially the executive and legislative branches about the need for a level playing field. For instance, the Obama administration has been silent about the need for Congress to exercise restraint on the anti-tax haven provisions, especially

in areas such as tax transparency, beneficial ownership, and the gatekeeper provisions. Until now, U.S. officials are silent about the double standards of the proposed anti-tax haven bills, even though they sometimes, at least off the record, acknowledge the fact that the U.S. does not meet international standards in these areas, even though nine years has transpired since the existence of the standards. In addition, both the public and private sectors of small international financial jurisdictions should engage more with FATF, the OECD, and the Financial Stability Board in the making of policy as well as the implementation, so that in addition to commenting on proposed policy changes, they can anticipate and make any legislative and regulatory adjustments quickly. Small international financial jurisdictions may want to cooperate with groups such as the Commonwealth Secretariat in developing strategies to engage with the international organizations, civil society (e.g., the Society of Trust and Estate Practitioners and the International Bar Association) and informal groups.

Engaging with international organizations, informal groups, and the G20 countries will enable small international financial jurisdictions to educate the international community about the need to improve financial architecture to allow the participation of small international financial jurisdictions and more effective participation by the private sector, so that international initiatives, such as tax transparency, AML, and better financial regulation (e.g., FSB) have sustainability and address and implement properly principles such as the need for initiatives to satisfy cost-benefit analyses and the need for the initiatives to have proper legitimacy, transparency, and governance: all goals of the initiatives themselves. To be able to achieve these goals, small international financial jurisdictions will have to emulate the late Bob Marley: "Get Up, Stand Up: Stand Up for Your Rights…"

Bruce Zagaris,
Partner, Berliner, Corcoran & Rowe, LLP
(Washington, D.C.)

The international tax practice of attorney Bruce Zagaris has included counseling twelve governments on developing international financial sector work and tax treaty strategy and negotiations. The practice has involved structuring transactions and tax compliance. His private practice has included monitoring international tax and enforcement developments in the U.S. and the Caribbean for foreign governments and corporate clients. His private practice also includes criminal trial and appellate work. His criminal work has included counseling on extradition and international evidence gathering cases, testifying as an expert in international criminal cases involving money laundering and tax crimes, counseling of witnesses for grand jury investigations, prisoner rights, representation of parolees, probation revocation matters, and early release of prisoners on emergency medical problems.

Bruce Zagaris has served as Chair, Committee on International Tax, Section of International Law & Practice, American Bar Association, 1989-92; Chair, Committee on International Criminal Law, Criminal Justice Section, American Bar Association, 1989-93; member, Executive Committee and Executive Council, American Society of International Law, 1991-93; Co-chair, Committee on Public International and Criminal Law, D.C. Bar Assoc.; and President, Washington Foreign Law Society, 1990-91. He has been an adjunct professor of law at the Washington College of Law, American University, Fordham University School of Law in New York, John Marshall College of Law in Chicago, and University of Montana. He has authored and edited several books and hundreds of articles on international law.

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Meeting International Standards for Transparency and Exchange of Information in Financial Services Regulation

By Rowena G, Bethel

The imperative faced by Governments to adopt and maintain uniform, coordinated approaches to aspects of national regulation, in a fast-paced, dynamic environment, is one of those indisputable inevitabilities of globalisation. This is most evident in the economic sphere, where rapid business innovation, globalisation of commercial activity, and the internationalisation of the economy, have caused unprecedented economic interdependence between states.

To facilitate the orderly conduct of global business, numerous governance/regulatory frameworks have been developed from a plethora of global principles-based rules,[1] under the direction of the world's leading economies. These frameworks (particularly in the areas of trade, investment, finance and development), enable coordination and cooperation between states to facilitate global business, and minimise opportunities for exploiting the inherent vulnerabilities of the global system. These frameworks also, typically, evolve with changing circumstances to maintain relevance, usually at the instigation of the leading economies.

The concerted and inter-related initiatives launched in the 1990s by the OECD, the FATF, and the FSF[2] ("the three initiatives")[3], with accompanying standards, introduced a new era in the regulation of global financial services[4]. The resulting regulatory framework aimed to eliminate financial opacity[5] and create robust networks for information sharing and international cooperation between relevant authorities. Each initiative, also, specifically addressed risks associated with the non-banking financial intermediary sectors and financial services activities, in and from offshore locations[6].

The initiatives sought to encourage worldwide adherence to rules promulgated by each sponsoring body[7] to ensure a level playing field in the provision of geographically mobile, particularly financial, services[8]; prevent abuse/misuse of the global financial system[9]; and maintain the stability and soundness of financial markets[10].

The principles of transparency and exchange of information (EOI)[11], twin concepts for international cooperation purposes, emerged as the primary tools for the effective regulation of global financial services and to counter the effects of financial opacity.

The wake of the 2008 financial and economic crisis saw the G20 mandating further leveraging of the regulatory capabilities of these principles to restore and maintain global financial stability[12]. To this end the G20 re-invigorated the three initiatives and related assessment programmes; and, strengthened the FSB's ability to address systemic risks through, amongst other things, ensuring that jurisdictions of significance to the global financial system adhere to the global standards for international cooperation[13].

Implementing the Standards

The twin concepts of transparency and EOI, as tools for effective international cooperation, can be trisected into the following components: the ***availability*** of specified information (a combination of collecting and maintaining relevant details as a legally enforceable requirement); ***accessibility*** by relevant authorities to information (including non-public information); and, the power of authorities to ***exchange information***, including for regulatory/administrative purposes, directly with peer agencies.

Substantively, transparency in financial services regulation is concerned with ensuring the integrity of market participants[14];

[1] Variously referred to as "standards", "recommendations", "principles", "elements" etc. Global governance frameworks have been produced by the WTO, the UN institutions, the IMF, the World Bank Group, the OECD, the Financial Stability Board (FSB), the Financial Action Task Force (FATF), and the prudentially regulated financial sector standards setting bodies ("SSBs"): Basel Committee on Banking Supervision (BCBS), International Organisation of Securities Commissions (IOSCO), and International Association of Insurance Supervisors (IAIS).

[2] Financial Stability Forum, the predecessor to the FSB.

[3] The three initiatives are:
- the harmful tax practices initiative by the OECD, which established a global framework for broad cooperation in tax matters including principles of transparency and exchange of information for tax purposes;
- the anti-money laundering/anti-terrorism financing ("AML") initiative by the FATF, which developed 40 Recommendations on combating money laundering, and later, 9 Special Recommendations on combating terrorism financing; and
- the FSF initiative concerned with the adequacy of supervisory regimes within significant financial centres, and which endorsed a compendium of 12 sets of standards issued by other SSBs, including the prudential SSBs. www.financialstabilityboard.org/cos/index.htm

[4] References to "financial services" should be construed as including "corporate services" also.

[5] Financial opacity was recognised as a pervasive global phenomenon characterised by -
- inadequate supervision of market participants;
- inadequate record-keeping requirements for customer identification and related transactional activities;
- insufficient records on the ownership, management, control, and financial dealings, of relevant legal persons and arrangements ("legal structures"); and
- inadequate requirements for exchange of information for regulatory purposes, with domestic and overseas authorities.

[6] These locations are variously called "tax havens", "offshore financial centres" and "international financial centres".

[7] See footnote 3.

[8] OECD 1998 Harmful Tax Competition: An Emerging Global Issue, para.8 www.oecd.org/dataoecd/33/0/1904176.pdf

[9] FATF www.fatf-gafi.org

[10] The G20 established the FSB to coordinate at the international level the work of national financial authorities and international standard setting bodies… and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. www.financialstabilityboard.org/about/overview.htm

[11] Particularly EOI for regulatory/administrative purposes, as historically information exchange was limited mainly to judicial and law enforcement conduits.

[12] http://www.g20.utoronto.ca/2009/2009ifi.pdf

[13] http://www.financialstabilityboard.org/publications/r_111102.pdf

[14] This includes legal requirements for licensing/registration and on-going supervision for providers.

meeting prudential requirements; customer/client due diligence; maintaining identity/ownership details of legal structures; monitoring financial transactions; disclosure and reporting requirements; and recordkeeping. Recordkeeping ensures that relevant information is available at a later point for regulatory, including EOI, purposes.

Availability of Information

Ultimately, availability of information concerns the maintenance of governance and operational records by prescribed persons for prescribed periods, including records of:–

- identity and ownership: identification and ownership details for customers/clients[15] and, additionally for tax matters, for persons that own, establish, manage or control (directly or indirectly) legal structures having a certain nexus with the jurisdiction; and

- financial information: details of financial transactions associated with any regulated services provided and, for tax matters, financial and accounting information for legal structures and commercial activities.

Each set of standards for availability of information under the three initiatives is tailored to the specific objectives of the issuing body, and vary in scope, though considerable overlap occurs.

As a horizontal matter, at the top level, the initiatives impose direct obligations on jurisdictions or state authorities. At the secondary level, obligations are also imposed, directly and indirectly, on non-state players. For prudential and AML regulation, secondary obligations must be met by designated financial institutions[16]. Whereas under the OECD initiative, being concerned with availability of information for "tax purposes", secondary obligations must be met, also, by legal structures having a nexus with a jurisdiction, even beyond their creation or administration[17].

A practical example highlighting this difference for availability of identity/ownership information is found in the contrasting ratings received by Australia in its most recent peer reviews by the FATF and the OECD. Australia's FATF mutual evaluation[18] determined that the AML standard for availability of information for CDD purposes was not met. In contrast, Australia was found, in its OECD peer review, to have met the standard for availability of ownership information for tax purposes[19]. The difference in conclusions can be explained by, on the one hand, the absence of sufficient legal requirements for CDD in relation to trusts, for AML purposes; versus, the existence of a requirement in Australian law for the filing of tax returns by taxpayers in respect of trusts that must disclose beneficial ownership relationships to the tax authorities[20].

In The Bahamas, relevant regulatory statutes, in combination with the AML laws, impose obligations[21] on regulated financial institutions to meet CDD obligations consistent with applicable international standards. These obligations are further expanded in subsidiary instruments such as Guidelines and Codes of Practice, which provide instructions and guidance on the methodology to be used to meet CDD obligations, based on industry specific risks.

Regarding the availability of financial records, for AML purposes, Bahamian law requires prescribed financial institutions to maintain comprehensive transactions records in relation to their clients' activities. Additionally, prudentially regulated financial institutions in The Bahamas must meet statutorily mandated accounting and record-keeping obligations, in respect of their business activities.

The OECD initiative, however, requires legal structures to maintain comprehensive accounting records, whether they are financial institutions or not[22]. The standards for tax purposes, therefore, include the availability of financial records by, and in relation to, operators in the corporate and commercial sectors as a whole. While The Bahamas was found to have met the AML standard partially for the maintenance of client transaction records in its 2006 CFATF Mutual Evaluation

[15] These are normally know-your-customer/customer due diligence rules (CDD)

[16] 2012 FATF 40 Recommendations, Part D. Preventive Measures www.oecd.org/dataoecd/49/29/49684543.pdf

[17] Sub-elements A.1.1 & A.1.4. www.oecd.org/dataoecd/37/42/44824681.pdf, p.4

[18] www.fatf-gafi.org/dataoecd/60/33/35528955.pdf, Recommendation 5 CDD rating, p.145

[19] http://eoi-tax.org/jurisdictions/AU#determinations_9e3371ee5839bf730a76e5161bcde828, element A.1

[20] See footnote 19, paras. 5-7, p.8.

[21] These requirements together with obligations under commercial laws resulted in The Bahamas meeting the standard for availability of ownership/identity information for OECD tax transparency purposes.

[22] Element A2, A2.1-A.2.3, www.oecd.org/dataoecd/37/42/44824681.pdf, p.5

Report[23], it was found not to have met the accounts standard in its OECD Peer Review[24].

Accessibility of information

Accessibility of information, in any case, is a function of a duly authorised national authority having enforceable powers to compel the production of non-public information for specified purposes, including for the purpose of exchanging such information with other authorities.

In The Bahamas the power to access and order production of information for regulatory/administrative purposes is found in the respective governing laws for each regulator and the Financial Intelligence Unit (FIU). The access powers for tax purposes are found in The Bahamas and the United States of America Tax Information Exchange Agreement Act and the International Tax Cooperation Act 2010 ("the tax cooperation laws")[25] respectively.

Exchanging Information

One of the reasons for relevant information being available and accessible is to ensure that it can be exchanged in appropriate circumstances.

To ensure consistent adherence to applicable standards, various intergovernmental agencies have developed multilateral instruments[26] or promoted bilateral models[27] for EOI between peer agencies.

Nationally, information exchange mechanisms generally take one of three forms: unilateral[28], bilateral[29] or as part of a multilateral framework[30]. Although, the most commonly used method is the bilateral mode, many jurisdictions have a combination of two or more of the three modes operating concurrently.

Meeting Evolving Standards

Observance of standards is ensured through periodic assessments that determine a jurisdiction's compliance level with the relevant applicable version of those standards at the time of the assessment. The assessment evaluates the jurisdiction's legal and regulatory structure that incorporates the standards into domestic law, and, also, substantively, how this structure has been applied in practice.

The issuing bodies also perform on-going monitoring functions to ensure that deficiencies identified in an assessment are addressed; and, to review and revise standards based on trends, experiences gained and material changes in prevailing conditions for financial stability and market integrity.

Examples of revisions are the FATF's 2004 Recommendations to address terrorism financing; and the 2008 international endorsement[31] that bank secrecy was no longer a barrier to EOI for administrative tax purposes. More recently, following the financial and economic crisis, a proliferation of new rules have been developed, or are under development, e.g. for the

"In The Bahamas the power to access and order production of information for regulatory/ administrative purposes is found in the respective governing laws for each regulator and the Financial Intelligence Unit (FIU)."

[23] www.cfatf-gafic.org/downloadables/mer/The_Bahamas_3rd_Round_MER_(Final)_English.pdf, rec. 10 The Bahamas amended its laws in 2007 to address the concern raised regarding rec. 10

[24] http://eoi-tax.org/jurisdictions/BS#determinations_b8548ea9458ff0a398cc3bfbba362d0d, element A.2. Action on legislative updates to meet the accounting standards commenced in mid-2011.

[25] The tax cooperation laws are available at http://laws.bahamas.gov.bs

[26] IAIS, IOSCO & OECD Model TIEA 2002

[27] OECD Model TIEA 2002, UN and OECD Model Double Taxation Conventions (Article 26)

[28] E.g. Cayman Islands Tax Information Authority law, section 3 (6), (1) (a) http://tia.gov.ky/pdf/Tax_Information_Authority_Law_%282009_Revision%29.pdf

[29] E.g. Tax treaties including TIEAs, and MOUs.

[30] E.g. the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=208&CM=8&DF=25/03/2012&CL=ENG. The Bahamas Securities Commission is in process of seeking signatory A status to IOSCO MMOU www.iosco.org/library/index.cfm?section=mou_siglist

[31] The UN adopted the standard in its revised Article 26, Model double taxation convention.

supervision of systemically important financial institutions[32], and regulation of the shadow banking industry[33].

Current indicators point to accelerated efforts to converge aspects of existing standards, such as the FATF revised Recommendation which now designates tax crimes as predicate offences for AML purposes. Other noticeable trends include coordinated actions to broaden EOI parameters and harmonise transparency standards specifically to manage systemic risks, with intensified external scrutiny of domestic regulatory activities[34]. Already, arenas for more comprehensive engagements have been established, largely through the reconfiguration of the intergovernmental agencies, providing for greater participation in deliberations and policy formulation by global stakeholders, e.g. non-G20 jurisdictions[35], civil society and industry.

This more condensed, intense global regulatory construct places significantly more demands on national resources (qualitatively and quantitatively) as jurisdictions seek to remain abreast of global developments and, at the same time, maintain appropriate national regulatory responses. Moving forward, effectively conforming to this tighter global regulatory regime presents the single biggest challenge to all Governments in sustaining and growing financial services business. Smaller economies are especially disadvantaged due to lack of individual and collective dedicated supporting analytical machinery, such as those at the disposal of the larger economies through the OECD, FSB and EU instrumentalities.

[32] www.financialstabilityboard.org/publications/r_111104bb.pdf

[33] http://www.financialstabilityboard.org/list/fsb_publications/tid_150/index.htm

[34] E.g. FSB new peer review programme to ensure implementation of the G20 financial reform agenda. www.financialstabilityboard.org/publications/about_peer_reviews.htm

[35] The OECD Global Forum on Transparency and Exchange of Information has 107 members and growing. The FSB recently established regional consultative bodies that include non-FSB member jurisdictions.

Rowena G. Bethel
Independent Consultant

Rowena Bethel is an independent consultant specialising in tax treaty negotiations; and the design and implementation of the supporting policy, legislative, regulatory and institutional frameworks for cross-border tax cooperation, financial services regulation, eGovernment and public sector reform, and national info-communications strategies. She previously worked in senior executive roles as a Legal Advisor within the public service of The Bahamas for approximately 27 years. She is a former Legal Advisor to the Ministry of Finance and the National Insurance Board, as well as the former Executive Commissioner for the Compliance Commission, the AML supervisor for non-traditional financial institutions (lawyers, accountants, real estate brokers, trust and corporate service providers etc.).

At the Ministry of Finance, her responsibilities included the regulation of the financial services and communications sectors; cross-border tax cooperation; tax treaty negotiations; leading the multi-agency coordinating team for The Bahamas OECD Global Forum Phase 1 peer review; eGovernment, the legal and regulatory frameworks for the national information society agenda and the privatization of the national telecommunications incumbent. She represented The Bahamas on the OECD Global Forum on Taxation from October 2002 to August 2011, during which time she served on the Level Playing Field Sub-Group and on the Peer Review Group, as well as serving as an assessor for the PRG. She was also a member of the UN Committee of Experts on International Cooperation in Tax Matters for the period 2005-2009, when the UN endorsed the standards for tax transparency and exchange of information established by the OECD. She was also a technical adviser and negotiator for the Caribbean Regional Negotiating Machinery (CRNM) in the areas of Data Protection, Tax and Financial matters in relation to the EPA negotiations with the EU.

Mrs. Bethel holds an LL.B from the Leicester University, UK, and an LLM in Information Technology and Telecommunications Law and Policy from the University of Strathclyde, UK. She was called to the English Bar in 1982 and to The Bahamas Bar in February of 1983.

Financial Safe Havens in Uncertain Times

By Nick Rucker

The problem with discussing the concept of a "safe haven" (let's leave aside whether it is specifically financial or not) is that it has come to mean rather different things to different people. The answer to finding a safe haven tended always to involve "Switzerland" and "Gold" but there aren't any geographical safe havens anymore and one man's safe haven asset represents another man's potential bubble. What we used to regard as universal financial truths now seem open to permanent question; not a day goes by that opinion on the rationale of gold, the Swiss Franc, Central London prime real estate or any other asset class divides investment pundits. Discussion over the need for more reserve currencies, constant re-rating of sovereign debt and even the International Monetary Fund warning that a drop in the number of countries with safe haven status may pose a fresh risk to global financial stability throw up as many new questions as they provide answers. If there ever was a default position for de-risking out there, some sort of financial oasis, I certainly don't think there is anymore.

Safety and risk, of course, are highly subjective, especially in relation to a truly global economy. That being the case, surely the only way to properly mitigate risk is to aggregate the various advisory resources at one's disposal and apply (and not just in relation to one's assets) the very best principles of diversification. In essence, you need to know where your risk lies (and, no, it is almost never purely financial) and how you can plan against it. For one person it might be mostly a residency or nationality issue, for another it might be whether they have significant exposure

to assets in or relating to a particular country. For others it can be as simple as whether their children make a habit of marrying poorly. Nowadays, I would argue, a safe haven is as likely to be found in good immigration advice, knowledge of regulatory compliance or efficient tax arbitrage as in an address or a bank vault.

As a lawyer, I am asked often (whether directly or indirectly) to assess what my client's "risk" is in any given situation: if I commence litigation how likely am I to win; what is the risk that a company I wish to buy doesn't own the assets which I am really interested in; what is the risk that the real estate I think I own actually turns out to be owned by someone else? In many instances we can make pretty good assessments about whether there is a risk and whether it is worth taking. For example, if I buy real estate in London and take relevant professional advice from a solicitor or licensed conveyancer I can be more or less certain that the information contained in the proprietorship register will be conclusive proof of title. Moreover, this information is valuable. I can leverage my ownership rights with a bank, who will be satisfied that by having its own title noted on the charges register relating to the relevant real estate it has protected its interest sufficiently. But what am I really relying on and why is the bank so sure that it has adequate security over the funds it has lent?

In essence I am relying on the rule of law. I am relying on the fact that, should it come to a showdown with a squatter, or a creditor or the government itself wanting to lay a motorway over my little piece of England, I will have the benefit of rights enshrined by law that protect me, my investment and my peace of mind. This is my safe haven. If I thought, for a second, that those rights wouldn't be upheld my investment in real estate would have to be hastily re-valued.

But can I be so confident that the rule of law is my safe haven? For example, where there is finite property stock and ever-increasing amounts of money chasing it, are we not heading for bubble territory? Could my house be worth twice what I paid yesterday only to be worthless tomorrow on the basis of a dramatic fall in confidence in real estate prices? The answer, of course, is that "yes" it could be worthless tomorrow but, to me, it is still something I own, somewhere I can keep my family safe, somewhere I can call home. In other words, safety is subjective: if what I want is a home where my legal ownership is not open to question, the rule of law is crucial and London is a great place to buy. If my only desire is to time the market and make a swift return on my investment, law and regulation may not be so important and may even be a hindrance to me achieving that goal.

Perhaps this is why the search for a default financial safe haven concerns me. For me, and in a truly global context, it is really missing the point. When I speak to the majority of investment professionals, I am always concerned that their advice is not entirely informed by their "fact find" processes. Risk-profiling tells a supplier of product what sort of product they can sell justifiably to a client but that is more geared to the risk profile of the product provider (or the product itself) than the client. If I need protection, I should probably find out first what it is I need protection from. Appropriate asset allocation may be very helpful in de-risking my portfolio but it isn't going to be top of my list if I am currently living in Syria.

Which, in a roundabout sort of way, brings me back onto the whole idea of the safe haven and whether, especially financially, there can ever be a universally safe port in a storm. If you have been any sort of investor over the past decade you may be feeling that the people who provided you with access to those investments have done you more of a disservice than anything else. Sure, you may have been very pleased with the investment returns while markets flew up. You may even have chanced upon a manager who really does deliver "alpha" and not "disguised beta" (which is another way of saying "he rode the bull market"). In good times, no one is looking at the risk - not really. It is only

> "...you need to know where your risk lies and how you can plan against it."

when we get that queasy feeling that the good times were based on cheap money, willingly delusional investors and an absence of moral hazard from the market makers that we begin to think our risk tolerance was a touch optimistic. Which is when, to use Warren Buffet's immortal analogy, we find out who went swimming without wearing bathing trunks.

On my last trip to The Bahamas, I met a client who had relocated to Nassau. No, he said, it wasn't totally perfect, but for him and his family it wasn't far off. He had achieved a level of wealth which gave him options, both financial and otherwise. He was renting a property but owned land in the UK and elsewhere. He had a conservatively managed portfolio, looked after by two of the institutions which make up the very strong international banking presence on the island. Their mandate was to protect his capital and keep pace with inflation if possible. He had taken good advice from independent legal and wealth planning experts on the island and internationally. They had helped him: structure his wealth so that he largely mitigated his tax risk; divest himself of the majority of his assets where appropriate; become compliant in every jurisdiction and with every regulator he encountered; and understand who his money and assets would end up with if he died. He disclosed information about his wealth willingly, appropriately and whenever necessary but not in a manner that affected his desire for privacy. He was confident that, if the world went to hell in a hand cart again, he would be living in a beautiful, safe and geographically well-connected place where his family could have a decent standard of living and would be reasonably insulated from the rest of the world's problems. In essence, he explained, it was less what he owned but where and how he owned it. The fact that The Bahamas suited him was, I think, largely irrelevant. It was that he suited The Bahamas.

"But can I be so confident that the rule of law is my safe haven?"

A safe haven for my client just happened to include living in the Caribbean but it could easily have been housing his assets in insurance wrappers, setting up a philanthropic entity or day-counting his way round the globe. Only by taking appropriate advice on all the issues (more non-financial than financial) that made him a risk to his, and his family's, happiness going forward, was he able to find his safe-haven.

Mind you, we always knew he'd like The Bahamas.

Nick Rucker
Partner, Berkeley Law Limited

Nick Rucker specialises in international structuring for ultra-high net worth individuals, families, trusts and structures, dynastic planning, succession and asset protection structuring. He further advises investors and managers on structuring private investment funds and vehicles. Typical clients are private banks and trust companies, families, individuals and family offices

Mr. Rucker qualified as a corporate lawyer, became a Director at UBS in their UK Investment Banking Department, was a partner at LG in their Private Wealth team and is a founding partner of Berkeley Law.

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Part of New Government

The Progressive Liberal Party (PLP) was elected as the new Government of The Commonwealth of The Bahamas in the general election held on May 7, 2012. The Rt. Hon. Perry G. Christie was sworn in the following day as the new Prime Minister at a ceremony held at Government House. He previously served as Prime Minister between 2002-2007.

The Prime Minister named The Hon. L. Ryan Pinder, M.P. Minister in the re-introduced Ministry of Financial Services. The move affirms the Government's recognition of the importance of the financial services sector, acknowledged as being second only to tourism in terms of economic impact.

Minister Pinder, who was sworn in at Government House on May 10, stressed the importance of ensuring 'ease of doing business' in financial services and pledged to introduce initiatives that will solidify the industry for renewed and sustained growth. The new Minister identified an intended focus on job creation as well as entrepreneurial opportunities for Bahamians within this dynamic sector of the economy.

In the May 23rd Speech from The Throne on the occasion of the Opening of the new Parliament, the Government outlined an "ambitious and extensive" agenda, with strong emphasis on re-energising the economy and producing a higher standard of living for all Bahamians. The agenda includes a full range of programmes, legislative proposals and policy initiatives, many of which are included in the Government's Vision 2030 Charter for Governance.

By Edmund L. Rahming

The New Face of the Insolvency Regime in The Bahamas

Historically, insolvency procedures in The Bahamas have been governed through the application of the Companies Act 1992 and the International Business Companies Act 2000. While these laws have worked well for many years there was a need for modernising them, given the economic development in The Bahamas and our status as a prominent international financial centre.

In 2011, the Office of the Attorney General here in The Bahamas met with a committee of experienced insolvency practitioners and developed jurisdiction-specific insolvency laws, rules and regulations. As a result in December of 2011, the Companies (Winding Up Amendment) Act, 2011 (the "law") was enacted, replacing Part VII – the "Winding up of Companies" provisions of the Companies Act 1992 and introducing a new Part VIIA – the

"International Cooperation" provisions. The law commenced on 30 April 2012. In addition to the law, three complementing rules and regulations were developed and are being reviewed by industry stakeholders. These rules and regulations are set to be promulgated during 2012. They include the Companies Winding Up Rules, 2012, the Foreign Bankruptcy Proceedings (International Co-operation) Rules, 2012, and the Insolvency Practitioners Regulations, 2012.

Given the increasingly active insolvency market in The Bahamas, the law, rules and regulations are timely. The improvements will provide insolvency practitioners with clearly defined procedures and an increased ability to act with confidence. The law, rules and regulations to a degree are based on the Cayman Islands Companies Amendment Law 2007, with a few features from the Bermuda and BVI Companies insolvency regimes. This should result in a level playing field with insolvency practitioners in The Bahamas gaining greater ability to communicate with their competitors and counterparts in the region using a common nomenclature.

This article will focus on the law which, as previously stated, was enacted in December 2011. While it is not possible to outline all the differences between the old insolvency regime and the new law, this article highlights 10 areas where we found the law to contain substantial changes, clarifications and improvements. It is to be noted that the International Business Companies (Winding Up Amendment) Act 2011 applies the reform in the Companies Act to international business companies, bringing that law also in line with modern international standards.

International Cooperation

Representatives of foreign companies, under foreign insolvency proceedings in their home countries, may seek assistance from the court in their dealings in The Bahamas. This assistance is dealt with primarily under the new Part VIIA of the law.

Section 254 provides that representatives may seek ancillary orders recognizing the rights to act in The Bahamas on behalf of the foreign company. Ancillary orders, such as enjoining the commencement or staying the continuation of legal proceedings against a debtor, staying the enforcement of any judgment against a debtor, and examination or the delivery of information or property relating to or belonging to a debtor, may also be sought. While the court has significant discretion in considering whether to make these types of orders, section 255 provides that it will be guided by matters that best assure an economic and expeditious administration of the foreign company's estate consistent with, among others:

- The just treatment of all claims/ interest in the foreign estate;
- The protection of the Bahamian claims from prejudice and inconvenience in the processing of claims;
- The prevention of preferential and fraudulent dispositions; and
- Distribution of the foreign estate's assets in a manner consistent with the law.

In addition, section 198 allows the court to have jurisdiction to issue a letter of request for the purpose of seeking the assistance of a foreign court in obtaining the evidence of a relevant person resident outside The Bahamas. This is a useful tool when a liquidator is seeking examination of relevant persons in a liquidation matter.

Regulatory Flexibility

Sections 251 and 252 of the law provide for substantial rule-making scope to be delegated to a Liquidation Rules Committee. This reduces the need for parliamentary action in the future to keep pace with developments. The Liquidation Rules Committee comprises:

- The Chief Justice or other judge nominee who will be chairman;
- The Attorney General or his/her nominee;
- The legal practitioner members of the Supreme Court Rules Committee;
- A qualified insolvency practitioner appointed by the Chief Justice upon recommendation of the Bahamas Institute of Chartered Accountants; and
- A person appointed by the Chief Justice who, in his opinion, demonstrates a wide knowledge of law, finance, financial regulation or insolvency practice.

The Liquidation Rules Committee plays a critical role in ensuring insolvency procedures in The Bahamas stay abreast with that of our competitors.

While section 251 provides a Liquidation Rules Committee with the power to make rules to regulate the activities of insolvency practitioners, section 186(f) provides all relevant regulators with standing to petition for the winding up of a company whose

"The Liquidation Rules Committee plays a critical role in ensuring insolvency procedures in The Bahamas stay abreast with that of our competitors."

license is revoked or suspended.

Alternatives to Winding up

Shareholders always have had the ability to petition for the winding up of a company in The Bahamas; however, the law now provides that the court may make specific alternative for petitions presented on "just and equitable grounds." The alternative orders as listed at Section 191(3) include the following remedies:

- Regulating the conduct of the company's affairs in the future;
- Requiring the company to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner complained has been omitted;
- Allowing civil proceedings to be brought on behalf of the company by the petitioner on such terms as the court may direct; and
- The purchase of shares of any shareholder/s of the company by other shareholders, or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.

I anticipate that these changes will provide options where there may be a dispute between dissenting shareholders or oppressed minority shareholders providing an avenue previously unavailable in these circumstances. While it is not clear exactly how the process would be implemented, presumably the concerned shareholders must petition to wind up the company first then seek the alternative remedies available under section 191(3) at the hearing of the application. The process may be clarified in the rules and regulations currently under review.

Provisional Liquidation

While provisional liquidation has long been viewed as a flexible and timely alternative to official liquidation, section 199 provides clear guidelines for the appointment, powers and termination of a provisional liquidator. Section 199(3) contains a significant new provision which allows a company to petition the court for a provisional winding-up order on an ex-parte basis if it is, or is likely to become, unable to pay debts and intends to pursue a compromise with its creditors. In making a provisional winding-up order, the court may grant the company certain relief, such as a stay of proceedings, while it works toward a compromise. Pursuing a compromise in this manner allows the company protection from creditors during reorganization from which it may emerge a going-concern. Applications for provisional winding-up orders can be made by a creditor or contributory on grounds to (1) prevent the dissipation or misuse of the company's assets, (2) prevent oppression of minority shareholders, (3) prevent mismanagement or misconduct of the directors or (4) protect the public interest.

Voluntary Liquidations

Companies can reach the end of their natural lives or wish to discontinue operating. When this happens the shareholders often pass a resolution appointing a voluntary liquidator. The law is now clear that insolvent voluntary liquidations must be court supervised and a qualified insolvency practitioner must be appointed in such cases.

Section 218 now requires that voluntary liquidators file with the Registrar within 28 days of the commencement of the voluntary winding up a declaration of the company's solvency signed by all directors, failing which, voluntary liquidators must apply to the court for an order that the liquidation continue under the supervision of the court. A director or liquidator who completes a declaration of solvency without reasonable grounds or basis for confirming that the company can pay its debts in full is guilty of an offense.

The continuation of an insolvent voluntary liquidation under court supervision may impact who is authorized to conduct the liquidation, as liquidations under court supervision must have qualified insolvency practitioners, whereas anyone, including a director or an officer of the company, may be appointed as a voluntary liquidator. The impact of the declaration of solvency is clearly significant and

may be something a liquidator considering appointment would want assurances of prior to the company being placed in liquidation.

Powers & Duties of Official Liquidators

An official liquidator is an officer of the court whose function is to collect, realize, maintain, manage and distribute the company's assets. To carry out his or her duties and functions, an official liquidator relies on specific powers granted to him or her. Section 205 and Part II of the Fourth Schedule provide certain powers to be automatically granted to the official liquidator, including, inter alia, the power to: (1) take possession of and collect the company's property; (2) promote a scheme of arrangement; (3) convene meetings of creditors and contributories; and (4) do all other acts incidental to the exercise of his or her powers. Part I of the Fourth Schedule also holds that certain powers will be granted to an official liquidator with the sanction of the court. Among these are the powers to: (1) bring/defend any action or legal proceeding on behalf of the company; (2) carry on the business of the company; (3) dispose/sell company property to any related party; (4) pay any class of creditors in full; and (5) engage staff and attorneys to assist the official liquidator.

Traditionally, many of the powers available only with the court sanction have been granted to an official liquidator in the order of appointment. Such powers should be included in the draft order submitted at the winding-up hearing and will become powers of the liquidator from the date of appointment, rather than a subsequent application having to be made. This is particularly relevant for the appointment of attorneys who provide necessary legal support and advice for a liquidator in carrying out his or her duties.

Investigations and Examinations

Official liquidators always have enjoyed the ability to apply to the court for examination of various parties in relation to the affairs of a company in liquidation. Section 198 provides official liquidators with ability to apply to the court for examination of:

- Persons who have made or concurred with a statement of affairs;
- Present or past directors and officers;
- Present or past professional service providers to the company;
- Receivers, advisors, or liquidators of the company or of its property; and
- Anyone who has been concerned with or has taken part in the promotion or management of the company.

A new provision here introduces the concept that an officer includes a "shadow director". A shadow director is defined as a person in accordance with whose directions or instructions the directors are accustomed to act. In most cases the specified parties listed above, including the shadow director, cover the most likely candidates for an examination. However, the liquidator may wish to examine other parties, such as creditors or bankers, for which he may be required to seek directions from the court.

In addition to the liquidator applying for an examination of a party, the creditors and contributories of a company now have the ability to require a liquidator to make such an application by resolution of at least 50% in value. The law provides liquidators with greater powers to investigate and report to the court on the affairs of the company, including (in an official liquidation) the causes of the company's failure and the company's promotion, business dealings and affairs.

Section 197 allows the liquidator to obtain directions from the court to either assist the Royal Bahamas Police Force to investigate the conduct of persons described above or to assist the Attorney General to institute and conduct criminal prosecution of these persons. Section 197 also strengthens the capacity to investigate and prosecute fraudulent activity. It demonstrates The Bahamas government's commitment to updating legislation to create a strong financial services industry with both

"Remunerating liquidators in this manner provides a system that can more closely align creditors' and investors' economic interests with that of a company's liquidators."

"Criminal prosecutions in fraud and other financial crimes are lengthy, costly and require significant resources over extended periods."

a level playing field and a regulatory and legal system that is competitive on the global stage and consistent with the objectives of the UNCITRAL model law.

Criminal prosecutions in fraud and other financial crimes are lengthy, costly and require significant resources over extended periods. While the law provides for the costs of a prosecution pursued by the liquidator to be paid from the assets of the company, I believe this would only occur where the liquidator is able to demonstrate a potential benefit to the estate by assisting the prosecution of the wrongdoers. The court is likely to take into account the views of creditors prior to issuing directions for a liquidator to pursue a criminal prosecution, particularly where there may be limited assets available to fund such an exercise and, in these cases, may direct the regulatory bodies to pursue action.

Statement of Affairs

Section 196 provides that a liquidator "may" require a statement of affairs (SoA), outlining the financial position of the company at the date of liquidation, the details of any person in possession of any company assets, the nature of any security held by creditors, details of all creditors of the company and any other information the liquidator may specify. A SoA may be required from (1) a director or officer (including shadow director), (2) a professional-service provider or (3) a person who was an employee of the company within one year preceding the date of liquidation. Previously there was no suggestion for a liquidator to request a formal SoA from any relevant person, although I note that the new provision does allow the liquidator some discretion if he requires it.

The SoA must be verified by affidavit and lodged with the liquidator within 21 days, beginning the day after notice is given. Non-compliance will result in a civil penalty.

Liquidators Remuneration and Qualifications

Section 204(2) introduces, for the first time, a provision that allows Bahamian liquidators to be remunerated on a "percentage" basis of realizations and distributions. Remunerating liquidators in this manner provides a system that can more closely align creditors' and investors' economic interests with that of a company's liquidators.

Section 204 also introduces, for the first time, provisions that allow liquidators to be remunerated from trust assets held by a company in liquidation, to the extent activities carried out by the liquidator are regarded as having benefited those entitled. Where the court approves remuneration of the liquidator out of trust assets it will be done on an equitable basis and in accordance with the law that assets held in a trust for another person are not divisible in the liquidation of that company.

The professional qualifications are specifically covered in the rules and regulations; however section 203 of the law states that a foreign practitioner may only be appointed to act jointly with a Bahamian insolvency practitioner on a Bahamas-domiciled company and that official liquidators are officers of the court.

Fraudulent Trading Provisions and Antecedent Transactions

Section 228 contemplates fraud "in anticipation" of the winding up of the company and includes the concealment or removal of the company's property and the destruction or falsification of documents. Such actions are now codified as an offense, carrying penalties of fines of $25,000 and/or up to five years in jail. The liquidator is now allowed to review fraudulent activity for the 12-month period prior to the commencement of the winding up.

In addition, section 243 now allows the liquidator to apply to the court for a declaration of fraudulent trading, and any persons that knowingly are a party to such conduct may be ordered to make a contribution to the assets of the company as the court considers proper.

Provisions relating to voidable preferences under section 241 hold that payments made to creditors automatically will be deemed to be preferential to a creditor if made at a time when the company was insolvent and within six months preceding its winding up.

Edmund L. Rahming,
MD, Bahamas Office,
KRyS Global

Ed Rahming is the Managing Director of KRyS Global's Bahamas office. He has over 14 years of experience in providing financial accounting services, auditing services to SEC registrants and other clients, insolvency services, and a comprehensive mix of forensic accounting services including damage calculations, fraud investigations and litigation support to clients involved in commercial disputes.

Mr. Rahming has worked in The Bahamas, the Cayman Islands, the UK, and the United States. He is certified in Financial Forensics by the American Institute of Certified Public Accountants, and also is a Certified Fraud Examiner (CFE) and a Certified Public Accountant (CPA).

Professional Associations include American Bankruptcy Institute; American Institute of Certified Public Accountants; Association of Certified Fraud Examiners; Association of Certified Fraud Examiners Bahamas Chapter; Bahamas Institute of Chartered Accountants; and the Georgia Society of Certified Public Accountants.

Recent Developments in the Regulatory Landscape for Banks and Trust Companies

By Wendy M. Craigg

The global financial crisis of 2008, and the aftermath of recession and economic slowdown serve as key reminders of the importance of having effective and balanced financial policies, strong, resilient financial institutions, as well as robust supervisory oversight arrangements. The international focus of The Bahamas, as underscored by the varied financial institutional mix, also highlights the need for a responsive and proactive regulatory approach. This implies, inter alia, mechanisms that are commensurate with the risk profile of the financial sector and the licensees, and consistent with international standards. More importantly, it is essential that there is a judicious balance of measures to maintain the competitiveness of the jurisdiction and to ensure prudential oversight for mitigating systemic and reputational risks.

The Central Bank continuously monitors developments relating to G-20 deliberations on financial sector reforms and the press releases, publications and directives issued by the Basel Committee and the Financial Stability Board (FSB). The objective is to identify potential amendments to the Banks and Trust Companies Regulation Act, 2000 (BTCRA) and/or enhancements to the regulations and policy framework for banks and trust companies.

Legislative Initiatives in The Bahamas

Over the past year, several amendments were made to the legal and regulatory landscape for the supervision of the Central Bank's licensees. These include:

The Banks and Trust Companies Regulation (Amendment to the Third Schedule) Regulations, 2011, which reduces the application and annual fees payable by Private Trust Companies, from $5,000 to $3,500 and $2,500, respectively. The amendment, which came into force on the 12th July 2011, intended to bring The Bahamas in line with key competitor jurisdictions and facilitate growth in these structures.

The Banks and Trust Companies Regulations (Amendment) Act, 2011 amended the Third Schedule of the Banks and Trust Companies Regulation Act, 2000 (the principal Act) by re-inserting paragraph 4, which now authorises the deduction of company registration fees payable under the Companies and International Business Companies Act, respectively, from licensing fees payable under the principal Act.

The Banks and Trust Companies (Money Transmission Business) (Amendment) Regulations, 2011 amended the schedule to the Regulations to introduce a new fee to be paid by money transmission service providers in respect of each location where a money transmission agent operates on behalf of the service provider.

The Banks and Trust Companies (Auditors) (Facts and Matters of Material Significance) Regulation, 2011 lists the

facts and matters of material significance which should be notified to the Inspector of Banks and Trust Companies by an auditor or, where appropriate, a former auditor of a licensee, pursuant to section 12(4) of the Banks and Trust Companies Regulations Act, 2000.

Banks and Trust Companies (Liquidity Risk Management) Regulations, 2012 require licensees of the Central Bank to establish and maintain liquidity risk management strategies which are appropriate for the nature, scale and complexity of their activities and impose reporting requirements with respect to licensees' liquidity positions.

Banks and Trust Companies (Large Exposure) (Amendment) Regulations, 2012 set out the criteria for the Bank to grant exemptions for related party exposures to parent and group entities for treasury management purposes.

The Central Bank also is in the process of finalising, for public consultation in 2012, a number of proposed amendments to the Banks and Trust Companies Regulation Act, 2000 and supporting draft regulations. These include provisions to enhance fit and proper requirements for shareholders, directors and officers of licensees. Another objective is to establish a comprehensive framework for the Bank to levy administrative penalties that will allow the Bank to address egregious contraventions of prudential and regulatory norms and tardiness in statutory reporting, and support prompt corrective action by licensees to supervisory recommendations.

Other amendments being considered to the Banks and Trust Companies (Private Trust Companies) Regulations, 2007 will (i) allow for private trust companies to be limited by shares or by guarantee; (ii) remove the requirement for registered representatives to obtain the approval of the Bank on an annual basis to continue to provide the services of a registered representative; and (iii) give the Bank the discretion to extend the time, beyond twelve months, for a Registered Representative to certify that a private trust company qualifies for an exemption from the licensing requirements of the Banks and Trust Companies Regulations Act.

Risk-based Supervision Framework

Rules, regulations and legislative frameworks covering minimum capital requirements, liquidity, statutory reserves and limits on activities are all important, but it is necessary to supplement the rules with supervisory oversight of financial institutions. In the past year, the Central Bank has made substantial progress towards the full implementation of the Risk-based Supervision Framework (RBSF), which was launched in the final quarter of 2010 and is now targeted for completion in the third quarter of 2012. The RBSF assists the Central Bank in developing an understanding of firms' business strategies, risk management and internal control functions. Going forward, other elements of the Bank's RBSF implementation plan will focus on, inter alia, enhanced monitoring of licensees with heightened risk characteristics, aligning core aspects of on-site and off-site supervisory perspectives, utilising the assessment results to prioritise on-site examination exercises, developing a matrix of country risk and parent bank rating indices to support the assessment of inherent risk across firms, simplifying risk assessments for licensees that have been rated as low or medium low risks; and organising more effective risk assessment training programmes for supervisors.

> "The international focus of The Bahamas, as underscored by the varied financial institutional mix, also highlights the need for a responsive and proactive regulatory approach."

Capital Adequacy

Capital adequacy rules continue to be an area for intense international supervisory focus, prior to and following the global financial crisis. To ensure that banks maintain sufficient levels of capital to act as "cushion" against losses, the Central Bank has embarked on several initiatives that will pave the

way forward for the full implementation of the Basel II and Basel III capital framework. Regarding Basel II, the Central Bank is strengthening its Pillar II – Supervisory Review in the context of its Risk-based Supervisory Framework, and has also engaged the audit community, via a survey aimed at defining the practicalities of the minimum disclosure requirements under Pillar III. Alongside the Basel II initiatives, the Central Bank also has prioritised, within its policy agenda for 2012, the international reforms under the Basel III.

These capital rules are primarily aimed at increasing the quality, quantity, and international consistency and transparency of capital; strengthening liquidity standards; discouraging excessive leverage and risk taking, and reducing procyclicality. Under the Central Bank's current Basel I capital rules, the 8% minimum capital risk-adjusted ratio is evenly split between Tier 1 capital and Tier 2 capital. With the changes under Basel III, Tier 1 capital will increase to 6% of risk weighted assets and Tier 2 capital will diminish to 2% of risk weighted assets by 1st January, 2015. Tier 1 capital will consist of common equity (i.e., ordinary shares), which is considered the highest quality of capital. This Common Equity Tier 1 (CET1) would need to be maintained, at a minimum, at least 4.5% of the risk-weighted assets or 75% of the Tier 1 component.

Ahead of any guidance from the Basel Committee or the Financial Stability Board, the Central Bank recognised the importance of ensuring that its domestic systemically important banks were well-capitalised. The commercial banks currently are subjected to trigger and target capital ratios of 14% and 17%, respectively - well above the levels proposed under the Basel framework. Some international banks also are subjected to specific trigger/target ratios. This is due largely to banks' own countercyclical recognition of the need for stable levels of loss absorbing capital, prior to the crisis, and the Central Bank's regulatory initiatives early in the crisis to cement the level through implementation of higher capital ratios and supplemented by more forward looking provisioning requirements.

Monitoring Emerging & Systemic Risks

To further enhance the oversight of systemically important financial institutions in The Bahamas, i.e., the domestic commercial banks, in the context of the broader objective of financial stability, the Central Bank took steps to establish the Systemic Risk Surveillance Committee (SRSC) in 2011. The SRSC's mandate is to:

- monitor, on a regular basis, the financial stability of the domestic commercial banking sector in The Bahamas, including the financial strength of individual firms;
- deliberate on events, issues, risks and developments (macroeconomic, sectoral and firm specific) with systemic implications, including crisis situations and, where appropriate, formulate and co-ordinate responses/ actions;
- analyse the performance of the stress-testing models in relation to macro-prudential data and industry trends; and
- oversee system-wide stress test scenarios.

In our current financial risk environment, much emphasis is being placed now on stress testing. Increasingly, regulators and banks are becoming more focused on processes to manage risk under stressed conditions, so that banks can identify the options and determine the action to be taken during periods of financial distress or a full blown crisis. In keeping pace with industry practices, the Central Bank has implemented a stress testing programme that serves as an important macro-prudential monitoring toolkit for assessing certain key risk elements, i.e., credit, liquidity and interest rate risk of the domestic banking sector as a whole, as well as the resilience of individual banks, based on a combination of extreme but plausible stress scenarios.

Regulatory Co-operation

The Group of Financial Services Regulators (GFSR), consisting of the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Inspector of Financial and Corporate Services Providers, the Office of the Registrar of Insurance Companies and the Compliance Commission, executed a MOU in October, 2002 and developed a handbook (revised in July 2008) to provide an overview of the regulatory information-sharing framework in The Bahamas under its financial legislation. The handbook sets out, inter alia, legislative provisions and principles that govern the exchange of information between Bahamian and overseas regulators.

The Central Bank, the Securities Commission and the

Insurance Commission, executed a MoU in February 2011, which established a framework for cooperation between the three (3) regulatory agencies in carrying-out consolidated quantitative and qualitative supervision of a domestic financial conglomerate. The arrangement also acknowledges their respective primary supervisory responsibilities for any entity forming a part of the conglomerate. The College has met several times since then to review its supervisory programme in the context of the conglomerate.

In addition, the Central Bank and the Securities Commission undertook a comprehensive review of the Protocol, towards achieving enhanced coordination of on-site examinations of jointly regulated financial institutions. Under the terms of the revised Protocol, the Central Bank, as the primary regulator/ supervisor for banks and trust companies, will continue to coordinate all areas related to these examinations, and be the primary point of contact for all communication with the firms on related matters. The practical effect of this arrangement will be that the Central Bank and the Securities Commission will present a "single face" to jointly regulated financial institutions. This will include, inter alia, issuing one notice of an examination, a single request for advanced information, setting out any additional documents/information required by both agencies, a unified team of examiners led by the Bank, a single Report of Examination (RoE), and a co-ordinated follow-up process for issues identified in the RoE.

Apart from undertaking work towards joint on-site examinations, the Bank and the Securities Commission made significant progress on a complementary project which sought to map out other administrative processes, with the objective of eliminating any regulatory overlaps. Work also commenced on a guideline to harmonise the application processes of the Central Bank's Exchange Control Department and the Inspector of Financial and Corporate Services, for account opening requirements of financial and corporate service providers.

Finally, the Central Bank, along with all of the other domestic regulators, has focused its immediate priorities toward ensuring The Bahamas' readiness for the IMF's Financial Sector Assessment Programme (FSAP), planned for mid-2012. Domestic regulators continue to update their respective self-assessment templates being used to measure the jurisdiction's compliance with international standards in the quality of supervision of the banking [the Basel Core Principles for Effective Banking Supervision (BCP)]; insurance [International Association of Insurance Supervisors' (IAIS) Insurance Core Principles] and securities [International Organization of Securities Commissions' (IOSCO) Objectives and Principles of Securities Regulation] sectors. ⁘

Wendy M. Craigg
Governor, Central Bank of The Bahamas

Mrs. Wendy Craigg was appointed Governor and Chairman of the Board of Directors of the Central Bank of The Bahamas on June 1, 2005, having served as Deputy Governor since 10th September, 1997. Prior to her appointment as Deputy Governor, Mrs. Craigg headed the Research Department of the Bank where she commenced her employment with the Bank on 17th July 1978.

Mrs. Craigg attained a Bachelor of Arts in economics and business from the College of Mount Saint Vincent, New York and further obtained a Master of Arts in economics from Fordham University. Her professional training included seminars and specialized courses at the International Monetary Fund and the Swiss National Bank.

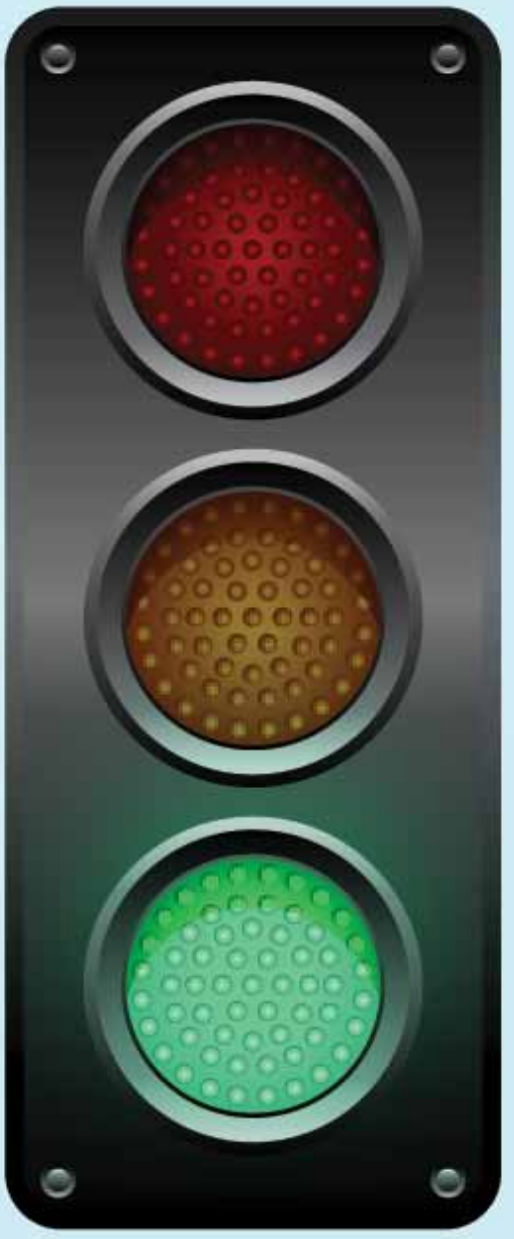
In her professional capacity, Mrs. Craigg has published a number of papers on economic issues and has served on numerous Boards and Working Groups and Committees related to trade, monetary integration, fiscal policy, payments and privatization. She presently serves as Deputy Chairman of the Securities Commission of The Bahamas, and as an Executive Committee member of the Caribbean Centre for Money and Finance (CCMF).

The Bahamas is a secure financial environment for investors, that is internationally recognised. Continued modernisation further ensures that investments thrive in our serene environment, where it is smart, safe and simple to do business.

THE CENTRAL BANK OF THE BAHAMAS

P.O. Box N-4868, Nassau, N.P. Bahamas • Tel: (242) 302-2600 • Fax: (242) 322-4321
Email: cbob@centralbankbahamas.com • www.centralbankbahamas.com

The Bahamian Capital and Securities Markets



An interview with Dave Smith, new Executive Director of the Securities Commission of The Bahamas regarding his views on the sector and the regulatory entity.

GW: Coming into the Commission with a wealth of practical industry experience, what do you envision the Commission's direction to be for the next strategic project-period?

DS: For the short to medium horizon, there will be a continued focus on the strategic programmes and projects that the Commission has identified as a part of its three year strategic programme launched in 2010; the end of 2012 will bring this strategic cycle to a close. The targeted goals that were set for the three-year period include improving corporate governance, advancing operational efficiency, modernising the legislative framework and enhancing administrative functions. These goals are articulated through five strategic programmes and their underlying projects. With the development of people, processes and tools identified as critical success factors, our resources at the Commission will be used for the continued realisation of these priority areas.

Having an appreciation and understanding for the jurisdiction's need to remain a competitive international hub for wealth management services, the Commission's long-term goals will include: a focus on improving business standards; strategic programmes and projects that work to enhance responsiveness to the dynamic markets we regulate; and building a well-trained human capital pool.

Our focus on enhanced responsiveness will result in streamlined processes that are geared toward improved authorisation service standards, more comprehensive and better harmonised off-site and on-site surveillance programmes, improved information management systems, and improved dialogue with the industry

through regular reporting and other mediums such as the Commission's website.

A strong and continued focus on developing the technical skills of staff also is a critical competitive success factor. The World Bank's and International Monetary Fund's previous Financial Sector Assessment Programme (FSAP) review noted this as a sector-wide need and the Commission already has commenced an initiative targeting human capital needs.

GW: How do you see the role of the markets and sectors regulated by the Commission expanding and/or evolving?

DS: The capital markets do not function in isolation from the financial services industry and the broader economy, and the role they play in both the local and international sectors has been expanding in line with maturing markets, industry participants and the regulatory environment. Now that the 'global recession' is somewhat behind us, it is an opportune time to have a forward focus.

The recession resulted in a six (6) percent fall off in the number of investment funds since yearend 2008. However, an increase in the licensing of the Specific Mandate Alternative Regulatory Test (SMART) Fund may prove an excellent indicator of the direction the investment funds industry is heading. Asset managers have been able to access this innovative Bahamian product since 2003, and they continue to discover this versatile tool for financial planning and structuring. In fact, we've seen a 16 percent increase in the number of SMART Funds over the two years since 31 December 2009 and the Commission continues to approve new SMART Fund models.

Another significant step aiding expansion is the promulgation of the Securities Industry Act, 2011 (SIA, 2011), which came into force 30 December last year. The new legislation paves the way for The Bahamas to sign onto IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU) as an 'A' signatory. Once that status is achieved, we expect many previously restricted international asset managers, particularly those in Brazil, to be able to access Bahamas-based investment fund administrators.

GW: You mentioned the SIA 2011, which recently went into force in The Bahamas. What are some of the more significant provisions or changes?

DS: Generally, the SIA, 2011 addressed a number of issues identified in the 2002 FSAP review. Notwithstanding there were broad improvements, international clients and those servicing them have some expectations of a regulator. These include, but are not limited to, responsiveness, fair treatment, and an internationally recognised regulatory regime. The SIA, 2011 better equips the Commission with the tools it needs to deliver.

The aforementioned SIA, 2011 empowers the Commission to generate rules for many matters, eliminating the need for amendments to the Act or Regulations in many instances. The Physical Presence Rule and Fees Rule, published in the Official Gazette during the first quarter of this year, are examples of this empowerment. Further, the disciplinary process has been simplified, maintaining its integrity while reducing the previously required number of panels and steps in the process.

The Commission is guaranteed greater independence through provisions of the Act, in that the Minister must show cause for the Chairman, the Executive Director and other members of the Commission's Board to be removed.

I mentioned the Act also paving the way for The Bahamas to sign onto IOSCO's MMOU as an 'A' signatory. Well, the information sharing provisions of the new Act are indicative of our commitment to the global effort to fight financial crime and cooperate with other local and international financial regulators to minimise the abuse of financial systems.

GW: On the Rules - Fees and Physical Presence - already published in the Official Gazette - how were these developed and how involved was the industry in the process?

DS: During the development of the Fees and Physical Presence Rules, the Commission conducted a benchmarking exercise considering the Cayman Islands, the British Virgin Islands, Bermuda, Jamaica, and Panama. The objective of the benchmarking was to ensure that all proposed obligations were on par with regional standards. In the end, we believe competitive and facilitative rules were realised.

By the publication of this article, several other Rules would

have been vetted by the Industry through the consultation process, including the Regulatory Capital and Corporate Governance Rules. It is envisioned that this consultative approach will continue where time and practicality permit.

GW: The financial services sector of The Bahamas is gearing up for the World Bank's and IMF's 2012 FSAP, which is scheduled to commence by July of this year. Where is the Commission positioned in terms of readiness for this significant international review?

DS: We have been busy in our efforts in preparing for the World Bank's and International Monetary Fund's (IMF) visit scheduled to commence as early as June of this year. Since The Bahamas was last examined in 2002 and had its follow-up visit in 2004, the Commission has made progress in executing its action plan to resolve the identified deficiencies.

In 2003, the Mutual Funds Act, 1995 was repealed and replaced by the Investment Funds Act. Subsequent amendments were made to the IFA, 2003, including provisions to allow for information sharing. Similarly, the SIA, 1999, was repealed and replaced by the SIA, 2011. This new Act incorporates recommendations from the previous FSAP and modernises the securities legislation, bringing the jurisdiction on par with international best practices.

We do, however, recognise the need for continued improvements and this is reflected in our mandate. It is felt that this concentrated focus will move us markedly nearer to the target of achieving full compliance with standards we are measured against.

GW: Finally, if there was one message you wanted to get out to the international community about the regulatory environment for the Bahamian capital and securities markets what would that be?

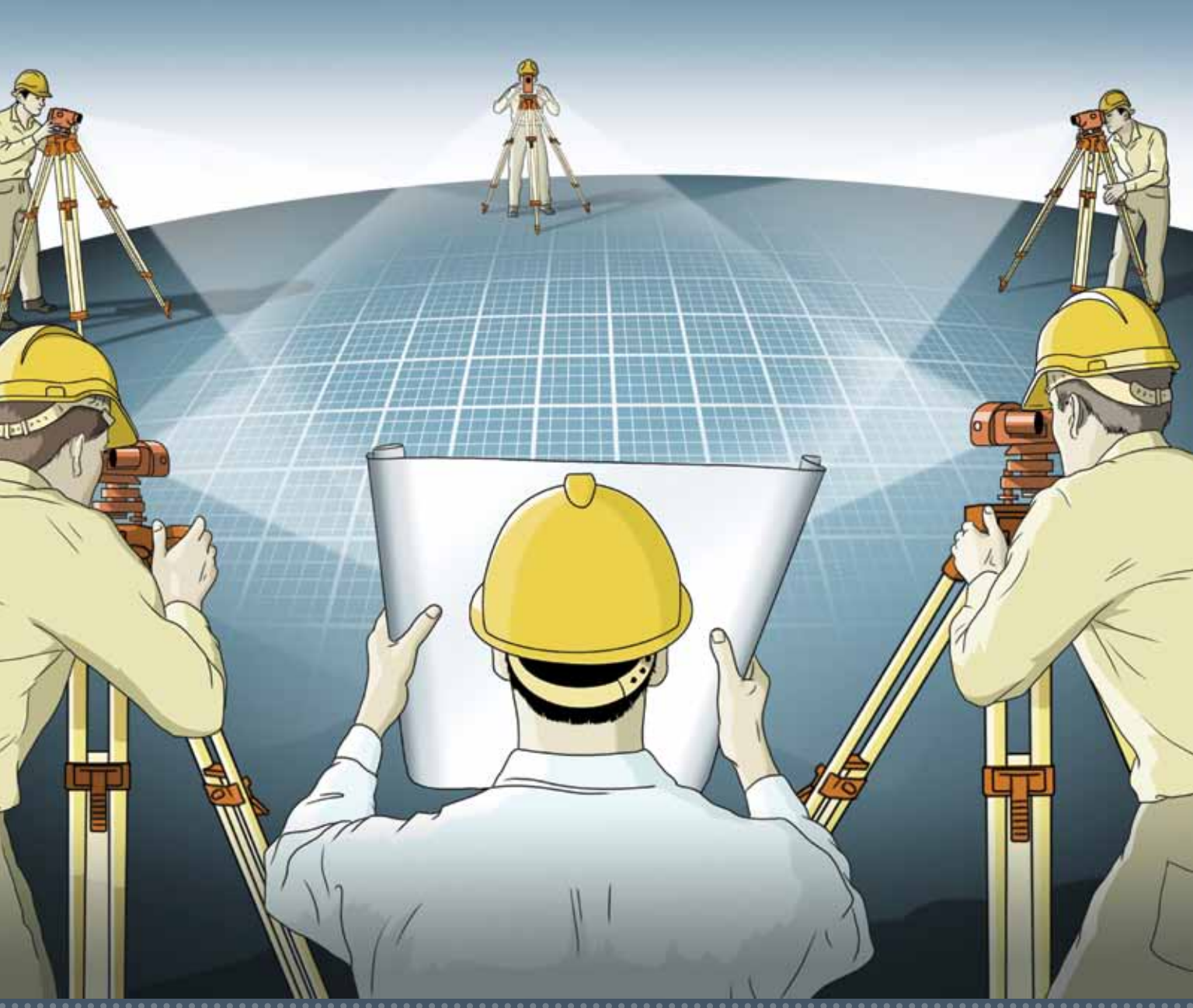
DS: Most importantly, I would want the international community to know what the Commission is mandated to do, and how earnest our commitment to fulfilling that mandate is.

The mandate has been expanded and redefined in the SIA, 2011, charging the Commission to: (a) advise the Minister on all matters relating to the capital markets and its participants; (b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities; (c) foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets; (d) protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices; (e) promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing; (f) create and promote conditions that facilitate the orderly development of the capital markets; and (g) perform any other function conferred or imposed on it by securities laws or Parliament.

When our mandate is scrutinized, it becomes evident that we are charged to not only regulate, but create conditions for the orderly development of the capital markets. This mandate requires a balance that we hope is appreciatively recognised over time.

Dave Shannon Smith
Executive Director, Securities Commission of The Bahamas

Mr. Smith was appointed as Executive Director of the Commission on 1 March 2012. He holds a B.A. in Business Administration and an MBA from Taylor University, Upland, Indiana. His other professional accomplishments include Certified Public Accountant, Fellow of The Bahamas Institute of Financial Services, and Fellow of The International Compliance Association. He is also a Member of the Bahamas Association of Compliance Officers, Bahamas Institute of Financial Services and the Bahamas Institute of Chartered Accountants.



The Legislative and Regulatory Regime for Insurance

By Michele C.E. Fields

The Insurance Commission of The Bahamas (ICB) was established on July 2, 2009, upon the implementation of The Insurance Act, Chapter 347 (Insurance Act). The broad mandate of the Commission is to maintain surveillance over the insurance market and to promote and encourage sound and prudent insurance management and business practices. This mandate is met through a programme of regulation, supervision and public information.

The activities of the Commission are directed by two Acts:

- *The Insurance Act, Chapter 347* which regulates entities carrying on insurance business in The Bahamas.
- *The External Insurance Act, Chapter 348* which regulates entities carrying on external insurance business from within The Bahamas.

The Insurance (General) Regulations 2010 related to the Insurance Act came into effect in September 2011, and the Commission will continue to issue guidelines to clarify certain areas of the legislation as needed.

The Commission is the prudential and market conduct regulator for the insurance industry. Policyholder protection is of paramount importance and significance. Under the Insurance Act, all insurance products must be sold through an intermediary, and the regulation of this class of licensee is a significant aspect of the work of the Commission with regard to market conduct.

The External Insurance Act sets out the legislative and regulatory regime for companies insuring risks outside The Bahamas. It was enacted in response to the demand for a clear, efficient, predictable and cost-effective structure for the establishment of insurance companies domiciled in The Bahamas. Under this legislation licensees are granted either an unrestricted license or a restricted license which relates primarily to Captive Insurance Companies. Although the minimum capital requirements applicable to external insurers are lower than that of domestic insurers, these companies are regulated in accordance with international standards, and capital levels are determined in accordance with the business plan of the licensee.

Since its inception, the ICB has focused on the implementation of a modern regulatory and supervisory regime. This Risk Based Supervisory Framework, which is consistent with international best practices, will contain the following key elements:

- Principles-based approach, requiring an application of judgment and a focus on principles rather than simply rules;
- Proportionality, where the level and focus of supervision is commensurate with the nature of business, size and complexity of the regulated entity;
- Risk management practices of the regulated entity will be considered in determining the scope of supervisory work;
- Corporate governance will be assessed;
- Continuous supervision will be instituted as opposed to a "point-in-time" assessment;
- Early intervention will take place as deemed necessary.

As a part of the first phase, there was a re-registration of all licensees under the domestic Act. The requirements for re-registration included compliance with enhanced solvency requirements, new capital and trust deposits for insurers, and compliance with minimum standards for corporate governance. All agents and brokers were required to comply with minimum capital standards and to have professional indemnity coverage as a condition for re-registration. The re-registration of licensees under the External Insurance Act will be completed during 2012.

The development of the risk based supervisory framework began with the enhancement of ongoing monitoring of licensees to better understand their risk profiles. To this end, quarterly meetings with senior management, the use of early warning indicators, horizontal and peer analysis all have been established. The supervisory framework is being documented and will be shared with the industry before full implementation.

The International Association of Insurance Supervisors (IAIS) is the recognised standard setting body for insurance regulators. It has codified such standards for the supervision of insurance in the Insurance Core

"Although the minimum capital requirements applicable to external insurers are lower than that of domestic insurers, these companies are regulated in accordance with international standards, and capital levels are determined in accordance with the business plan of the licensee."

Principles (ICPs). The Insurance Commission of The Bahamas is a member of the IAIS and is committed to becoming compliant with all relevant ICPs within three years.

The reputation of the insurance sector in The Bahamas is of critical importance, and in keeping with its mandate under the legislation and international obligations, the Insurance Commission drafted Anti-Money Laundering Guidelines and circulated them to the insurance industry for comments. These Guidelines came into effect in 2012 and compliance will be reviewed as part of the supervisory regime.

The Commission is committed to developing a consultative relationship with its stakeholders. Prior to proposing and implementing new regulatory measures, the Commission will continue to carry out its own research and assessment and consider the advice and comments received from the insurance sector. The Commission will continue to work with the industry as it enhances its regulatory and supervisory regime. This in turn will improve the safety and soundness of the insurance sector in The Bahamas and improve policy holder protection and services.

Michele C.E. Fields
Superintendent,
The Insurance Commission of The Bahamas

Mrs. Fields is a member of the Institute of Chartered Accountants in England and Wales, having qualified with KPMG (formerly Peat Marwick Mitchell) in London, England in 1982. Upon her return to The Bahamas, she was admitted as a member of the Bahamas Institute of Chartered Accountants (BICA) and worked with KPMG in Nassau from 1982 to 1994. During this time she gained extensive experience in accounting, auditing, financial advisory and corporate finance in a wide range of industries.

Mrs. Fields joined the management team of Global Life Assurance Bahamas Ltd. (now Colina Insurance Ltd.) in 1994. During her tenure at Colina, she held the positions of Financial Controller, Chief Risk Officer, Vice President of Group and Corporate Administration and Company Secretary of the BISX-listed parent company. While there, she acquired a wealth of knowledge in the life and health insurance industry, business administration and company management.

In 2008, she established a consultancy practice providing accounting and business consulting services to companies in a range of industries, including insurance.

Mrs. Fields served as a Commissioner at the Insurance Commission of The Bahamas since its inception in 2009.

The Super Qualified Investor Fund

By Brian Jones

For many investors, an investment fund is their gateway to financial markets. The rising "smart money" demand for alternative investments is driving the creation of more user-friendly, turn-key investment fund solutions for complex money management. The Bahamas, for instance, has earned its reputation for ingenuity in the private investment funds space with the introduction of the SMART Funds regime.

SMART Funds customarily are being used in niche fund arrangements such as private family funds, e.g., in succession and wealth planning structures. SMART Funds also have proved practical for use as regulated special purpose vehicles, e.g., to capture limited duration or event-driven opportunities. Another common use is as an incubator fund, e.g., for asset managers to test new strategies or establish a track record. This is because SMART Funds provide many benefits, such as streamlined reporting, flexibility, operational efficiency, transferability and transparency, often at a relatively immaterial cost.

With the pending promulgation of the seventh Bahamian SMART Fund template dubbed the "Super Qualified Investor Fund", the regime is significantly expanding the possibilities for using SMART Funds more generally as private placement funds. The Super Qualified Investor Fund or the "SFM007" may be offered on a private placement basis to up to fifty (50) "super qualified" investors who must make a minimum initial investment of US$500,000. This investor-centric fund model is designed around "super qualified investors" in order to more precisely accommodate professional asset managers, institutional investors and ultra high net worth individuals, all of whom stand to benefit from the risk-based approach to structuring and operating private placement funds available in The Bahamas.

A private placement fund may invest in traditional or alternative investments, and its objective may be simple or complex. On one hand, the SFM007 may serve to facilitate a complex solution such as serving as the offshore counterpart in a cross-border compliant master-feeder fund structure. This set up allows onshore funds to achieve access to global markets via a regulated investment vehicle in order to diversify their onshore portfolios. On the other hand, the SFM007 is simply ideal for a private placement fund with a

"The rising "smart money" demand for alternative investments is driving the creation of more user-friendly, turn-key investment fund solutions for complex money management."

"In a nutshell, the SMART Fund Model 007 represents the right balance between delivering bespoke wealth management solutions to sophisticated clientele, while adhering to appropriate regulatory requirements within a risk-based supervisory environment."

single "plain vanilla" strategy, open to one or more investors.

Similar to the other SMART Funds, SFM007 can be set up and licensed in a matter of weeks (post due diligence), and the audit requirement may be waived with the unanimous consent of all investors. Additionally, a concise term sheet may be issued, although the fund always has the option to adopt a more elaborate private offering memorandum, depending on the size and profile of the investor base.

What makes this SMART Fund model stand apart from the others, other than the expanded investor pool, is that the appointment and location of the fund administrator will be the choice of the directors, similar to the appointment of a custodian. Such dynamics are crucial because these decisions tend to be driven by many factors, including the fund's investment strategy, investor profile, cost, time zone, etc.

In addition, the administrative functions may be expressly contracted by the SFM007 to any reputable service provider in any approved jurisdiction on an "as needed basis". Thus, any functions not so delegated remain the responsibility of the directors. For example, a fund may appoint a net asset value calculator in Brazil (e.g. a family office), a Cayman-based registrar & transfer agent, a Bahamian independent director, and perform all of its trading and custody with a Swiss bank. Such a robust set up enhances efficiency and transparency, while ensuring compliance and offsetting counterparty and jurisdictional risks.

In a nutshell, the SMART Fund Model 007 represents the right balance between delivering bespoke wealth management solutions to sophisticated clientele, while adhering to appropriate regulatory requirements within a risk-based supervisory environment.

SMART Fund Model 007 was designed and promoted by Brian Jones. At the time of going to press it was awaiting final regulatory approval.

Brian Jones
Associate Director and Authorized Specialist,
UBS (Bahamas) Ltd.

Mr. Jones has responsibility for the Private Label Funds Solutions Unit, which acts as a competence centre for client investment funds.

He began his 8-year career in the funds industry as a manager with a leading fund administrator in The Bahamas, and he has been a member of the Bahamas Financial Services Board's Funds Working Group since 2004. He also is a board member of the Bahamas Association of Securities Dealers and is licensed by the Securities Commission of The Bahamas as a Principal.

Mr. Jones earned a Bachelor's degree in Economics from St. John's University, Minnesota and has studied and travelled extensively throughout Latin America, attaining language proficiency in Spanish and Portuguese.

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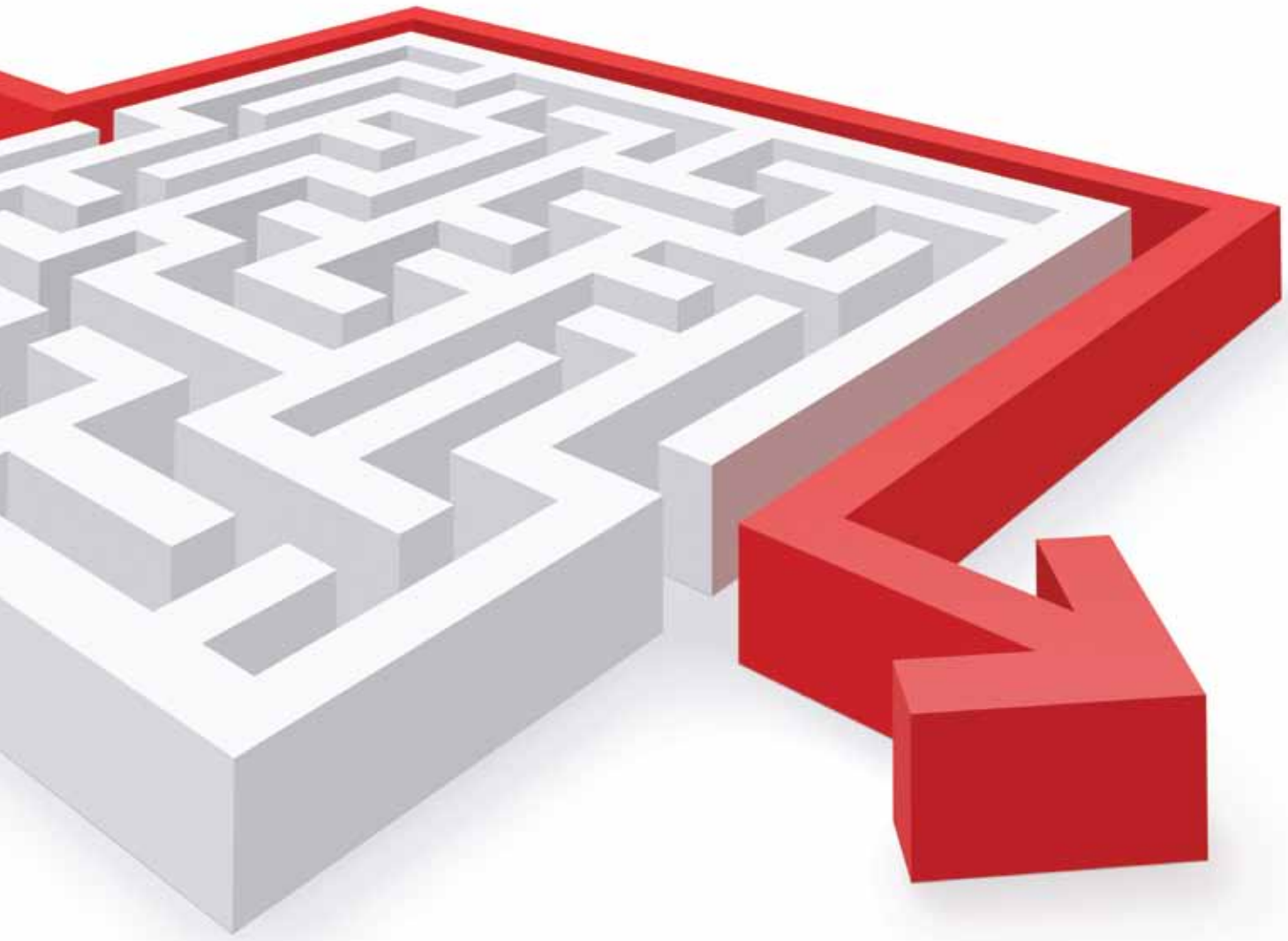

The Bahamas Executive Entity Explained

By Timothy J. Colclough

February 1, 2012 was just a normal day for most of us. It was the start of a new month, we were probably wondering what on earth had happened to January, and then started to realise that 2012 was already scooting by. For The Bahamas Financial Services industry though, February 1st marked yet another innovation milestone and saw the addition of a new and pioneering vehicle to its tool-kit of estate planning solutions. This addition once again confirmed, and clearly evidenced, The Bahamas' commitment to listening and reacting to the needs of our international client base.

After great anticipation, the Bahamas Executive Entity ("EE") became a reality through the official enactment of The Executive Entities Act, 2011 (the "Act"). The EE is a unique planning vehicle unavailable in any other jurisdiction, and this article will explore what the EE is and how it can be used.

What is the EE?

At its core, the EE is an administratively and structurally simplified vehicle created to perform an "executive", "administrative" or "shareholder" function, whether as a stand-alone vehicle or as part of an overall structure. The EE must act only in the capacity for which it has been established, and it is only permitted to hold assets sufficient for it to be able to fulfill its purpose.

In order to fully understand this definition, and have an appreciation for what the EE is and can do, I must ask one favour before moving on. If you are reading this article with any knowledge of the trust and estate fields, please, and albeit temporarily, forget everything you know regarding trusts, companies and foundations. The reason? We as practitioners have a tendency to apply our knowledge to new vehicles, helping us rationalise and understand what the new vehicle is. To a certain extent this is true for the EE; however given its unique characteristics, applying these principles to the EE too early may lead to confusion. Therefore, by starting with a blank sheet of paper, you will gain a full appreciation for what the EE is - taking the characteristics at face value - and once done the comparisons with other vehicles can begin. It is then, and only then, that the advantages of the EE will emerge.

Key Characteristics

As with any vehicle, the EE has some key and defining characteristics. All of the characteristics are clearly stated in, or are derived from, the Act and can be seen as follows.

The EE is:

- a legal and registered entity;
- created to act in a specific "executive", "administrative" or "shareholding" role; and
- only permitted to hold assets allowing it to carry out the function it has been established for; nothing more, nothing less.

The EE has:

- limited liability;
- no share capital (so no shareholders);
- no beneficiaries;
- no minimum level of assets required (only requires assets allowing it to carry out its functions); and
- no annual filing requirements.

The EE affords:

- continuity - can be established for a definite or indefinite period;
- confidentiality (the names of the Founder and EE Council remain confidential and are not public information);
- simplicity of management;
- flexibility, with:
  - only the "registered office" having to be provided by a Bahamas service provider;
  - no requirement that the Executive Entity Council, Officers or other Supervisory Body be provided by residents of The Bahamas.
- the ability to avoid probate.

So, and as an initial summary, we can see that the EE is a legal entity that has no share capital or beneficiaries, and affords limited liability, simplicity of management and flexibility in its design. The EE, however, can only be created to perform a single function and hold assets sufficient for it to be able to carry out that function.

The EE's Key Positions and Documentation

Before we examine the practical applications of the EE, and its uses in the wealth / estate planning world, it is important to review the key positions and the mandatory and optional documentation of the EE.

The key positions of the EE are as follows:

- Founder (person(s) who sign(s) the Charter);
- Executive Entity Agent (the registered office of the EE which must be provided by a Bahamas based service provider - this is the only Bahamian requirement);
- Executive Entity Officer (performs the day-to-day administrative tasks);
- Executive Entity Council (the Governing Body of the EE);
- Executive Entity Secretary.

"The EE is a legal entity that has no share capital or beneficiaries, and affords limited liability, simplicity of management and flexibility in its design."

The Officer(s) and Council constitute the "engine" of the EE. However, the Act notes that the EE need not have both Officers and a Council, and can therefore survive with just one being appointed. If this is the case, and should no Officers be appointed, the EE must have a Council, and that Council will assume the duties of the Officers. Likewise, if only Officers are appointed the same principle applies.

Regarding the EE's documentation, the main governing, and mandatory document is the **EE Charter**.The EE Charter contains the basic information of, and governance parameters for the EE and can be quite a simple, or complex, document. As to which one very much depends on the reasons for which the EE has been established. Indeed, the Act does cover what information the EE Charter must, or may, contain.

The other and optional document is the **EE Articles**. The EE Articles work along with the EE Charter and typically include additional, and detailed, governance provisions. Indeed, the EE Articles can be particularly useful where there is a desire to register the EE Charter, making the EE Charter public information. As will be seen, there is no requirement that the Charter or the Articles be registered; they therefore remain confidential documents. There certainly are reasons why someone may wish to register the EE Charter and this will be explored later in this article.

Registering the EE and Maintaining Confidentiality

The registration of the EE is a simple process and, by virtue of the limited information required on registration, a good deal of confidentiality can be maintained.

An EE is registered through the provision of three items:
- a registration statement;
- a statutory declaration of compliance; and
- the prescribed fee.

The registration statement provides a summary of the EE and only divulges information regarding its name, purpose, officers and the name and address of the EE Agent (the registered office). There is no requirement that the name(s) of the Founder(s) or EE Council be divulged and they therefore remain confidential.

Why might you wish to file the EE Charter and have EE Articles?

Where the EE is being used in more of a public role, or where transparency is required, it may be prudent to file the EE Charter making it available for review by the public. Why? As a public document, the EE Charter can be reviewed by people dealing with the EE, allowing them to obtain a level of comfort with its role and who is involved.

When the EE Charter becomes a public document, there likely will be a desire to keep the information in the same to a minimum. This being the case, there must be a separate document that details the governance and succession provisions of the EE, and this is where the EE Articles are useful. By placing the detailed governance and succession provisions into the EE Articles, confidentiality regarding those provisions is maintained as the EE Articles are not filed and therefore not public information.

Used correctly, and in this scenario, the EE Charter provides the transparency people dealing with the EE require, and the Articles maintain the confidentiality the EE desires.

Checks and Balances

Referring back to the EE's characteristics, the purists reading this article are likely still focusing on two characteristics that appeared rather odd. These are the fact that there:
- is no share capital requirement; and
- are no beneficiaries.

If so, the natural question of "checks and balances" arises and "how can one ensure the purpose of the EE is being fulfilled?" Of course, the checks and balances are built into the EE documentation through the inclusion of appropriate governance provisions; these provisions likely would centre on the ability to add and remove difficult/ineffective Officers and/or Council members. However, checks and balances also are available through the Act itself and in particular:

- Default provisions regarding enforcement of the purpose via application to the court;
- The restriction regarding the assets the EE can hold.

By limiting the assets, the risk of any loss is mitigated to a great extent, and this is further evidenced when we look at the functions envisaged by the Act.

Practical Uses of the EE

Given its flexibility the EE can act as a stand-alone entity or form a part of an overall structure. It can add tremendous value to a wealth / estate plan, especially where share capital or beneficiaries are not of concern. With this in mind, the EE may be a good choice to act in one of the following roles:

Executive Functions

- Director of a Company;
- Protector/Enforcer of a Trust;
- Authorised Applicant of a Purpose Trust;
- Foundation Council;
- Foundation Officer.

Advisory Functions

- Investment Adviser;
- Family Council.

Holding Functions

- Shareholder of a Private Trust Company;
- Shareholder of a Family Business;
- Shareholder of the Management Shares of a Mutual Fund;
- Shareholder of the voting shares of a company.

To provide a couple of practical examples:

Protector of a Trust

(a) Acting in a Personal Capacity

The role of protector is an important one. The responsibilities are great and liabilities can be greater. Ultimately, and if this is provided in a personal capacity, liability is unlimited. The EE will afford the nervous personal protector a high degree of comfort. The person can establish an EE and in doing so will effectively "wrap" himself / herself in a legal entity with limited liability. Therefore, and rather than acting as personal protector, they are doing so in the name of the EE.

(b) Where a protector committee is required?

The wish for multiple personal protectors can prove logistically problematic, especially when one retires or needs to be removed. Through the use of the EE, the protector always will stay the same and it is merely the composition of the EE Council (or Officers if no Council is appointed) that will be altered (done in accordance with the EE Charter or Articles). This therefore negates the need to alter the trust documentation and removes any complexities regarding the same.

Acting in a Fiduciary Capacity

When acting in a fiduciary capacity, such as a Director on a Foundation's Council, or as an Investment Adviser, whether in a personal capacity or where a committee approach is required, the EE should be considered. Indeed, the same principles as noted above for a protector are applicable here also.

As a Shareholder / Family Governance Council

(a) Shareholder of a PTC

The question of who should hold the shares of a PTC is an important one. Often it is solved through the use of a Purpose Trust or Foundation; however, neither is a perfect fit given the various "working parts" and regulatory requirements of each. The EE on the other hand offers a unique solution as the "working parts" and requirements of the other structures simply are not there. Once established, the EE will be managed by the EE Council (or Officers if no Council is appointed) with little, if any, involvement by others. In addition to simplicity of management, the EE also offers continuity:

- in ownership given its legal entity status; and
- regarding succession of Council Members (and/or Officers) with a clearly defined plan being written into the EE Charter or Articles.

"Given its flexibility the EE can act as a stand-alone entity or form a part of an overall structure. It can add tremendous value to a wealth / estate plan, especially where share capital or beneficiaries are not of concern."

(b) Shareholder of Voting Shares

For many of the same reasons as noted above, there may be a desire to hold the voting shares of an operating company or family business in a legal entity. As with the shares of a PTC, the voting shares of a company can easily be held in the name of an EE. The EE therefore will be seen as the shareholder, affording continuity in ownership and also confidentiality. This also has applicability in the investment world where the management shares of a mutual fund can perhaps be held in an EE.

Family Governance / Advisory Board

Where a structure is particularly complex - perhaps through family dynamics - a family governance or advisory board may be desired. As with a protector committee, and rather than name individuals, an EE can be created to act in this role. Again, the name of the family governance committee / advisory board will remain consistent and a comprehensive succession plan can be built into the EE Charter or EE Articles ensuring continuity. Clear parameters regarding the committee's / board's objectives will be written into the EE documentation and can be detailed in the EE's Charter or Articles. Such a committee/board may be particularly useful for a family office or a PTC structure.

Conclusion

The administratively simplified nature of the EE, along with its key characteristics, undoubtedly will make the EE a vehicle of choice when considering the various positions noted above. The EE certainly is a welcome addition to the Bahamas Tool-kit, and clearly evidences The Bahamas' commitment to proving pioneering and cutting-edge solutions.

Timothy J. Colclough, TEP
Vice President & Head of Trust and Fiduciary Services
Butterfield Bank (Bahamas) Limited

Tim is Vice President and Head of Trust & Fiduciary Services at Butterfield Bank (Bahamas) Limited, in Nassau, Bahamas. He has over 15 years of experience in the financial services industry and focuses on trust and estate planning for single and multi-generational high net worth and ultra high net worth individuals and families.

Tim is a Chartered Company Secretary (ACIS), holds an LL.B (Hons) law degree from the University of Buckingham, is a Member of the Society of Trust & Estate Practitioners (STEP), and is an Individually Chartered Member of the Chartered Institute of Securities & Investment (Chartered MCSI). He has also spoken at a variety of industry seminars and conferences and has written articles for various industry publications.

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FACE of the Industry: Dorothy Hilton

Business Analyst,
Societe Generale Private Banking (Bahamas) Ltd.

Dorothy Hilton was chosen as the Mentor of the Year in BFSB's Financial Services Industry Excellence Awards Programme. Described as a "mentor extraordinaire" - a mentor by instruction and by example - she uses her vast experience and expertise in financial services (some 40 years) to take on the challenge of producing effective managers within the sector. A first-class wealth management practitioner, she clearly represents the best of what the Bahamian financial services has to offer.

Ms. Hilton's deep interest in the development of people is unrelenting. Long after she is gone, her legacy always will be her passion for teaching, high moral standing and, most importantly, a vision for a leading, first-class Bahamas through the lives she has touched. She is a woman of substance and integrity with a motto that excellence is the only way to go. And she has taken junior and senior managers along the way with her - insisting on high standards of service across the board. Mentoring attributes include recognising and correctly diagnosing strengths and weakness; leading by example; coaching necessary changes in mindsets; encouraging a thinking process in terms of not only the position being mentored but in the context of the entire jurisdiction.

"This shining example" has proven herself to be unselfish in sharing her deep insight and wide knowledge of the financial industry, particularly within the trust and fiduciary areas. She has been indefatigable in urging "mentees" to develop abilities and assisted them in so doing wherever possible - while holding down a high level, challenging position, taking care of her family, lecturing at the College of The Bahamas and studying by Distance Learning for the LLB with the University of London. She also holds an MBA from the University of Miami.

A key component of her efforts, as verified by a number of colleagues, is the ability to instill confidence and trust while setting goals for the individual and the company at large. Testimonies from others attest to a learning curve that profiles the impact of effective management on the organisation globally. Her genuineness and unmistakable no-nonsense attitude come across well in the midst of extending compliments, rebukes, encouragement, scholarship, feedback, constructive criticism and suggestions on how to better approach solutions to problems and situations. Overall, her mentorship is guided by a principle that she often expresses, "We have an opportunity here as Bahamians to prove that we can provide the best service in the world." Hence, the common thread mentioned in a series of supporting documentation that professionals like her have 'raised the bar', significantly improving the service level of the industry. In this context, she is credited with irrefutable promotion of The Bahamas as a premier financial services jurisdiction.

Dorothy served as Managing Director of SG Hambros Bank & Trust (Bahamas) Limited since January 2009, and previously as Head of Trust. Prior to joining SG she was Head of Trust at Lombard Odier Darier Hentsch Private Bank & Trust, a Trust Consultant at CIBC Trust Company (Bahamas) Ltd., and Director, Vice President & Chairman of the Fiduciary Committee of Cititrust (Bahamas) Ltd. Included in her tenure at Cititrust was a stint of 5 years as Managing Director of Cititrust (Cayman) Ltd. in the Cayman Islands.

Following the merger of the two SG entities in The Bahamas, Dorothy is now a business analyst with Societe Generale Private Banking (Bahamas) Ltd.

She is an Adjunct of The College of The Bahamas.

An M&A Outlook for 2012: A Bahamian Perspective

By Nigel Rouse

2011 saw considerable Mergers and Acquisitions ('M&A') activity in The Bahamas, with the sale of BTC to Cable & Wireless Communications plc, the Chinese investment into BahaMar, Buckeye Partners' acquisition of BORCO and the listing of CBL's shares on BISX. All of this activity was despite continued financial difficulties in Europe and the US. 2012 promises to be another interesting year once the dust settles from the General Election and key decision makers return from summer vacations. The APD Initial Public Offering, continued investment into infrastructure around The Bahamas, activity in the private banking and trust sectors and proposed investments in Grand Bahama are but some of the drivers behind M&A levels that we are likely to see as the year progresses. On a slightly longer term basis, I believe we will see this trend continue, with M&A activity levels reaching levels similar to more 'mature' markets such as Australia or even the US and UK.

Interestingly, the M&A activity that we are experiencing here in The Bahamas is against a backdrop of what can be described as 'subdued' at best, global M&A levels. Apart from a couple of very large transactions (Glencore's proposed merger with Xstrata being the most notable), there appears to be little interest in transactions amongst the larger corporate players. Doubts over the future of the Euro, high sovereign debt levels and strikes across Europe seem to repeatedly dominate the headlines in Europe and, understandably, negatively impact global confidence levels and the market's appetite for M&A. It shouldn't be a surprise to readers of this article that M&A activity (in terms of transactions completed) has been negligible in recent times. Management teams over the last twelve months (and longer)

have been focused on driving efficiencies in their operations and strengthening their balance sheets as opposed to targeting growth through acquisitions. Lending banks have taken a similar approach with a number of banks having to redirect resources towards the struggling loans in their portfolios away from their business development functions.

Such actions, and the macroeconomic uncertainties seen in global markets, naturally have had a significant impact on general market confidence. KPMG's February 2012's M&A Predictor actually found market confidence was down 14% from December 2010 levels, with India and Germany showing quite dramatic declines of 19% and 18% respectively over the last six months alone, thus indicating that any turnaround in activity levels is unlikely any time soon. Markets such as the US, however, are showing more positive signs. A recent survey[1] of 825 key decision makers across the US (large corporations, private equity ('PE') firms and investment funds) found that executives had "guarded" optimism about M&A for 2012. Conversely, this optimism was despite two thirds of those surveyed forecasting that the economic recovery wouldn't arrive until the end of 2013 at the earliest. The main drivers for this increased optimism (from 2011) levels were: (i) the high cash balances held by corporations in the US; (ii) low interest rates; (iii) a likely surge in PE activity as firms try to complete their investment mandates; and (iv) a likely consolidation in financial services firms in response to the Dodd Frank financial regulations and the repayment of the Troubled Asset Relief Program (TARP). All of these drivers should act as a stimulus for M&A activity over the coming months and lead to an increased level compared to 2011.

Despite these positive drivers, it is likely that global M&A activity will still be hindered by the negative macroeconomic conditions seen in Europe, and elsewhere. These conditions along with the associated uncertainty that they generate, hinder the preparation of reliable financial forecasts, and any decision dependent on them. This difficulty was evidenced in the same US survey referred to above, where 46% of the respondents stated that it is more challenging to make accurate financial forecasts today as compared to any time in the last ten years, with some 32% stating that it was significantly more difficult. This lack of reliable forecasts not only affects potential purchasers in their acquisition decisions, it also impacts the lending banks involved in transactions as it prevents them from being able to properly value the opportunity at hand or price the downside risk attached to it.

Here in The Bahamas, global comparisons are somewhat limited in their application; M&A activity has yet to reach the 'mature' market levels seen in the US or Europe, with management teams preferring organic growth strategies. In addition, due to the high number of family based businesses, companies often are passed down from generation to generation, and rarely put up for sale. Accordingly, transaction levels are still at a relatively early stage when compared to markets where the separation of owner/manager is more common, and as such are less affected by the wider macroeconomic environment.

Recently, though, there does appear to be increasing appetite for M&A activity in The Bahamas, as well as an increased level of sophistication in both the equity and debt markets. Investors often are considering acquisition-led growth as opposed to the more traditional 'organic' growth used in the past (consider Super Value's acquisition of City Markets). Banks increasingly also are looking to corporate M&A activity to drive revenue growth; increased levels of competition for

"Here in The Bahamas, global comparisons are somewhat limited in their application; M&A activity has yet to reach the 'mature' market levels seen in the US or Europe, with management teams preferring organic growth strategies."

[1] Knowledge @Wharton/KPMG LLP Survey; dated February 2012

"Banks increasingly also are looking to corporate M&A activity to drive revenue growth; increased levels of competition for commercial banking services and lower residential mortgage activity are leading banks to increase their focus on corporate lending revenues."

commercial banking services and lower residential mortgage activity are leading banks to increase their focus on corporate lending revenues. Both of these trends have coupled with a higher level of general awareness of what M&A entails and an increased appetite for management/investors to take on more aggressive (and potentially higher risk) growth strategies. These trends are likely to continue as more Bahamians gain experience of more developed transactions overseas, working for corporate finance firms and investment banks, or through completing MBAs, CFAs or similar programmes.

Specifically, over the coming twelve months here in The Bahamas there are several sectors that are likely to experience more activity than most, and that should be watched.

- **Trusts & fund management sectors:**
  these sectors are experiencing a surge of activity in The Bahamas, with a number of larger corporate entities and high net worth individuals looking to move away from higher tax jurisdictions. Given the nature of the services they offer, businesses in these sectors offer investors quite consistent returns year on year with relatively little risk attached as most client portfolios are built on long standing relationships between the client and the fund manager. There is likely to be increased consolidation within the sector as the larger operators in the sector attempt to maximise returns from this trend, and leverage their existing back office support functions across a wider client base.

- **Banking sector:**
  The Bahamas has a number of smaller private banks, stand-alone and subsidiaries of Swiss and other onshore banks. The increased regulatory burden from past and ongoing initiatives such as the Dodd Frank Act and the Foreign Account Tax Compliance Act ("FATCA") continue to increase the cost of doing businesses for these companies, to a level that is prohibitively high in some cases. As a result, it is highly likely that a number of the smaller operators may be sold to larger operators over the next year (to avoid having to incur the costs of investing in compliant systems themselves), as well as a potential consolidation of smaller operators.

- **Public Private Partnerships:**
  there is the potential for significant service improvements and productivity gains in The Bahamas through introducing further competition into state owned monopolies. As seen in the UK in the 1980s, increased competition in the utility/infrastructure sector can help drive overall economic growth by helping both improve the performance and reliability of services provided, as well as lowering the cost of consumption for Bahamians.

Using past history of general elections in The Bahamas as an indicator, it will take a few months before our new Government has had a chance to fully assess its strategy for implementing the initiatives outlined in its Charter for Governance. Accordingly, I expect a strong uptake in the latter half of 2012 once investors themselves formalise their investment strategies and look to capitalise on any new opportunities resulting from the planned initiatives.

Nigel Rouse
Director, KPMG
Advisory Caribbean Ltd.

Nigel is a Director in KPMG Advisory Caribbean Ltd, based out of Nassau, in The Bahamas. His financial advisory experience ranges from financial due diligence (both buy and sell side) to Independent Business Reviews, historically within the European leveraged buy-out deal space.

While originally from The Bahamas, Nigel has spent a number of years living abroad. He is a Fellow of the Institute of Chartered Accountants of England and Wales and a member of the Bahamian Institute of Chartered Accountants. He has worked for KPMG in both the UK and in Australia (on a two year secondment from London). Prior to returning to The Bahamas in 2010, he was an Associate Director in KPMG London's Private Equity Group, providing due diligence services for both M&A and refinancing based assignments across Europe. In addition, Nigel also led due diligence based training courses for new managers within KPMG's European Transaction Services Group.

He has worked with both private equity and corporate clients, including the Cayman Water Authority, DP World, KKR, Blackstone, Permira, TPG, Thule AB and the Swedish Post, across manufacturing, telecommunications, chemicals, retail and healthcare sectors in the Caribbean, Europe, Africa and the US. Since his return to The Bahamas, he has led transaction services based projects in The Bahamas, Cayman, Dutch Caribbean, the Eastern Caribbean and Bermuda.

Building a Bridge: Marketing to the Next Generation

Gateway (GW) spoke to Elena Mortemore of Citi Trust about the imperative of building wealth management relationships with the next generation

GW: What are some of the forces shaping the Private Banking industry today?

EM: The past few years following the financial crisis have been volatile in finance, economics and even geopolitics on a global scale. People lost money, lost their trust in the banking systems and are very concerned about the uncertain environment. In private banking, we are experiencing a trust deficit with clients, enhanced regulations are reshaping how we serve clients and how we manage our business and we are witnessing major shifts in wealth patterns and trends. For example, within this decade we have seen significant wealth creation in emerging markets and an estimated $5T of wealth transfer from one generation to the next.

In the trust and fiduciary services industry, this turmoil and the related lack of optimism about the future have our clients thinking more about the wealth and security of the next generation. Clients are also keen to equip the next generation with the skills and financial savvy to manage the family's wealth legacy and weather similar challenges. Helping this next generation navigate through these potentially muddy waters is critical to the long-term success of Private Banking.

GW: How is this best done?

EM: Build a bridge across the generations. Open the line of communication to Generation X and Generation Y. While they may not be your clients now, they stand to inherit their parents' wealth and family businesses. Institutions need to understand client needs and adapt their approach accordingly; every generation has needs and behaviors that are different to that of the previous generation.

GW: Please explain.

EM: To begin with, they are generally more highly educated than their parents and very digital in their learning, information, communications, and financial transactions. With information being so commoditized, insight, expertise

and innovation will become key differentiators for success with these clients. Both my husband and I are Gen X'ers and we do all of our banking online. We can see our portfolio with the click of a button on our IPAD, purchase securities online and even get our questions answered via live computer chat with a customer service representative.

In an era of globalization and digitalization, service providers must find new ways of doing business or risk losing these prospective clients.

GW: How is Citi building relationships with the next generation?

EM: Citi Private Bank has the NextGen program to educate and engage the next generations. Conferences, seminars, dialogues and private discussions on wealth and family legacy related matters are regularly held to foster better inter-generational relationships and understanding. At these events, the next generation also gets to meet their global peers, which enables them to discuss common issues, share best practices and build a global network.

Our signature summer conferences cover investments, economics, entrepreneurship, trusts, art and philanthropy. Courses are taught by expert instructors and our own specialists. By the program's end, participants have knowledge about financial markets and wealth management. And importantly, they've built new relationships. Our programs are held in various cities and are very popular. Our clients are extremely appreciative of how we are engaging their scions.

Few Private Banks have developed programs and tools that are so focused on the adult children of their clients.

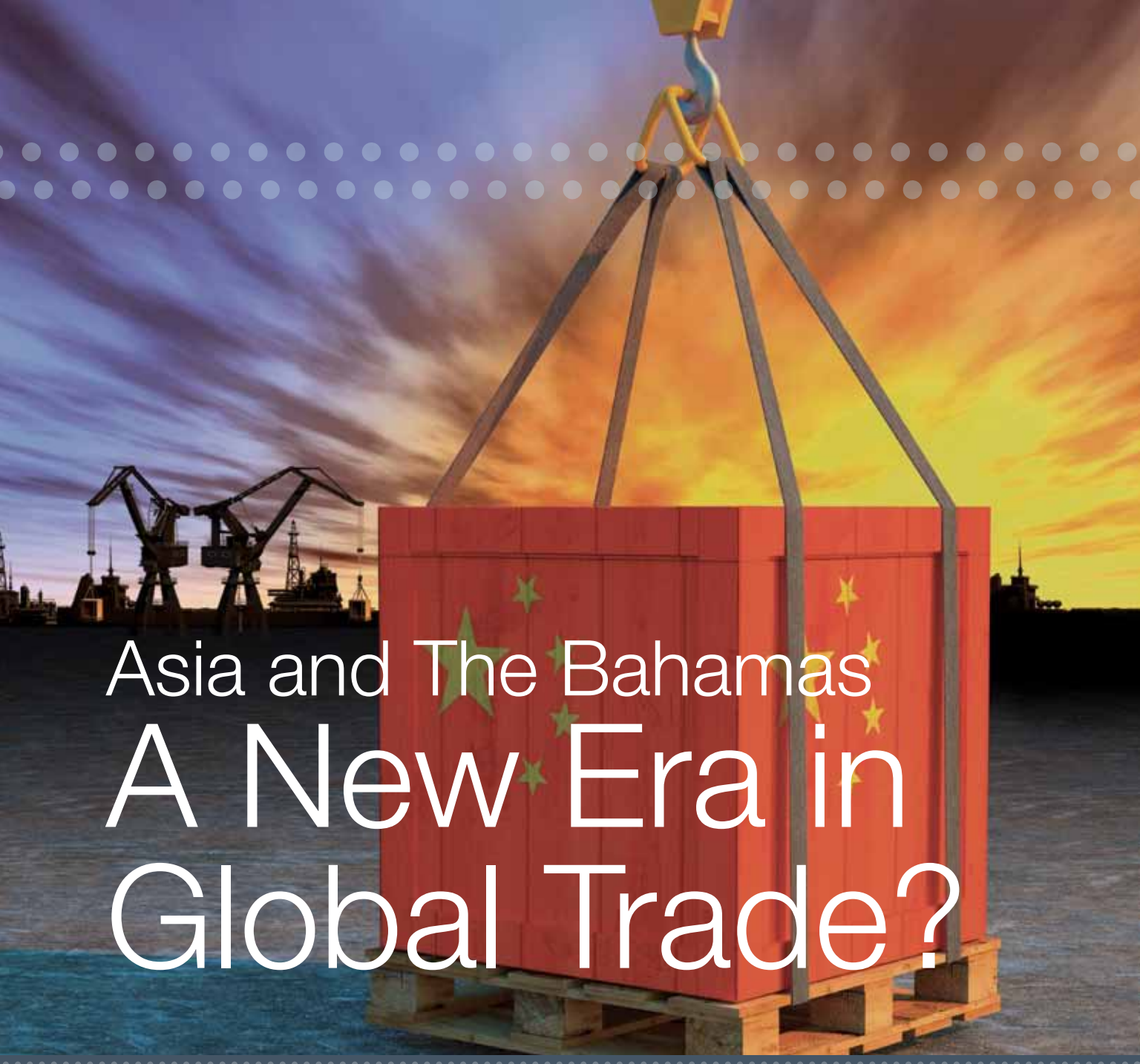
GW: Beyond the NextGen programs, how do you help prepare the next generation?

EM: Many times, our clients will look to their adult children to watch over their interests or guide them in their investments. When it comes to trusts, the children's roles are not usually that of decision makers, but they often are involved in the decision-making process. When clients ask their son or daughter to serve as protector or investment advisor for their trust or in the event of the parents' incapacity, we have the opportunity to develop a relationship with the children. They generally have a vested interest in the trust as heirs and as such, they have a strong incentive to learn about the intricacies of fiduciary structures. We consult with the children one-on-one to increase their understanding of trusts. It prepares them for the future and provides the parents with a measure of assurance that their children have clarity about how a trust functions. At the same time, it builds a strong foundation for our relationship with the children to continue after they come into their inheritance.

Elena Mortemore
Head of Citi Trust Centre,
The Bahamas and Cayman Islands

Elena Mortemore heads Citi Trust Centres in The Bahamas and Cayman Islands, overseeing business strategy and the administration of fiduciary solutions for Citi's Wealth Management global clients. She joined Citi Trust approximately eight years ago as the Head of New Business. For the last five and half years Elena has been the Head of Trust Administration for the same trust companies. Prior to joining Citi, Elena held the position of Legal Counsel and Wealth Management Advisor at Santander Bank & Trust (Bahamas) Ltd. and had more than six years experience with a local Bahamian law firm.

Elena is a Barrister-at-Law and is admitted to practice law in England and Wales and The Bahamas. She is a member of the Society of Trust and Estate Practitioners and is fluent in English and Spanish.



Asia and The Bahamas
A New Era in Global Trade?

By Joseph A. Field

Some two hundred years ago Napoleon Bonaparte remarked that China was a sleeping giant, and when she awoke, the world would tremble. He may well have been right.

Some ten years ago, a sage observer at Goldman Sachs coined the term BRICS (Brazil, Russia, India, China and more recently, South Africa) to refer to a series of countries whose economic development was going to outstrip the rest of the world. He may have been right. All have been successful to a greater or lesser degree - but then, so have Canada and Australia and they are not part of the 'team'. Brazil has done well, but Russia seems mired in the duels of the oligarchs and India's performance seems to have peaked. I am unsure as to what is going on in South Africa, but it does not seem to be in the same class of national powerhouses as the others.

China's Economic Growth

While the statistics in China are not necessarily as accurate as one would expect in the West, clearly it is a country which has made enormous strides in the last 30 years. China is now the second largest economy in the world (behind the United States) and some suggest that they will surpass the US within a decade. China is investing all over the world, primarily to secure its global supply chains in natural resources, but it also is a giant consumer of foreign products including luxury goods, expensive cars and travel.

The statistics certainly are indicative of a world which is expanding in a way which is hard for those who have not seen Asia to understand. According to Wikipedia, greater Guangzhou, the birthplace of new China now has over 41 million people. There are eight cities with over 10 million in population and literally dozens above five million. According to the Hurun Report, 11 of the 20 wealthiest women in the world live in China. Most millionaires in China are 15 years younger than their counterparts in the West. The largest Louis Vuitton store in the world is in Shanghai. The largest export market for Bentley cars is China.

Thirty years ago, people in China waved little red books and thought the Cultural Revolution was a great idea. It was not until 1979 that Deng Xiaoping said that to be wealthy was a good thing. At that time, there were no billionaires in China; indeed, there were no millionaires and private wealth did not exist. China has come a long way since then, but it still has a way to go. For China, the most serious question is whether the expectations of a growing middle class can be sustained when the rest of the world is once again looking at the abyss. The tensions between the wealthy 'princelings' and the emerging white collar employee have been accentuated in recent months by the Bo affair, but the central government is very much focused on the question. It is interesting to note that two years ago the government shifted its focus from an export-driven economy to a policy of infrastructure development and domestic expansion. Today in China, the rail and highway systems are in many cases as good as anywhere else in the world and for the first time in centuries, people in China do not die of starvation.

Still, there are some metes and bounds. There are still fairly rigid exchange controls in China and the country continues to adhere to a one child policy. There are signs that both are relaxing, but this will take time. In the interim, a substantial part of China's private wealth is outside the country and wealthier families are having more children.

One very interesting issue is that for a Communist country China supplies little, if anything, by way of social services to its people. As a result, the savings rate approaches 25% of income. These savings are used primarily for three purposes: healthcare, retirement and, above all else, education. The number one destination for Chinese sending their children abroad for schooling is the United States, followed by Canada, the UK and Australia. This is both at the high school and university level. This is true also in many other prospering Asian countries. Sometimes, a prior colonial attachment may cause families to select public schools or universities in the UK, while in other cultures, the American influence is strong. Recently, for many, the cost and relative proximity of Australia has been a beacon. In Thailand, Boston University is particularly attractive because it is the alma mater of the king.

Rest of Asia

Sometimes quietly, sometimes noisily, Asia powers on. China is the 'elephant in the room', but many of the other economies in the region are moving full steam ahead. Much of the rest of Asia also is experiencing a vast enrichment in its economies and many of the characteristics shown by the Chinese are reflected in other Asian nations. Growth remains strong, although the picture is somewhat varied. In some of the less advanced societies, such as Cambodia and Vietnam, manufacturing and low-wage production are greatly enriching the economies and in the next few months, we may see Myanmar emerge as one of the new Asian tigers. Singapore had the strongest growth of anyplace in the world last year, and countries like Indonesia and Malaysia with vast mineral reserves have shown great economic strength. India's growth may have cooled a bit recently but, again, this is a country which has a great deal of room for growth.

One of the questions which arises frequently is whether, in light of the global economic downturn and particularly the dramatic issues confronting Europe and in a slightly different way the United States, can Asia sustain its economic momentum? Is there likely to be a brush with recession there, as well? I am a lawyer and not an economist, so anything I say in this regard should be taken with a large grain of salt, but Asia is not Europe and it is not the United States.

The rate of growth in Asia seems to be slowing slightly, but is still progressing at a much faster rate than the rest of the world. Asians are investing a great deal in Asia, but they are also looking to other parts of the world to diversify their holdings and interests.

What Can This Mean For The Bahamas?

For The Bahamas, the vast increase in economic strength means that Asian countries are outpacing the rest of the world in both the production of goods and in their consumption, with the result that much of their trade is shipped to or from every corner of the globe. The Bahamas has one of the most advanced transshipment ports in the world, and this can only be a benefit for much of Asia. This port is Asian owned and it would seem only obvious that ties could be extended further to create even greater links between Asian customers on the one hand, and North and South American suppliers and consumers on the other, using the Freeport facility as a fulcrum for these cargoes.

An important part of the growth of wealth in Asia is a vast expansion in tourism. In China, for example, domestic tourist attractions are mobbed with local visitors. International travel also is growing at a very substantial pace, and both government and private tourist agencies are promoting a variety of foreign travel ranging from packaged tours to bespoke luxury trips. Two obvious barriers to the development of such business in The Bahamas are distance and language. With respect to the former, it should be noted that people often are attracted to the US and beach destinations are particularly popular. Adding The Bahamas to a US itinerary should not be a problem. The language issue is a more delicate issue. For many Asians, English is a second (if not a first) language, but for the Chinese, a basic knowledge of Mandarin is essential. This is not an insurmountable barrier and should be considered by tourism officials in The Bahamas.

An interesting aspect of the scholastic tourism discussed earlier is that often when children are sent abroad to be educated they are accompanied by the mother or other close relatives. This sometimes can be an acute problem because in countries like the United States, and in some cases the United Kingdom, such presence can give rise to some potentially serious reporting and tax obligations. A possible solution for some of these families with children being educated in the Eastern United States might be to consider acquiring a secondary residence (or even permanent resident status) in The Bahamas. This could serve as a platform for the family to avoid exposure to American taxation and at the same time, create a stable and secure home away from home - and to enjoy the bounty of The Bahamas when the school term ends. While many jurisdictions offer investor-related residence programmes, few if any are 30 miles from the United States with superb vacation facilities, combined with the ability to have an anonymous and secure base.

"For The Bahamas, the vast increase in economic strength means that Asian countries are outpacing the rest of the world in both the production of goods and in their consumption, with the result that much of their trade is shipped to or from every corner of the globe. The Bahamas has one of the most advanced transshipment ports in the world, and this can only be a benefit for much of Asia."

Clearly, many Chinese investors are gobbling up property in the United States; why not The Bahamas? The Chinese tourist is expanding his horizons and, as noted for the wealthier Chinese, a Western education still is a great symbol of achievement. This means that Chinese wealth is moving

"The Bahamas offers a great number of options in the areas of financial management and tourism, but simply sending a delegation to Asia once a year may not be enough to capture the Asian investment dollar."

much more out of China. For the fortunate few, The Bahamas could be an excellent location for a family vacation home.

What about the rest of Asia? Singapore is probably the wealthiest nation on earth and Hong Kong is not far behind. There also is massive wealth in Taiwan and Korea and significant pockets of wealth in Thailand, the Philippines and Malaysia. Indonesia has a population roughly equivalent to the United States with enormous resources and a large number of wealthy families.

Many people in the West are looking for an Asian play, but as in any developing region of the world, local knowledge (and indeed, often local partners) are essential for success. For some, the sheer size of China is an interesting challenge, for others, the simple size is daunting. Singapore and Hong Kong are among the most sophisticated financial centres in the world. The emerging markets of Cambodia, Vietnam and Myanmar beckon many who seek to involve themselves in developing economies.

The net result of this is greatly increased trade and an increasing interest on the part of Asians in seeking investment opportunity beyond their horizon. The Bahamas offers a great number of options in the areas of financial management and tourism, but simply sending a delegation to Asia once a year may not be enough to capture the Asian investment dollar. That being said, there is a significant Chinese hotel project being developed in Nassau and the Freeport cargo centre is owned by a Hong Kong group.

Napoleon clearly understood the potential of China. However, he did not envision the substantial potential represented by the rest of Asia. As the tigers of East Asia get stronger, it is likely that the nations of western Asia will also join in the party. ⁘

Joseph A. Field
Senior Regional Partner, Withers – Asia

Joseph Field is Senior Regional Partner, Asia of Withers. He represents substantial international families on structuring their affairs and estate planning. He also advises financial institutions with respect to the establishment of international trust companies and a wide variety of financial services, particularly with respect to life insurance.

He is listed in the 2011 Citywealth Leading Lawyers - International - Asia, and was one of the Top Leading International Lawyers by Citywealth in 2009. He was also cited within their Top 100 wealth professionals in 2007.

He is a frequent speaker at international conferences on legal issues facing international families and family offices. He is the editor of Planning and Administration of Offshore and Onshore Trusts (with Simon Jennings and Anthony Travers) a publication which targets the Society of Trust and Estate Practitioners ('STEP').

Mr. Field graduated magna cum laude from Princeton University and received his J.D. from Columbia University.

Maritime Bahamas - Clusters as a Development Tool

By Ian D. Fair

Many of you already will be aware of The Bahamas' position as one of the world's leading ship registries and our role as the pre-eminent passenger vessel registry. But The Bahamas maritime sector is much more than that; it currently covers a wide selection of industries and organisations which include:

- The Bahamas Maritime Authority
- The Grand Bahama Port Authority
- The Freeport Container Port
- The Port Department
- The Royal Bahamas Defence Force
- Inter-island and overseas shipping
- General maritime services
- Resident shipping companies
- Overseas shipping companies based here
- Various yacht service centres
- Other ports and marinas
- The fishing industry
- The maritime leisure and sport fishing business
- Suppliers, subcontractors
- Professional advisers

Other businesses and organisations may be less immediately obvious but they do have a major maritime element. These include the legal profession in all its aspects, finance and insurance.

Many factors attract business to our shores. Our legal system is based on English common law, which integrates well with many other countries. As to finance there is no capital gains tax, no income tax, no corporation tax and the Bahamian dollar is kept at parity with the US dollar. Our financial system is very stable and is well regarded by the international credit ratings agencies. But, very importantly, since independence from Britain in 1973, we have maintained a stable and well-functioning government based on universal suffrage. During this time, although different political parties have been in power, our commercial system

"Our vision is to have all these maritime industries and organisations join forces and coordinate their approach to the rest of the world."

has remained stable. In essence, The Bahamas is well known as an excellent place for both business and pleasure. Having the United States as our closest neighbour, just a short hop away, brings substantial advantages.

All of this has contributed to making The Bahamas one of the most successful maritime entities in the world but we do not intend to rest on our laurels. Our vision is to have all these maritime industries and organisations join forces and coordinate their approach to the rest of the world. This would bring benefits to all Bahamians.

It is a general rule in life that people achieve more when they work together than when they work alone. So my suggestion is that all our industries just mentioned should form an association and create a coordinating body - perhaps under the name 'Maritime Bahamas', which I feel would be both for their own benefit and more importantly for the benefit of The Bahamas. We could feed off our respective strengths, avoid wasteful duplication of effort and develop strategies and synergies together, not in isolation.

One might ask, why should we concentrate on the maritime sector? The answer is clear; shipping is the servant of world trade, it has exploded over the past fifty years and it is inconceivable that there will be any reversal in the foreseeable future. Shipping is the most economical, efficient and environmentally friendly way to transport goods whether it is raw materials in bulk or manufactured goods in containers.

90% of world trade goes by sea. That will not change in the foreseeable future. Globalisation, the emergence of many developing countries and the resulting explosion in world trade will see to that. The future of the maritime industry is therefore secure and presents many opportunities both in the short and long term. The Bahamas must be in a position to take advantage of these and we can do this most effectively by government bodies, businesses and financial institutions, cooperating with one another.

The Bahamas has the potential to become a major maritime player in the Western Hemisphere. It has a number of assets which can enhance its position in the maritime field, principal amongst which are:

- Proximity to the United States and the Americas generally.
- A low tax regime.
- Our port facilities are able to serve vessels trading between the East Coast of the United States, the Gulf of Mexico, the Caribbean and South America. We also sit astride the trade lanes to Europe, the Mediterranean, the Far East and Australia.
- Deep water harbours.
- An existing fleet of acknowledged high quality (1,680 vessels with 57 million gross tons).
- A financial industry with maritime connections.
- An existing highly regarded and successful ship repair industry.
- An educated workforce.
- A favourable climate and an attractive environment in which to do business.

One very important aspect is that the maritime field, like The Bahamas' other major industries of finance and tourism, requires no manufacturing capacity or natural mineral resources. It is based on a small but appropriately-educated workforce and is therefore an ideal industry for our country to develop. What other options are open to our future? We have three principal business sectors, tourism, financial services and maritime. We must protect and develop these every day, without fail. Our future success as a stable country depends upon it.

Taken as a whole, the maritime sector is the third largest contributor to the Bahamian economy and rivals the financial services industry in size. This is one of our lesser known stories and needs to be promoted to a much larger extent. At the moment, the industry is somewhat fragmented and has not been marketed as extensively as it deserves.

For the maritime sector to bring maximum benefit to the country it must not only attract new businesses

and grow existing ones but it must also provide more employment for Bahamians, especially the young, with jobs that are satisfying and build into worthwhile careers.

When we think of careers in the maritime sector it is important to look beyond simply 'going to sea', important though that is, and look at the maritime cluster as a whole. The range is almost unlimited but includes:

- Shipowning
- Ship management and operation
- Ship chandlers
- Ship's agents
- Shipbroking
- Ship repair and refitting
- Insurance
- Finance
- Law

These are all in addition to seagoing, although in several career options, experience at sea is very beneficial. It is important to recognise that many of these industries offer opportunities at many levels. Some degree-level education is necessary for the higher-level positions but there are also many careers which require more practical skills and these can be equally rewarding both financially and in terms of career satisfaction. At present, career guidance is fragmented and could be greatly improved by a coordinated approach from the whole sector.

Let me take an example – we have a large ship repair yard in Freeport. What skills are required there? Careers are possible at a number of levels depending on the level of academic achievement and area of interest of the person. There are high level engineering and naval architectural careers requiring degree level qualifications and wide experience in the industry. But, there are also careers for fitters, welders, painters and plumbers as well as within the fitting-out area – those beautiful interiors of cruise ships need a wide range of skills to maintain them.

Finally, if we look at other small island states that have similar assets to The Bahamas; Cyprus, the Isle of Man, Singapore, Hong Kong and the Marshall Islands for instance, what can we learn from their experience?

- **Cyprus and the Isle of Man** have attracted sizeable numbers of ship management companies, Cyprus from Europe, the Isle of Man mainly from the UK.

- In the **Isle of Man** this has resulted in other finance and insurance companies following the ship management companies to the island. The Bahamas could use its proximity to the Americas to do the same.

- **Singapore** has exploited the tax regime of Japan to create an attractive haven for Japanese shipowners - The Bahamas could adjust its tax system to be equally attractive. They have also used their geographical position at a key point on a number of sea routes to attract many other maritime-related industries.

- **Hong Kong** is now part of China and shares both language and culture with China, this is a major attraction for Chinese shipowners, as well as other maritime sectors. The Bahamas not only shares its language and culture with the US and Canada, but also shares those characteristics with many Commonwealth and some European countries; can these be further exploited?

- **The Marshall Islands** has very close relations with the US and has built up a large, worldwide marketing team. With all our maritime industries working together, could The Bahamas follow this route?

Each of these paths, suitably adopted for the Bahamian situation offers potential for strong growth, but to achieve growth in the whole maritime sector we need to work together.

What would 'Maritime Bahamas' look like? In the first instance it would probably have a coordinating committee and possibly a very small secretariat. With modern communications it would be possible to involve virtually all interested parties in the broader policy decisions. It could become a 'one stop shop' for those making enquiries about maritime business in The Bahamas and could help to avoid wasteful duplication of effort. It would be able to ensure that any presence at international conferences and exhibitions reflects the full range of maritime interests and possibilities within The Bahamas. Advice on careers could reflect the broad spectrum of opportunities for the upcoming generation. By having maritime interests talking to one another fresh ideas would emerge to enhance the future for all.

The Bahamas is a nation steeped in the history and traditions of the sea. We were discovered by sea. We have a rich maritime heritage. Let us grasp the moment and make an even greater contribution to our economy in the years to come. ::

Ian D. Fair

Chairman,
The Grand Bahama
Port Authority

Ian Fair has been involved in business and particularly the financial services industry in The Bahamas since 1969. He currently is the Chairman of The Grand Bahama Port Authority and Port Group Limited, the Chairman of Bahamas First Holdings Limited, the largest general insurer in the country, and Deputy Chairman of Butterfield Bank (Bahamas) Limited.

He was the founding Chairman of The Bahamas Financial Services Board ("BFSB"), from 1998 to 2002 and presently is the Chairman of the Bahamas International Securities Exchange ("BISX") and immediate Past Chairman of the Bahamas Maritime Authority ("BMA").

Mr. Fair's previous work experience was as Chairman of MeesPierson Bahamas, which he co-founded in The Bahamas, from 1987 to 2003, Managing Director of Deltec Panamerica Trust Company and with the Bank of Nova Scotia Trust Company (Bahamas) from 1969-80 and 2003-6.

Mr. Fair is a member of the Society of Trust and Estate Practitioners ("STEP") and was the founding chairman of its Bahamas Branch and is a Fellow of the UK Institute of Directors. He also serves on the boards of a number of charities.

Opportunities Arising from the TIEA between Canada and The Bahamas

By Sandra Slaats & Cassandra Hemmings

As a result of the new Tax Information Exchange Agreement ("TIEA") between The Bahamas and Canada, certain business income earned by a Bahamas subsidiary of a Canadian corporation is now eligible for tax-free repatriation to Canada.

Multinational corporations often establish subsidiaries in zero tax or low-tax jurisdictions, such as The Bahamas, to reduce the overall tax liability for the corporate group. However, the repatriation of the subsidiary's income always is an issue. Depending on the tax laws applicable to the parent company, a dividend from the subsidiary can attract significant tax.

In Canada, dividends from a foreign subsidiary can be received without Canadian tax if they are considered to have been paid out of the "exempt surplus" of the subsidiary. Previously, a subsidiary could earn exempt surplus only if the subsidiary was resident in a country with which Canada has concluded a comprehensive tax treaty for the relief of double taxation. Canada does not have a double tax treaty with The Bahamas. However, recent law changes allow the same treatment to apply if Canada has entered into a TIEA with the country of residence.

Ratification of The Bahamas-Canada TIEA

A TIEA sets out a framework for the mutual exchange of information between countries to help administer and enforce their domestic tax laws. Similar to many double tax treaties, a typical TIEA is based on standards set by the Organisation for Economic Co-operation and Development ("OECD"), and agreed to by the members of the OECD.

TIEAs typically are negotiated where a comprehensive tax treaty has not been or will not be entered into. The change in Canadian tax law was intended to act as an incentive for countries that do not impose income taxes to enter into TIEAs with Canada.

The TIEA between The Bahamas and Canada was signed on June 19, 2010 and entered into force on November 16, 2011. The tax exempt treatment of dividends is available for the entire taxation year of a Bahamas subsidiary in which the TIEA enters into force. For example, where The Bahamas subsidiary has a fiscal period based on the calendar year, it became eligible to earn exempt surplus as of January 1, 2011.

Eligibility of Bahamas Subsidiaries to Earn Exempt Surplus

The Bahamas subsidiary must be a "foreign affiliate" of the Canadian parent company, which generally requires at least a 10% ownership interest in the subsidiary, including shares owned by related parties. The foreign affiliate must be resident in The Bahamas (or be resident in another tax treaty or TIEA country and have a branch in The Bahamas). Residency is based on criteria developed under the common law. In general, a corporation is considered to be resident where it's "mind and management" resides, which is typically where the Board of Directors meets and makes important decisions. A foreign affiliate that is resident in a tax treaty country must also generally be "subject to tax" in that country for purposes of the tax treaty. That requirement does not apply to a foreign affiliate that is resident in a TIEA country such as The Bahamas.

What Income is Included in Exempt Surplus?

Exempt surplus generally includes income from an active business and excludes income from property. If the foreign affiliate earns income from property, the income is generally considered to be "foreign accrual property income", and is taxed immediately to the Canadian parent if the foreign affiliate is a controlled foreign affiliate, whether or not a dividend is paid to the Canadian parent.

In some cases, the characterization of the income is simple. For example, the income from operating a hotel is income from an active business. However, the rules for categorizing income of a foreign affiliate can be complex.

In some cases, income that would be considered to be business income under the common law characterization of such activities is deemed to be income from property. For example, for certain businesses that involve earning interest, rent, royalties or similar types of property income, the business will generally be deemed to earn income from property unless the foreign affiliate employs greater than 5 full-time employees in the active conduct of the business. Certain businesses that involve transactions with the Canadian parent or Canadian customers are also deemed not to generate active business income. This prevents the diversion of Canadian-source business income to another country.

Conversely, income that typically would be considered to be income from property is sometimes deemed to be income from an active business. For example, active business income is deemed to include amounts such as interest and royalties paid to the foreign affiliate by another foreign affiliate of the Canadian company that deducts the payment in computing its income from an active business. The income is included in exempt surplus if the payor is resident in and carrying on business in a tax treaty or TIEA country. This rule allows for the use of special purpose foreign affiliates such as group finance companies.

> "TIEA's typically are negotiated where a comprehensive tax treaty has not been or will not be entered into. The change in Canadian tax law was intended to act as an incentive for countries that do not impose income taxes to enter into TIEAs with Canada."

Typical roles for foreign affiliates resident in a zero tax or low-tax jurisdiction may include:

- holding the shares of other group companies, which may be sold without capital gains tax;
- making loans to other group companies;
- licensing software and other intellectual property;
- captive insurance;

- the procurement of goods and performance of services for other group companies, and
- manufacturing and processing.

While the new TIEA will allow the use of a Bahamas resident foreign affiliate to earn exempt surplus in all these cases, The Bahamas nevertheless may be at a disadvantage compared to other jurisdictions that have entered into tax treaties with other countries. For example, if a Bahamas company makes a loan to another subsidiary of the Canadian parent, the interest paid to The Bahamas company may be subject to withholding tax if the country where the debtor is resident imposes a withholding tax on the payment of interest under its domestic law. No reduction in the withholding tax rate would be available under an applicable tax treaty since The Bahamas does not have any tax treaties with other countries. Certain low-tax jurisdictions do have a network of tax treaties and therefore may be better candidates for a special purpose entity, depending on its anticipated sources of income. Where no withholding tax applies to the sources of income earned by the Bahamas subsidiary, and the activities of the Bahamas subsidiary don't place it at risk of being considered to be carrying on business in another country, the lack of tax treaties should not be a concern.

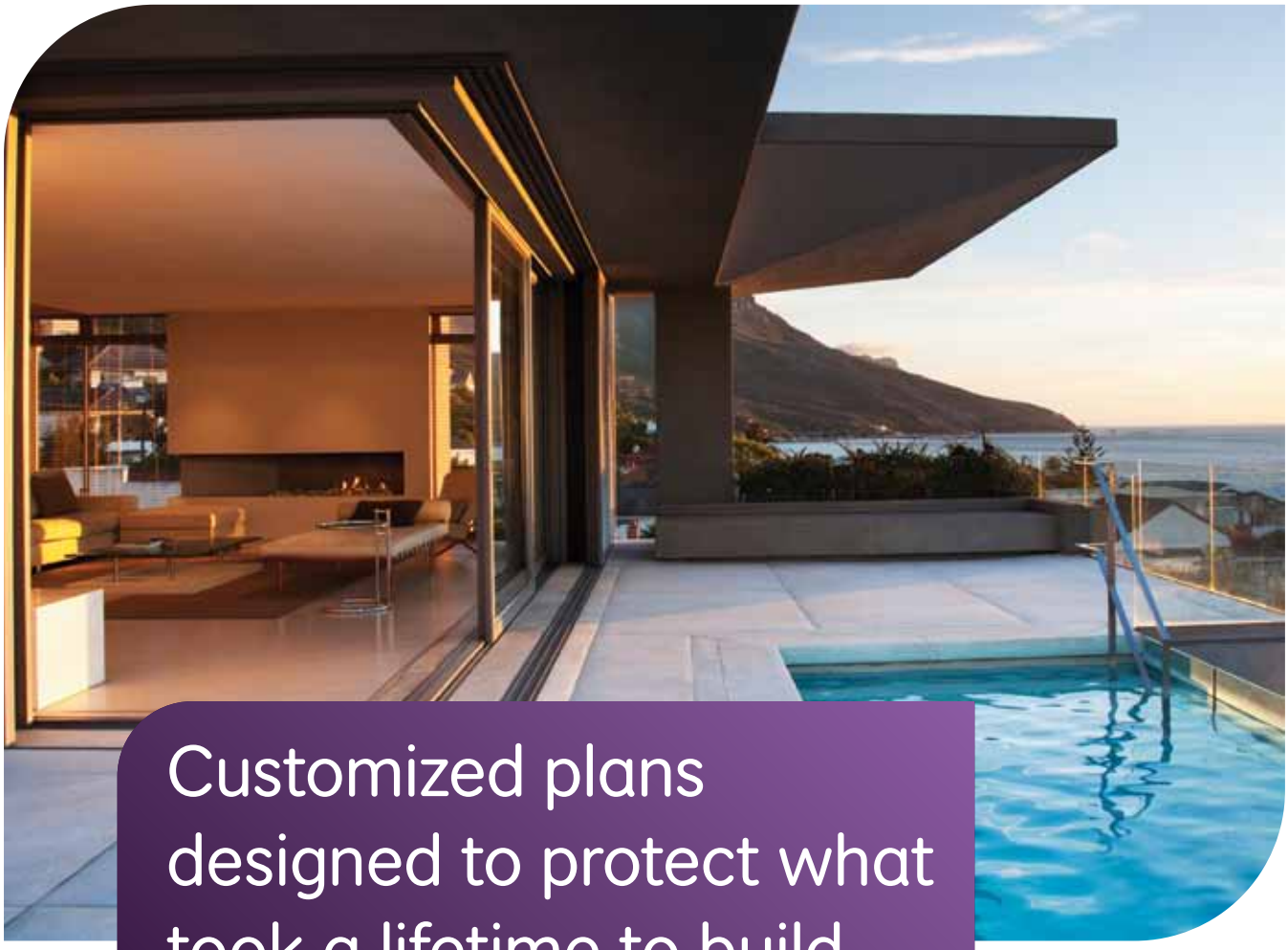
Sandra Slaats; LLB, LLM
Partner-International Tax,
Deloitte & Touche

Sandra Slaats is a Partner in the International Tax group of the Toronto office of Deloitte & Touche. She is the chair of the Canadian firm's International Tax Opinion Committee and a member of the firm's international tax think tank group. She also is a member of the Joint Tax Committee of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, and part of the Committee's working group on the foreign affiliate rules. She lectured for many years on the taxation of foreign affiliates at the CICA Part III tax course. Ms. Slaats is a frequent speaker on international tax issues, including presentations to the Canadian branch meeting of the International Fiscal Association and the Annual Conference of the Canadian Tax Foundation. She has contributed numerous articles to tax publications including the Canadian Tax Journal, Tax Notes Today, Tax Notes International and The Tax Executive. She has been repeatedly named as one of the world's leading tax advisers in the Legal Media Group's Expert Guides. From 1987 to 1990, she was a Tax Policy Officer with the Canadian Department of Finance. She received her Bachelor of Laws degree from the University of Toronto in 1985 and a Master of Laws (specializing in Taxation) from Toronto's Osgoode Hall Law School in 1997.

Cassandra Hemmings, MTax
Analyst-International Tax, Deloitte & Touche

Cassandra Hemmings is an Analyst with Deloitte & Touche in the International Tax Services practice. She recently joined Deloitte after completing the Master of Taxation program through the University of Waterloo. She has experience assisting both Canadian and foreign based clients, and has been involved in domestic income tax projects as well as international reorganizations and repatriation strategies.

Prior to joining Deloitte & Touche, Ms. Hemmings worked extensively in the financial services sector providing compliance and regulatory services to private investment funds.



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Scotia Private Client Group

Strategies For Effective Giving – The Bahamas Well Positioned As A Philanthropic Partner

By Anthony J. Minna

The laws of The Bahamas and the expertise of its financial services sector likewise make the island nation a top-tier jurisdiction for the realisation of philanthropic initiatives

John D. Rockefeller, Sr. famously said that he found it harder to give his money away than he did to make it. Some people might snicker at such an observation, but Rockefeller, who by many measurements was both the richest person and greatest philanthropist in history, was certainly qualified to comment on the relative difficulties of giving intelligently. The desire to help others, while unquestionably laudable, is only the first step toward actually helping them. There can be many obstacles and even risks along the way. But assistance is available for those who wish to assist others and, when properly navigated, the world of philanthropy - private initiatives for public good - can be made highly rewarding not only for those who ultimately benefit from the initiatives, but also for those who give.

Private giving can take many forms, ranging from a simple donation of money placed directly in the hands of a person in need to the work of charitable foundations created by ultra high net worth individuals with a vision for a better world. The objects of giving are similarly varied and include the alleviation of poverty, the healing of the sick, the eradication of disease, the promotion of education, the protection of the environment, and the advancement of the arts. While a simple donation to an individual or a recognized charity may not require much time or effort on the part of the giver, other initiatives, particularly those involving larger sums of money or transformational goals, often require a more complex

"John D. Rockefeller, Sr. famously said that he found it harder to give his money away than he did to make it."

plan that includes vetting of the recipients, structuring of the donation, and monitoring of the results.

The first step in any philanthropic initiative, big or small, is the identification and vetting of potential recipients. An individual contemplating a simple donation need look no further than the internet for assistance here. Independent charity evaluators such as Charity Navigator, GiveWell, Philanthropedia, and GreatNonprofits help donors by reviewing and rating and/or recommending potential recipients on the effectiveness and sustainability of their programs as well as their transparency and accountability. The results of their research are available online at no cost. Many worthwhile projects also accept donations online.

For donors with more personalized and ambitious objectives, lawyers and consultants who specialise in philanthropy are available to help their clients select and later implement projects in line with their goals. One of the risks of philanthropy is that a donor may give to a project whose objectives are radically different from the ones he believed he was supporting. Professional research and structuring of the gift may be necessary where the project is new or the recipient is not a well-known organization.

Individuals looking to translate philanthropic ideas into action can look to a global financial services institution, many of which have in-house philanthropy teams, as a first point of contact. Such institutions can assist with the establishment of donor-advised funds and the creation and administration of trusts and foundations - just some examples of the many philanthropy-related services on offer. Advice also can be had on socially responsible investing and impact investing; the former involves screening an investment portfolio to remove companies that engage in objectionable social or environmental activities, while impact investing aims to invest in ways that not only generate financial returns, but also promote projects and activities in line with investors' philanthropic objectives.

For the record, it should not be assumed that values-based investing is only suitable for do-gooders not concerned with maximizing the return on their investments. According to a recent Harvard Business School study that tracked the performance of 180 companies over 18 years, a dollar invested in the 90 more socially and environmentally responsible companies in 1993 had grown to $22.60 by 2011. That same dollar invested in the 90 companies less concerned with sustainability returned $15.40 over the same period.

Implementation of philanthropic initiatives brings a new set of challenges, but also new opportunities for donors to become active in their giving, and perhaps even to become a real part of the change they wish to make happen. The most common form of giving remains a direct donation of cash or other assets to a charitable cause. The following is a summary of six other widely-practiced gift-giving strategies:

1 Beneficiary Designations in Wills and Revocable Trusts

Donations can be made of specified dollar amounts, percentages of estates, or residual parts of estates once all other bequests or distributions have been made. Gifts made via a will or revocable trust have the advantage of allowing the donor access to the funds or other assets right up until death, which allows for more substantial donations than might have been made during life.

2 Donor-Advised Funds

Typically established by large financial institutions, a donor-advised fund is a designated fund offered through a public charity such as a community foundation. The fund is segregated from the foundation's remaining assets and may even bear a dedicated name chosen by the donor. The donor usually can make recommendations concerning the fund's investments and can act as advisor to the fund in connection with the projects and charities that ultimately receive the assets.

3 Private Foundations

The structure, legal status, and tax treatment of a private foundation can vary from country to country, but the common idea is that of a private charitable organisation created and funded by an individual or a family to further a philanthropic

agenda. Family members and/or friends and advisors often serve as trustees or directors of foundation boards. It is this potential for active management that makes private foundations well-suited to families who wish, or expect their members not merely to donate assets but also to cultivate their common philanthropic impulses together, to develop their management and administrative skills, and participate in the selection of individual projects and the application of the funds.

4 Charitable Remainder Trusts

As with private foundations, there are different varieties of charitable remainder trusts, but the standard structure is an irrevocable trust that makes a stream of income payments, for a defined term or for life, to the donor. At the end of the term, or on the death of the donor, the remaining assets are distributed to charities specified by the donor in the trust deed. Advantages of a charitable remainder trust include the ability of the donor to claim a tax deduction for a gift of cash or appreciated assets and the tax-free growth of the donated assets as long as they remain undistributed to the donor, while at the same time ensuring that the donor is able to receive funds for life or as long as he believes he will need them.

5 Charitable Lead Trusts

Also known as the Jackie O Trust because it was used by Jacqueline Onassis to eliminate virtually all estate taxes upon her death, the charitable lead trust is the reverse construct of the charitable remainder trust. Here the stream of income for a specified number of years or lifetime of a specified individual is paid first to the charity, then to non-charitable beneficiaries (usually the donor's children) named in the trust deed. Tax systems vary from country to country, but in the United States to name an important example, the present value of the payment stream to the charity qualifies for a charitable gift tax deduction, so that only the actuarial value of the residual gift to the non-charitable beneficiaries is subject to gift or estate tax. In a low-interest rate environment like the current one, where the IRS presumes a low rate of return, a large enough stream or payments to the charity can cause that actuarial value to approach zero.

6 Project-Related Donations

Although the recipient of a charitable gift usually decides upon the application of the funds, certain donors have very specific philanthropic goals; for example the founding of an educational institution or hospital in their hometown, or the construction of a museum to house a special collection. These donors should be aware of the risk that, once a gift has been made, the donor and the recipient could become involved in a dispute over the specific purpose of the gift or how the funds were meant to be applied. Charitable donations by musicians Ray Charles for the construction of a performing arts center, and Garth Brooks for the construction of a women's center, both became subjects of such disagreements and, in the Brooks case, a lawsuit. Legal advisors can mitigate this risk through the drafting of a Grant Award Agreement that defines 1) the objective of the donation, 2) the time frame in which it is to be applied, 3) the specific amounts to be applied to the various aspects of the project, and 4) the frequency and detail of progress reports. It can be stipulated that a breach of the terms of the agreement will result in a return of the gift.

A final, practical point should be made on the subject of implementation. Before any assets are actually donated, it is highly recommended that donors consult their lawyers and/or tax advisors to determine the tax consequences of the gift and to take advantage of any charitable deduction attaching to it. An individual who holds securities or other assets that have increased in value, for example, is typically advised to gift the assets in kind rather than first selling them and gifting the proceeds. The sale of the appreciated assets followed by a donation of the proceeds would attract capital gains tax, resulting in a smaller tax deduction for the donor and a smaller donation for the beneficiaries.

Once a donation has been made, it is natural for the giver to hope he has made a positive impact, and he may wish to evaluate that impact. Indeed, larger philanthropic organisations such as The Bill and Melinda Gates Foundation devote personnel and resources to track the results of their grants. For donors without their own monitoring capability, there are specialised organisations that provide these services. Recipients, too, often welcome evaluation, both as a means of showcasing the beneficial impact made by donors' contributions and as a way of improving their own practices.

The exact methods used to evaluate the impact of a gift will vary depending on the nature of the project, but ideally will employ specified and measurable indicators. A grant to promote education, for example, might use the number of teachers trained, the number of children taught, and test

scores as evaluation metrics. A vaccination program would logically look to the number of individuals inoculated.

A recent trend in the evaluation of charitable initiatives has been the emergence of philanthrocapitalism - the convergence of capitalist methods and philanthropy. Donors measure their grants in many of the same ways they measure the health of their business ventures: they look to the "social return on investment" (SROI) and the "double bottom line," i.e. financial returns on the one hand and social or environmental returns on the other. As another example, venture philanthropists actively work together with recipients on their projects in the same way a venture capitalist works with entrepreneurs to ensure the success of their common venture.

An individual looking to establish a philanthropic vehicle will need to select a jurisdiction in which to establish his trust, foundation, or fund. The Bahamas is an ideal choice.

The importance of philanthropy is understood in The Bahamas, and the spirit of giving runs deep among the Bahamian people. Annual social events such as the Hellenic Ball and the Heart Ball raise thousands of dollars for worthy causes while organisations such as the Bahamas National Trust work to preserve the unparalleled beauty and environmental integrity of its islands and oceans. The most popular tourist destination in The Bahamas is the Atlantis hotel - its iconic Royal Towers are recognised around the world. Less well-known, but no less worthy of recognition, is the work being done on behalf of the world's oceans by the Kerzner Marine Foundation, a nonprofit organisation supported by private donations and a portion of certain Atlantis revenues. Advised by some of the world's foremost experts in oceanic research and conservation, the Foundation has made grants to protect and enhance marine ecosystems both in The Bahamas (e.g. The Blue Project and the Andros National Park Expansion) and places as diverse as Northern Sumatra, The Philippines, and Bangladesh.

The laws of The Bahamas and the expertise of its financial services sector likewise make the island nation a top-tier jurisdiction for the realisation of philanthropic initiatives. As noted above, the common law trust and the private foundation are two of the most widely used implementation vehicles in philanthropy. The Bahamas recognises both of these. The Bahamas has extensive legislation dealing with trusts and trustees as well as an independent judiciary able to draw on centuries of common law trust jurisprudence.

Private foundations, which are a more traditionally civil law concept, were introduced in The Bahamas by the Foundations Act in 2004. Unlike most private foundations in the United States, which pursuant to Section 4940 of the Internal Revenue Code are subject to an excise tax of 2% on their net investment income (with certain exceptions), and face additional excise taxes if they fail to meet a minimum annual payout requirement of 5% of their net investment assets, foundations in The Bahamas, like trusts in The Bahamas, are subject to no taxes whatsoever and no minimum payout requirements. Trust and foundation assets thus can grow free of any imposition, leaving a greater amount available for distribution to the ultimate recipients. Moreover, Bahamian legislation allows for trust settlors and foundation donors to retain a relatively broad range of powers and play an active role in the investment of their assets without jeopardising the overall integrity of the vehicle. Likewise, donor-advised funds can be set up at many of the island's banks.

The Bahamian financial services sector is able to provide a broad range of services to prospective philanthropists. There are over 275 financial services firms licensed under the Banks and Trust Companies Regulation Act, employing over 4,900

"An individual looking to establish a philanthropic vehicle will need to select a jurisdiction in which to establish his trust, foundation, or fund. The Bahamas is an ideal choice."

people from The Bahamas and all corners of the globe. The world's leading financial institutions have an extensive local presence in the banking, trust, and insurance sectors, and employ multilingual, multicultural specialists experienced in the management of financial and other assets as well as the administration of fiduciary vehicles and funds. Locally active global firm also are able to draw on the knowledge of their philanthropy experts worldwide.

The Bahamas thus emerges as the perfect partner for a philanthropist seeking to transform his vision of a better world into reality.

Anthony J. Minna

Trust Relationship Manager, UBS Trustees (Bahamas) Ltd.

Anthony Minna has served in his present position with UBS Trustees since May, 2011. He has previous experience in international law and banking in Canada, Liechtenstein, and Switzerland and also served as Head of Trust Administration at UBS Trustees (Bahamas) Ltd. (2003-2006) and Wealth Planner at UBS (Bahamas) Ltd. (2006-2009). He holds Bachelor's degrees in history and law from the University of Toronto, and a Master's degree in law from the University of Brussels. He is admitted to the practice of law in New York State and the Province of Ontario.

The Philanthropy and Values-Based Investing Team at UBS provides blue-ribbon assistance in the matching of donors' goals and suitable projects. Among the many services offered free of charge to its ultra high net worth clients are knowledge exchange roundtables and large-scale philanthropy forums where prospective donors can meet and discuss their ideas and goals with other more experienced philanthropists.

From July 2, 2012, Mr Minna will serve as CEO, UBS Trustees (Cayman) Ltd.

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Bahamian Talent:

The Present and Future of the Bahamas Financial Services Sector

By Kim W. Bodie and Tanya McCartney

The Labour Force in the Bahamas Financial Services Sector

The Bahamas financial services sector employs well over nine thousand persons. In the banking and trust sector alone, there are seven domestic clearing banks and over two hundred sixty (260) other banks and trust companies, with employment approaching 5,000. The strength of a sovereign country rests primarily in its human capital - specifically in the ability of citizens to identify and utilise their acumen and talent for the greater good of nation building.

The attractiveness of The Bahamas as a financial services centre is buttressed by its skilled labour force. Bahamians are highly qualified to work within the sector. The Oxford Economics Study on "the Economic Value of the Financial Services Industry in the Bahamas" (2007) noted that:

> "of the 9,300 direct employees of financial services, an estimated 8,925 are Bahamians."

Annual reports on the contribution of the financial services sector to the overall economy as produced by the Central Bank of The Bahamas confirm the high ratio of Bahamians versus non Bahamians in the sector. Importantly, the Oxford Economics study also highlighted that there were many

"It will be the ability of persons to be innovative in creating new products and services that will reposition the Bahamian financial services sector. A tangible investment in the people who make up the sector - the human capital - is critical to the growth of the financial services sector."

opportunities for training and development for professionals who work within the sector. This training is both informal (in house training) and formal (external) programmes towards degrees and professional designations. There has been great investment in the professionalisation of the Bahamian financial services sector. Across the spectrum, from banking to trust and extending to the insurance sector, Bahamians have internationally recognised qualifications that position them to compete with international counterparts. This has fortified the foundation of the sector. However, there has to be a commitment from all stakeholders - the government, financial institutions, the talent who work within the institutions as well as education and training bodies - to build upon this base for the sustainability of the sector.

The Importance of Education and Training

Competition within the sector on a global level is fierce. As a jurisdiction faces intense scrutiny and seeks to avoid being placed on "blacklists" or being labeled as a "harmful tax jurisdiction" the skill level of the professionals in the sector becomes even more important. It is only the competence of the human capital and quality of service that differentiates one jurisdiction over the other. It will be the ability of persons to be innovative in creating new products and services that will reposition the Bahamian financial services sector. A tangible investment in the people who make up the sector - the human capital - is critical to the growth of the financial services sector.

Opportunities of Education and Training

Bahamians are well educated and trained. The number of persons with tertiary level education continues to grow. The College of the Bahamas offers full four year Bachelors Degrees in its School of Business and most recently offered its very own Master of Business Administration (MBA) program neatly crafted after consultation with key stakeholders to meet the needs of the modern day Bahamas. In addition to opportunities for formal degrees, The Bahamas Institute of Financial Services (BIFS) offers professional banking and trust designations designed to provide professionals within the sector with practical skills that can be transferred easily, and applied in the working environment. There are also professional bodies such as the Society of Trust and Estate Practitioners, The Bahamas Institute of Chartered Accountants, the CFA Society of The Bahamas, the Bahamas Association of Compliance Officers, and the Bahamas Real Estate Association – all of which provide training specific to their respective areas. Additionally, various insurance designations/certifications are promoted throughout the insurance Industry.

The Bahamas Institute of Financial Services

In 1973 shortly after The Bahamas became a sovereign nation, The Bahamas Institute of Bankers (now called The Bahamas Institute of Financial Services - "The Institute") was formed. The mission of the Institute was to develop a cadre of Bahamian professionals equipped to work within the sector. Today the industry has grown and developed into much more than a few banks. The Institute is no longer merely preparing Bahamians for entry level positions but it is key to the professionalisation of the Bahamian financial services sector. Further, through its high school programme (G12) it is stimulating an interest in the sector in young persons who are at school leaving age and presenting the financial services sector to young people as a viable consideration when making career choices.

The Institute is highly regarded among professionals in the financial services sector as being one of the country's top educational institutions. The success of the Institute is evidenced by the achievements of the many employees who have completed programmes and who have had continuous career advancement, now holding senior positions within the sector. The Institute has an average of 600 enrolments annually.

Why is the Bahamas Institute of Financial Services a Most Valuable Player in the Sector?[1]

The Institute offers a product, the features of which are targeted at a specific market: persons who are employed or desire to be employed in the financial services sector. Its stated mandate is to provide:

> "High standards of training and professional development to foster and enhance the professional growth and status of employees in the financial services sector"

In meeting its mandate the Institute is committed to the following ideals:

1 **Providing a wide Range of Quality Course Offerings with Practical Application to the Workplace**

In the early years the programmes offered by the Institute were focused on the fundamental aspects of banking. The aim today is to provide both academic qualifications and practical skills that can be applied on the job right away. Today the course offerings have been expanded to include:

- The Banking Certificate Programme
- A Trustee Diploma
- International Diploma in Anti Money Laundering and Compliance (in conjunction with the Bahamas Association of the Compliance Officers and the International Compliance Association)
- International Risk Manager
- Certified Financial Planner
- Certified Credit Professional
- Project Management
- Leadership Essentials Certificate
- Advanced Leadership Essentials
- International Certificate in Securities and Investments
- Chartered Institute for Securities and Investment (CISI) Certificate in Securities
- Chartered Institute for Securities and Investment (CISI) Certificate in Wealth Management
- Certificate in Investment Funds Management
- Chartered Banker MBA
- BSc (Hons) Compliance
- BSc (Hons) Trust and Estates
- Certificate in Company Law, Practice & Administration Stages I & II

2 **Offering Internationally Accredited Courses (i.e. Chartered Institute of Bankers, Scotland and the Canadian Securities Institute);**

3 **Promoting Professional Designations (i.e. Chartered Banker) for the professionalisation of the sector;**

4 **Promoting higher education by ensuring that credits that are transferable to other tertiary level Institutes (the College of the Bahamas and Nova Southeastern university);**

5 **Being accessible to working professionals. Courses are offered after work hours and on weekends;**

6 **Reaching out to the entire archipelago of The Bahamas with online access to courses (eLearning);**

7 **Maintaining a sound relationship with financial institutions who founded the institute and comprise its membership. The Institute is physically located in the heart of Nassau's financial district;**

8 **The recognition and support of licensed financial institutions, professional associations and regulatory bodies. The institute collaborates will all key stakeholders as a means of staying relevant to the needs of the sector;**

9 **Quality Assurance - Qualified Lecturers with experience working in the financial services sector are recruited for quality assurance**

The Way Forward

The skill level of the professionals who work within the sector is a well kept secret. More must be done to showcase the talent that resides in the Bahamian financial services sector.

[1] Brooks Robin, Campbell Claudia and McCartney Tanya, "STRATEGIC FIELD PROJECT FOR "THE BAHAMAS INSTITUTE OF FINANCIAL SERVICES" (2012)

Moreover, more investment must be made in the development of the talent that resides in the sector. There are Bahamians who have obtained international exposure and who have gone on to add value to their respective organisations and ultimately the sector.

Talent Management

The Government and the Private Sector must work towards implementing a robust talent management strategy for the sector to include:

- Identifying Talent
- Talent Retention; and
- Talent Development

The talent management strategy should involve bringing together all the stakeholders from the Government and Private Sectors to examine the existing talent pool, indentifying any opportunities and promoting the requisite training to fill any identifiable gaps. We need to measure the success of the current institutions of higher learning and how successful they have been in getting us to where we are now, in preparing citizens to fill existing job placements - with incentives being provided to both the financial institutions who promote talent management and the institutions that provide the training.

Mentorship

The Bahamas financial services sector would benefit greatly from an established mentorship program that connects high potential employees, with mentors some of whom can be senior executives in the sector as well as retired professionals who have extensive experience. The benefits attributable to robust mentorship programmes are invaluable to the sector. These include:

- Increased Employee Productivity
- Knowledge Management and Retention
- Job Satisfaction
- Career Development
- Enhanced Quality Assurance
- Talent Development

Focus on Key Products and Services – Wealth Management

The Bahamas is ideally located to serve as the Wealth Management Knowledge Centre of Latin America and the Caribbean. The Bahamas Financial Services Board continues to engage key stakeholders in this effort. The framework already exists and it merely requires the coordination of resources that the jurisdiction already possesses. The Bahamas Institute of Financial Services has pledged its support to this process.

Wealth management is a key business area for The Bahamas and recent surveys put us in 5th position in the Caribbean with respect to the provision of wealth management services. Competition is increasing from both old and new players emerging in Asia. It is essential therefore, that we in The Bahamas remain highly skilled in our management of investment trusts and high net worth individuals by utilising appropriate asset management strategies. The Wealth management programme offered by the Institute covers core concepts:

1. Corporate Financial Evaluation;
2. Advanced Investment/Portfolio Analysis;
3. Industry and Business Risk ; and
4. Corporate Governance and Wealth Management.

The overall content of this programme is comparable to any other of its nature in the global market. It provides comparative insights into the approaches taken to wealth management globally. It has obtained the endorsement of the oldest banking institute in the world, the Chartered Institute of Bankers Scotland, who will serve as the examiners to ensure quality assurance and adherence to standards of best practice in these types of certifications.

The Bahamas Advantage

When considering The Bahamas as a premier financial services centre, the skilled labour force should be the first factor that comes to mind. The Bahamian workforce is well-educated, skilled, English-speaking, and amiable. The adult literacy rate in The Bahamas is over 95 percent. Moreover, Bahamian professionals are learning new languages such as Mandarin, Spanish, French, and German to remain competitive.

"When considering The Bahamas as a premier financial services centre, the skilled labour force should be the first factor that comes to mind."

The awareness of future generations of Bahamians as to their role in ensuring the sustainability of the second pillar of the Bahamian economy - financial services - is being raised. Proper talent management through education and training is critical to this. We must continue to take advantage of every opportunity to train and re-tool the cadre of professionals who work in the sector, thereby securing the competitive advantage of The Bahamas as a premier financial services centre. ::

Mrs. Kim W. Bodie

FCIBS,
Executive Director,
Bahamas Institute of Financial Services

Mrs. Bodie joined the Institute in 1980 as Secretary to the Registrar. In 1986 she was promoted to Executive Administrator, and to her current position of Executive Director in 2003.

Her vision and passion for the growth of the Institute has seen Mrs. Bodie at the forefront of major initiatives impacting the growth of the Institute and the variety of education and training programmes offered to employees in the financial services sector in The Bahamas. This same vision has led her to coordinate the expansion of physical offices and training facilities from Star Plaza to Royal Palm Mall to its present location at Verandah House, Market and Trinity Place, in the centre of downtown, Nassau.

At the 34th Annual Presentation of Awards ceremony held August 29, 2010, the Executive Council of the Institute recognised Mrs. Bodie for thirty (30) years of service. She has attended the conferences of the World Network of Banking and Finance Institutes on a number of occasions, and received the certificate of 'Fellow' of The Chartered Institute of Bankers in Scotland in November 2010.

Mrs. Bodie has been actively involved in other professional associations, including the Bahamas Human Resources Development Association (BHRDA), Women's Ministry of Evangelistic Temple. She is a member of the Caribbean Association of Banking and Finance Institutes (CABFI) and Working Group member of The Bahamas Financial Services Board (BFSB). She also serves as a member of C.R. Walker Senior High School Board.

She studied Teacher Education, (Home Economics) and Secretarial Studies programmes at The College of the Bahamas. Presently, Mrs. Bodie is a final year student in the Professional Management degree Programme at Nova South Eastern University.

Tanya McCartney

President, Bahamas Institute of Financial Services

Tanya McCartney currently serves as Managing Director of RBC FINCO, being the youngest person to serve in this capacity. She joined RBC Royal Bank of Canada in June of 2006 as Regional Manager for Compliance for The Bahamas and Caribbean with responsibility for eight countries in the Caribbean (Bahamas, Cayman Islands, Barbados and 4 Eastern Caribbean countries).

She entered the financial services sector in 1999 as legal counsel and compliance officer for a private bank and has worked at a number of international financial institutions. Prior to this she served as Assistant Counsel in the Office of the Attorney-General, obtaining experience in civil litigation as well as in criminal prosecution.

Julius Baer, the leading Swiss private banking group, was founded in 1890 and today is present in over 40 locations worldwide. From Dubai, Frankfurt, Geneva, Guernsey, Hong Kong, London, Milan, Monaco, Montevideo, Moscow, Nassau, Shanghai, Singapore to Zurich (head office).

Calling Paradise Home...

By Toby Smith

The thoughts expressed below are intended to illustrate the ease and attractiveness of moving to and/or doing business in The Bahamas. While it is good to do one's own research in a particular field of interest, it is my hope that this article assists in doing some of the legwork and builds credence to making such a move.

There are many fundamental facets that enable a country to make a comprehensive, attractive domiciliation offer. These include components such as laws and regulations, personal security, asset protection, location, ease of access, immigration options, economic incentives, global recognition, qualified work force, privacy, professional talent, corporate and personal taxation, recognised corporate structures – just to highlight a few. One could probably list a number of countries that appear as likely candidates meeting this criteria; it would then be up to personal preference to appraise each on its pros and cons.

But - think about it... if you are considering going offshore, wouldn't you want to pick some of the most beautiful shores on the globe?

Musha Cay,Exumas, The Bahamas

Destination of Choice

The Bahamas is the gateway to the New World. Christopher Columbus put it on the map in 1492 and the world followed suit. Since then, this independent country has thrived and evolved into what it is today, a global financial hub and a world-class tourist destination. Yes, indeed, it has a warm tropical climate complemented by some of the best beaches and picturesque islands in the world. The Bahamas also breeds hospitality and Bahamians know how to extend it to you like you are family. Tourism is the country's number one industry and it is no surprise that here you will find world-class hotels and resorts, golf, fishing, shopping and spectacular locales to do as much or as little as you wish.

Nassau has direct flights to most U.S. major cities, direct flights to Europe and a local currency that is on par with the US dollar. All of this makes it a beautiful destination to visit but, beyond that, it as an attractive place for permanent residency and a hub to set up business. You would be pleased to know that the financial services sector is second only to the tourism industry in terms of economic importance. Where else in the world can you find a country that has a regulated financial services industry that adheres and exemplifies globally recognised, impeccably high standards? A jurisdiction that is pro top-quality business which prescribes what it can deliver upon.....and delivers? For the past sixty years, The Bahamas has excelled in its offering and support to financial services, succeeding in the many components needed to provide comprehensive, viable solutions available to most client needs.

When someone is considering a jurisdiction in which to live and operate their business why should they have to compromise to the extent of not winning a favorable end result?

The Bahamas Advantage

The Bahamas' legal framework is based on the British Westminster System and the Bahamas Bar Association is populated with many qualified lawyers that lend their professional expertise to that of the financial services sector as well as those of specialised callings.

Regulation in The Bahamas has served the industry well. Policy makers and regulators are committed to open and ongoing dialogue with the private sector. This has created an environment designed to encourage the continued growth of the sector through adherence to internationally accepted regulatory principles, and efficiency in the conduct of business.

The regulator of the investment funds and securities sector is the Securities Commission of The Bahamas, a member

of International Organisation of Securities Commissions (IOSCO). The Commission sets and insists on impeccably high standards and does an excellent job of not only attracting and retaining the right kind of business, but serve as welcoming gatekeepers in making sure the high caliber entrants receive professional courtesy in getting new businesses off the ground and ensuring existing businesses are well regulated. The Central Bank of the Bahamas serves as the regulator to those in banking and trust services, and has qualified leadership and staff as well as the foundation of stringent, transparent laws and regulations.

Importantly, the two-way relationship between the Government of The Bahamas and the financial services community promotes both direct input and representation through the Bahamas Financial Service Board (BFSB) which serves as a conduit and collective voice. The Bahamas Government has long realised the value of the financial services business in The Bahamas, and extends a listening ear, has an open door policy and is willing to make policies where needed or required - keeping the country on the cutting edge of competitiveness at a sensible pace.

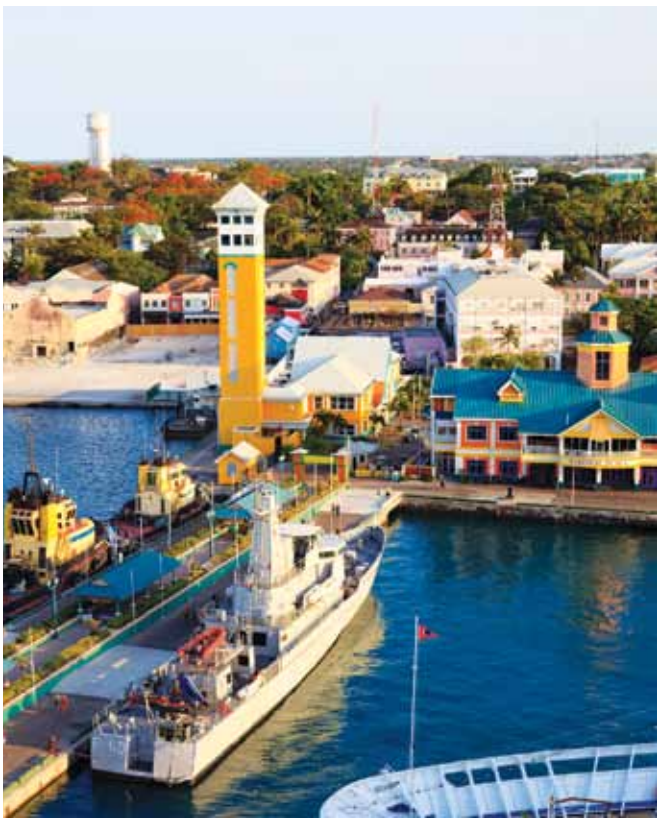
The Immigration Laws of The Bahamas are clearly defined and those wishing to make The Bahamas their home, say, through Economic Permanent Residency are welcome to make the application. The Bahamas Government in 2011 amended its National Investment Policy (NIP) to provide accelerated permanent residency consideration for individuals purchasing a residence of $1.5 million or more. The NIP increases certainty and transparency to the Bahamas business and investment environment, thereby enhancing the country's attractiveness to the foreign direct investment required to foster economic growth.

Once you meet the frankly simple criteria, you can enjoy the opportunity to live in a beautiful paradise, while investing in some of the Earth's prettiest real estate, which, by global comparison is priced quite cheaply. Since the real estate is offered in dollars, depending upon the denomination of the home currency of the investor the real estate could become even more enticing with the strengthening of their home currency against the dollar. The motivation behind changing domiciles can come from one of many factors: having close ties to the financial markets and wishing to set up shop in The Bahamas, wishing to live in a tax neutral jurisdiction, seeking viable estate planning measures - all compelling reasons. Rest assured, The Bahamas can offer a complete package. One looking to relocate here can have all facets of what is required covered in The Bahamas, a one stop boutique that you can then call home. Please also bear in mind that The Bahamas does not require one to give up their foreign residency to receive another.

In addition to the professional legal services referenced earlier, there is solid, knowledgeable advice needed to set up any structure needed to operate a business. One often hears that living in the "islands" requires some compromises; but if the truth be known, there is a full menu of financial solutions and options to finding a solid real estate investment, definitive immigration status, internationally recognised professional investment fund structures, companies, trusts or foundations available. Seeking affirmations in securing the right professionals and quality institutions as service providers are valid considerations, but really just a phone call or click away.

There are many resources available to those considering such a move "to kick the tires" ahead of coming to The Bahamas. The city of Nassau is located on the island of New Providence and is the hub of the financial services industry for The Bahamas. This commercial centre holds the concentration of the Securities Commission of The Bahamas, Central Bank of The Bahamas, Department of Immigration, Central Government - just to name a few - and a virtual navigation of what is required for setting up an operation in The Bahamas is readily available through the Internet. BFSB, for example,

"When someone is considering a jurisdiction in which to live and operate their business why should they have to compromise to the extent of not winning a favorable end result?"



hosts a helpful, uptodate website which has convenient links to accessing useful and pertinent information.

Quite often it is not just the breadwinner of the family looking to move to The Bahamas for commercial reasons. Consideration also needs to be given to families moving to The Bahamas and ensuring that all needs are met. Safety, education, immigration, healthcare and ease of passage are some concerns one will no doubt have for ones' family and all can be easily addressed with satisfying results. It is often the personal and lifestyle aspects that may actually convince an advisor or a client of the wisdom of this selection.

The Bahamas has a full array of adventure and activities, which while being marine-centric at first glance, go beyond that and extend to a safe environment in which a family can be happy and thrive. A well-established education system, state of the art hospitals, modern infrastructure and utilities all are services that are recognised by both Bahamas residents and government as critical, and at world standard, for the country to move ahead.

As important as the education and training in areas of private banking, hedge fund and investment management, and trading are the invaluable relationships that can be developed amongst professionals in The Bahamas - as well as with external partners. These definitely can be counted in the "Advantages" column.

In short, The Bahamas is a mature banking, estate planning and investment services provider – a leader in financial services. It is strategically positioned for international business providing a favourable location for corporate offices, ownership of intangible assets, the establishment of businesses involved in the international trade in goods and services, and premier lifestyle options with access to major cities.

So far, one might say "it all sounds very good in theory, but perhaps not so easy in practice". I agree with the sentiment that it may not be easy, but I would encourage you by saying that, indeed, it is very possible and attested to by empirical evidence. Having been born and raised in The Bahamas, and having spent the past thirteen years working in the financial sector of the country, I have first-hand experience of lifestyles and in the industry. There is an abundance of opportunity and an open door to welcome it to our shores. I am pleased that

I have been given the opportunity to experience the field and knowing that it can be done positions me well to encourage anyone else looking to make the same voyage.

Client Servicing

The Bahamas meets the needs of clients and institutions through unwavering commitments by the Government of The Bahamas, financial institutions drawn from around the globe and a strong and committed talent pool dedicated to professional development and delivering high quality service.

Earning the trust of the clients is paramount when providing advisory services and management for their assets. Seasoned advisers can expand into not only managing the assets but also the vehicles and structures that best fit the underlying assets.

Common denominators in setting up any structure or investment vehicle are the laws and regulations; it is a given that there are going to be requirements that have to be met. Then there usually is a consultation phase, education and understanding between a consultant, lawyer or other industry professional to liaise with the client and establish a clear comprehension on both sides of the requirements and then providing options as to what best solutions are available, as naturally there may be more than just one viable option.

Once the objective has been defined, the implementation side of things would come into play. There are quite a few components - investment managers, trust and foundation companies, custodians, fund administrators, private bankers, legal advisors - and one could seek and meet with each of the aforementioned to determine which best suits their needs. There are many, very talented and quality professionals within The Bahamas that can provide outstanding, high caliber - gauged by international standards - service to clients.

The island of New Providence is a mere seven miles by eighteen miles (not twenty-one as commonly quoted) which adds further benefits since most of the professional service providers in the industry are all close by each other within the city of Nassau; there is no need for extensive delays in between meeting with each. The reputation of each is established and well known, so searching for a professional of good repute is easier than that of being lost in numbers. Chances are that one service provider of one particular acumen knows the abilities of another, say in due diligence, which provides important synergy, and because of the relationship will generally keep moving things along with personal service all around.

Without question, there is a wealth of experience existing in The Bahamas. As an example, seasoned Bahamian personnel are here working through the entire cycle of Investment Funds (SMART, hedge funds, professional funds, etc). From taking the idea from a concept on a drawing board, to receiving initial subscriptions, to an investment fund reaching the end of the opportunity or its cycle and winding down the fund through formal liquidation - it can all be done here in The Bahamas. And, Bahamians really are motivated towards seeing projects succeed, contributing towards that success and driven by the results. Notwithstanding there can be multiple moving parts to any investment, clients do have the option of selecting a key person to simplify things and liaise with each facet to advance developments and report to the principal the progress being made towards the collective objective.

To speak with absolute candor - and with firsthand knowledge and experience - I know that those wishing to establish economic permanent residency, launch a new or move an existing hedge funds, or pursue private banking, estate planning and investment vehicles may well be pleasantly surprised and with a smile to call the Bahamas "Home". ::

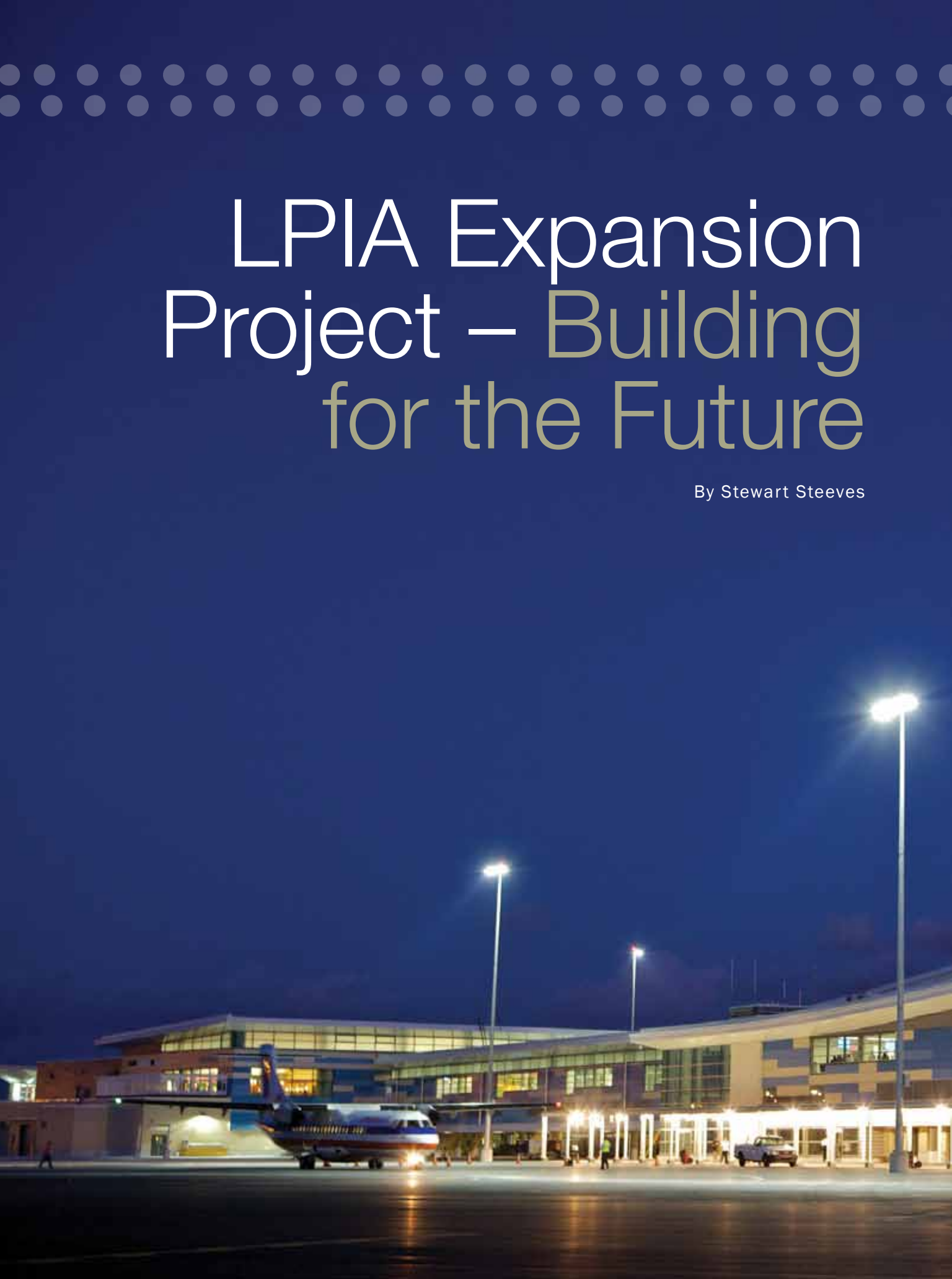
Toby Smith
General Manager,
Pasche Fund Management Ltd.

Over the past 13 years Toby has worked for a number of international companies within the financial services sector of The Bahamas. He has served as an investment manager as well as a relationship manager in private banking; and as head of trading, managing director and general manager in the hedge funds industry.

Born in The Bahamas and educated in England, the United States and The Bahamas, he has the Series 7, Series 3, and Series 63 licences. He currently works as General Manager of Pasche Fund Management Ltd.

LPIA Expansion Project – Building for the Future

By Stewart Steeves



The progress taking place in The Bahamas is evident even from the sky. During 2011, an estimated 43,500 aircraft landed at the Lynden Pindling International Airport (LPIA). Airborne passengers on their descent into Nassau/Paradise Island could see the massive $409.5 million terminal redevelopment project taking place at the country's major gateway.

Dubbed the largest public sector infrastructural upgrade project in the history of The Bahamas, the airport development is an essential element to a revamped tourism product. With the three-staged project, LPIA is poised to become the regional leader in advanced airport systems and environmental features.

LPIA's growth plan is being managed by Vantage Airport Group (formally Vancouver Airport Services). Nassau Airport Development Company (NAD) is in year five of a 30-year management contract with the government to oversee the day-to-day operations of the facilities.

Since March 16, 2011, passengers travelling to the United States from the completed "stage one" 247,000 square feet US Departure Terminal experienced firsthand the enhanced facilities. At check-in, bags were photographed and whisked away by a $10 million baggage system. Passengers exiting the post security

screening and US Customs area were greeted by a three-tiered waterfall feature. Atop the stairs sits a life-sized bronzed sculpture by local artist Nicole Sweeting depicting two Junkanoo parade figures - an iconic glimpse into Bahamian culture. The piece is one of four Bahamian art installations in Stage One with more to come. NAD has made a $2.2 million investment in local art for all three stages to add depth and to fulfill its commitment to creating a "sense of place" for the terminal buildings.

The $191 million US Terminal boasts 19 retail and food & beverage outlets, with a delightful mix of recognized brands sitting beside high quality local crafts and food options. It includes outdoor patios for dining, a Smoking Lounge, and a Mini-Spa.

Today, more than 3.1 million passengers transition through LPIA annually, with passenger projections to 2025 indicating a 3.0 - 3.5 percent rise in overall user numbers every year. The upgraded facilities will be able to accommodate some 5 million passengers when the project concludes in 2013.

With more than 50% of the overall project now complete, stage two construction is well underway, with full enclosure estimated by summer 2012. Stage two has involved selective demolition of the former US Departures Terminal and the construction of a new 226,000 sq. ft. International Arrivals Terminal and Pier at a cost of $129 million. This will add five new jet bridges and will house Bahamas Immigration and Bahamas Customs in the new facilities. The project's completion timeline is fall 2012. The third and final stage includes the construction of a new 112,000 square feet Domestic / International Departures Terminal and a new Domestic Arrivals Terminal at a cost of $84 million. This stage is scheduled for completion in the fall of 2013.

The expanded facilities have attracted and will continue to attract new carriers to the destination. In June 2011, LPIA welcomed the first scheduled non-stop flight from South America with the launch of the COPA Airlines' direct flight to/from Panama City, Panama. The robust service gives the island access to an entirely new market, complementing the more than 80% of travellers originating in

"The $191 million US Terminal boasts 19 retail and food & beverage outlets, with a delightful mix of recognized brands sitting beside high quality local crafts and food options. It includes outdoor patios for dining, a Smoking Lounge, and a Mini-Spa."

the United States. The COPA network in fact connects The Bahamas to more than 50 cities in South and Central America.

The new airlift adds up in a big way for the Bahamian economic picture. Every additional passenger who lands at LPIA brings benefits to the community by creating jobs at the airport, in hotels and other related industries – all injecting money into the local economy.

The airport management company joined with tourism partners as the official hosts of the 2012 Routes Americas Development Forum at Atlantis on Paradise Island. The conference included three days of intense meetings and talks between more than 400 airport and airline delegates. The event also allowed tourism stakeholders to show how the product is evolving with developments like Baha Mar and the LPIA Expansion Project.

"The entire redevelopment project has positioned LPIA as a leader in developing a sustainable, modern facility that generates jobs and economic activity for the community and the country. We're building for the future."

Stewart Steeves

President and CEO,
Nassau Airport Development Company (NAD)

Stewart Steeves joined NAD in January 2007. Prior to assuming his current role, Mr. Steeves served as NAD's Vice President, Finance and Chief Financial Officer, with responsibility for accounting, corporate finance, purchasing, and human resources. In this position he completed three successive financings, culminating in the $265 million financing for the terminal redevelopment project. He also held the role of Vice President, Airport Development at NAD where he oversaw all aspects of airport development at LPIA including master planning, design, construction, project financing, operational readiness and transition.

Before joining NAD, Mr. Steeves was the Vice President, Finance and Chief Financial Officer for Hamilton International Airport Limited where he was responsible for finance, accounting, engineering, human resources, information technology and commercial development. He has also worked for the Vancouver International Airport Authority (YVR) as Manager, Corporate Finance, where his experience included involvement in several airport financings, investments, and commercial negotiations both domestically and internationally.

Prior to his tenure with YVR, Mr. Steeves worked in commercial banking with HSBC in Vancouver and in construction project management with the Turner Construction Company in Chicago, Illinois.

Mr. Steeves holds a Bachelor of Applied Science Degree (Civil Engineering) from the University of Toronto, an MBA from the Ivey School of Business at the University of Western Ontario. Mr. Steeves is also a Chartered Financial Analyst (CFA), a Professional Engineer (PEng) and licensed pilot. Mr. Steeves is Vice Chairman of The Airports Council International World Economics Committee, and a new member of the board of the Bahamas Chamber of Commerce and Employers Confederation.

Attracting Global Investors – Company Profile

By Norman J. Boersma

Location Analysis

John Templeton discovered The Bahamas much in the same way he discovered undervalued stocks: through disciplined and methodical research. The story goes that when Templeton decided to domicile his business offshore - a common practice today, but less so in the 1960s - he developed a set of criteria to determine the location best suited for the growth and success of his fledgling investment advisory firm. Templeton's list was said to have included variables like "Distance to Nearest Airport," "Flight Time to New York," "Seasonal Climate Range," "Political Stability," "Communications Infrastructure," and so on. Nassau ticked all the boxes, and Templeton soon left New York for sunnier climes, setting up shop in the top floor of a modest two-story building located just outside the gates of a new development called Lyford Cay.

An Audacious Idea

Legend has it that before Templeton hung out his shingle in Nassau, another Bahamian opportunity briefly diverted his attention. Shortly after his arrival in The Bahamas, Templeton purportedly hatched a plan to buy an island in the Exuma chain, secede from The Bahamas, and run his investment advisory business from his own autonomous country. First-hand accounts have John Templeton arriving at the doorstep of then-Premier, Sir Roland Symonette, along with the deed-holder of his chosen island and the necessary transfer paperwork in hand. All he required, Templeton insisted, was the blessing of the Premier and the Royal Governor. Amused though he was at the brash American's eccentric proposal, Symonette politely explained the impossibility of such an arrangement. He assured Mr. Templeton, though, that he would be welcome to conduct business in The Bahamas, just so long as he did it under the jurisdiction of the British flag! As he would go on to demonstrate through six decades of exemplary success in global equity markets, Templeton was an outside-the-box thinker always looking for a unique competitive advantage.

Bahamian Roots, Global Ambitions

He ultimately found that advantage in Nassau, establishing one of the best investment records in market history, earning a knighthood from Queen Elizabeth II, and amassing a personal fortune that continues to support various philanthropic pursuits that bear his legacy. Indeed, Templeton's arrival in Nassau

marked the beginning of a long and fruitful relationship that continues today. Following a 1992 acquisition by leading global asset manager, Franklin Resources, Inc., the investment advisory firm founded by John Templeton is now known as Templeton Global Advisors Limited. Today, our Nassau-based investment professionals with the Templeton Global Equity Group manage over $50 billion using the same fundamentally-driven value discipline pioneered by the late Sir John Templeton. The Templeton Growth Fund, Sir John's original investment vehicle, remains the world's first and oldest global equity fund, and the cornerstone of an organization that now operates in 25 countries around the world. From its humble beginnings in western New Providence, Templeton has emerged as an industry-leading global investment powerhouse, a success story facilitated in large part by the advantages of a Bahamian domicile.

Giving Back

Sir John Templeton leveraged the many advantages of Bahamian registry to bring global equity investing to individuals and institutions around the world, and we have remained committed to the country ever since. Our local philanthropic pursuits have been myriad over the years, but include most recently a trip to Eleuthera to participate in the 2012 Ride for Hope, where our investment team helped raise over $200,000 to fight cancer in The Bahamas. Also in recent months, we hosted the Minister of Finance and a group of over 75 high school seniors from Freeport with an interest in the financial services industry. Templeton analysts and portfolio managers delivered a presentation about the firm and its history, and explained the basics of global equity investing to the aspiring university students. We were impressed with the students' genuine enthusiasm for finance, and believe their interest bodes well for the continued development of the industry in The Bahamas.

A Great Place to Invest

We have witnessed tremendous growth in the infrastructure supporting financial services in The Bahamas. Indeed, finance in The Bahamas is now a mature and diverse industry with a highly professional and specialised support network. Nassau is home to an active chapter of the Certified Financial Analyst (CFA) Institute, the industry torchbearer for professional education and accreditation. The CFA Society of The Bahamas hosts a number of events and seminars every year offering perspective on current issues and promoting continued professional development. Both the Government and the Bahamas Financial Services Board have helped establish Nassau as an important hub in the global financial services industry, and provide the tools necessary for a wide variety of finance-related businesses to excel. Indeed, a diverse group of traditional and alternative asset managers, private banks and insurers have chosen to call Nassau home. While Templeton was among the first major brands to establish a presence here, most global banks now maintain offices in The Bahamas. And with no fewer than four Nassau-based asset management businesses owned by former Templeton employees, our influence on the development of the local industry is as apparent as ever. Even Sir John Templeton could not have predicted the tremendous growth of the industry he helped establish!

New Chapter, Same Story

Having worked at the firm for more than two decades in Asia and North America, I was well-steeped in the Templeton legacy when I moved to Nassau in 2011 to accept the position

"The Templeton Growth Fund, Sir John's original investment vehicle, remains the world's first and oldest global equity fund, and the cornerstone of an organization that now operates in 25 countries around the world."

of President of Templeton Global Advisors Limited and Lead Portfolio Manager of the Templeton Growth Fund. As a former Director of Research, one of my primary responsibilities before coming to Nassau was maintaining the integrity and quality of our global investment process. It has been a tremendously gratifying learning experience, aided not least of all by the wisdom Sir John himself would pass on during his annual trips to Toronto, my previous post. His appearance at the Canadian Templeton Growth Fund's annual shareholder meeting generated unprecedented levels of publicity and interest for an industry event. Over 10 thousand people would pack the auditorium to hear Sir John Templeton's views on the markets, and his visit made for front-page material in the local Toronto newspapers.

"All told, I'm delighted to have the opportunity to live and work in The Bahamas, and look forward to helping write the next chapter in the long and illustrious story of the Templeton organisation."

Having spent the bulk of my career practicing the investment principles pioneered by Sir John, the opportunity to come to his home turf and manage his flagship Templeton Growth Fund was in many ways a dream come true. The experience has exceeded my expectations. Our location in Nassau fosters a sense of independence that is critical to our contrarian investment approach. Our Nassau-based investment professionals and support team are extremely talented and gracious, welcoming me and my family with open arms. And though I may always be a Canadian at heart, I haven't found much wrong with the climate and environment of my new location. The weather is ideal, and I'm finding ample opportunities for outdoor activities like cycling, boating and golf. The community is also stimulating, and the diverse mix of Bahamians and expatriates makes for a lively and interesting social atmosphere. All told, I'm delighted to have the opportunity to live and work in The Bahamas, and look forward to helping write the next chapter in the long and illustrious story of the Templeton organisation.

Norman J. Boersma, CFA
CIO Templeton Global Equity Group
Nassau, Bahamas

CIO at Templeton Global Equity Group, Norman Boersma is also lead portfolio manager for Templeton Growth Fund and Templeton Growth (Euro) Fund and co-portfolio manager for Templeton World Fund. He previously served as Director of Research for the Templeton Global Equity Group as well as President of Templeton Global Advisors Limited.

Mr. Boersma has over 20 years of experience in the investment industry. He joined the Templeton organization in 1991. Prior to joining Templeton, Mr. Boersma was an investment officer with the Ontario Hydro Pension Fund, where he was the portfolio manager responsible for the fund's small capitalization Canadian equity investments. Mr. Boersma holds a B.A. in economics and political science from York University and an M.B.A. from the University of Toronto. He is a Chartered Financial Analyst (CFA) Charterholder and past treasurer and director of the Toronto Society of Financial Analysts.

Around Town

Festivals... A Bahamian Specialty

No matter where or when you are in The Bahamas, you can find yourself at an event that will take your mind away from the pressures of business life. From June through December there are events and festivals to satisfy just about every interest. The annual **Junkanoo** is the most famous carnival celebration event, but The Bahamas also plays host to a number of other events, including **an international film festival and a quirky celebration of the humble conch.**

Eleuthera Pineapple Festival in Eleuthera, a celebration devoted to the island's succulent pineapple featuring among other things a pineapple recipe contest, tours of pineapple farms, and a "pineathalon" – a .5km (1/3-mile) swim, 5.5km (3 1/2-mile) run, and 6.5km (4-mile) bike ride. *(June)*

Junkanoo Summer Festival... Although the major Junkanoo celebrations take place on Boxing Day (Dec 26) and New Year's Day, a two-month event is now held in the summer on Exuma, Eleuthera, and various other islands. *(June – July)*

Bahamas Summer Boating Fling/Flotilla at which boating enthusiasts and yachters make the one-day crossing from Florida to The Bahamas (Port Lucaya's marina on Grand Bahama Island) in a flotilla of boats guided by a lead boat. *(End of June to beginning of August)*

Regatta Time in Abaco, Marsh Harbour a weeklong regatta featuring a series of sailboat races in the Sea of Abaco. *(July)*

Cat Island Regatta... Sleepy Cat Island comes alive during this weekend of festive events, including sloop races, live rake 'n' scrape bands, quadrille dancing, old-fashioned contests and games, and local cuisine. *(Late July)*

Great Bahamas Seafood & Heritage Festival... A cultural affair in Nassau, showcasing authentic Bahamian cuisine, traditional music, and storytelling. *(October)*

McLean's Town Conch Cracking Festival... This wonderfully authentic (and delicious) local event on Grand Bahama celebrates the flavor of the conch, and of course a contest to determine the title of **"Best Conch Cracker."** *(October)*

Guy Fawkes Day at which night-time parades are held through the streets on many of the islands. *(November)*

Bimini Big Game Fishing Club All Wahoo Tournament where anglers take up the tough challenge of baiting one of the fastest fishes in the ocean. *(Mid November)*

Vertical Blue has established itself as one of the world's premiere free diving competitions boasting more records and more dives per athlete than any other competition. Freedivers from around the world will take the plunge in Bahamian waters. *(November)*

Bahamas International Film Festival... This isn't your typical island "off-season" event: BIFF is a world-renowned film festival that **attracts Hollywood celebs like Nicolas Cage and Sean Connery** as well as up-and-coming directors anxious to showcase their films. *(December)*

Junkanoo... Bahamians welcome the Christmas Season and New Year's with parades featuring traditional Junkanoo dancing and music, on islands from Grand Bahama to Abaco. The parade in Nassau, the nation's capital, is the biggest and starts at 2 a.m. and runs through 8 a.m. *(December)*

Islands of Romance

Sixteen lucky UK couples exchanged their vows on 16 different islands in The Bahamas on May 16 (of course) in a unique promotion by the **Bahamas Tourist and Wedding Invitation.** Bahamian wedding planners made the finishing touches to arrangements for the "I-do" ceremonies that ranged from the intimate setting of the 14th century French Cloisters on

Paradise Island to tying the 'Nautical Love Knot' aboard a white catamaran floating on an azure ocean in the Berry Islands.

Foodies Love The Bahamas

There's no shortage of great dining experiences in The Bahamas especially in Nassau where internationally- renowned restaurants such as **Nobu and Mesa Grill** – favorites of food critics – have established themselves. But there are dozens of hidden dining gems throughout the islands which residents and visitors have brought attention to through websites such as *tripadvisor.ca.*

Sugar Beach Villa - Exuma
"This is my one piece of Heaven on Earth"

Bahama John's Seafood-N-Rib Shack - Freeport
"World's Most Fabulous Rib Shack - found in paradise :)"

Sip Sip: Restaurant – Harbour Island
"OMG"

Da Smoke Pot: Cat Island
"Fantastic food, great owners and more fun than should be legal!"

Front Porch - Eleuthera
"Crawfish Burgers are a must!"

Treasure Sands Club - Abaco
"Exceptional & outstanding in every way; simply perfect"

Tennis Anyone?

Bahamian tennis star Mark Knowles will host his annual Celebrity Tennis Invitational in December on Paradise Island. The 20-year pro who has 54 titles under his belt saw his event raise $150,000 for local charities last year.

Celebrity Watch

The Bahamas is a great place for anyone celebrity watching. **Prince Harry** was here recently as part of Queen Elizabeth's Diamond Jubilee Tour. And **Hal Jackman, Beyonce, Demi Moore and Brittany Spears** were recently spotted in vacation mode in the islands. Others like it so much they have homes in the islands including **Nicolas Cage, Sean Connery, Johnny Depp, Bill Gates, Michael Jordan, Tim McGraw and Faith Hill, Eddie Murphy, Chuck Norris, Oprah, Shakira and John Travolta.**::

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Name: Philippa Willie
Position: Ops Product Specialist
Company: UBS Trustees (Bahamas) Ltd.

Name: Sharon LaFleur
Position: Jr. Relationship Manager
Company: Julius Baer Bank & Trust (Bahamas) Limited

Name: Samantha Watson
Position: Vice President & CFO
Company: Foyil Asset Management

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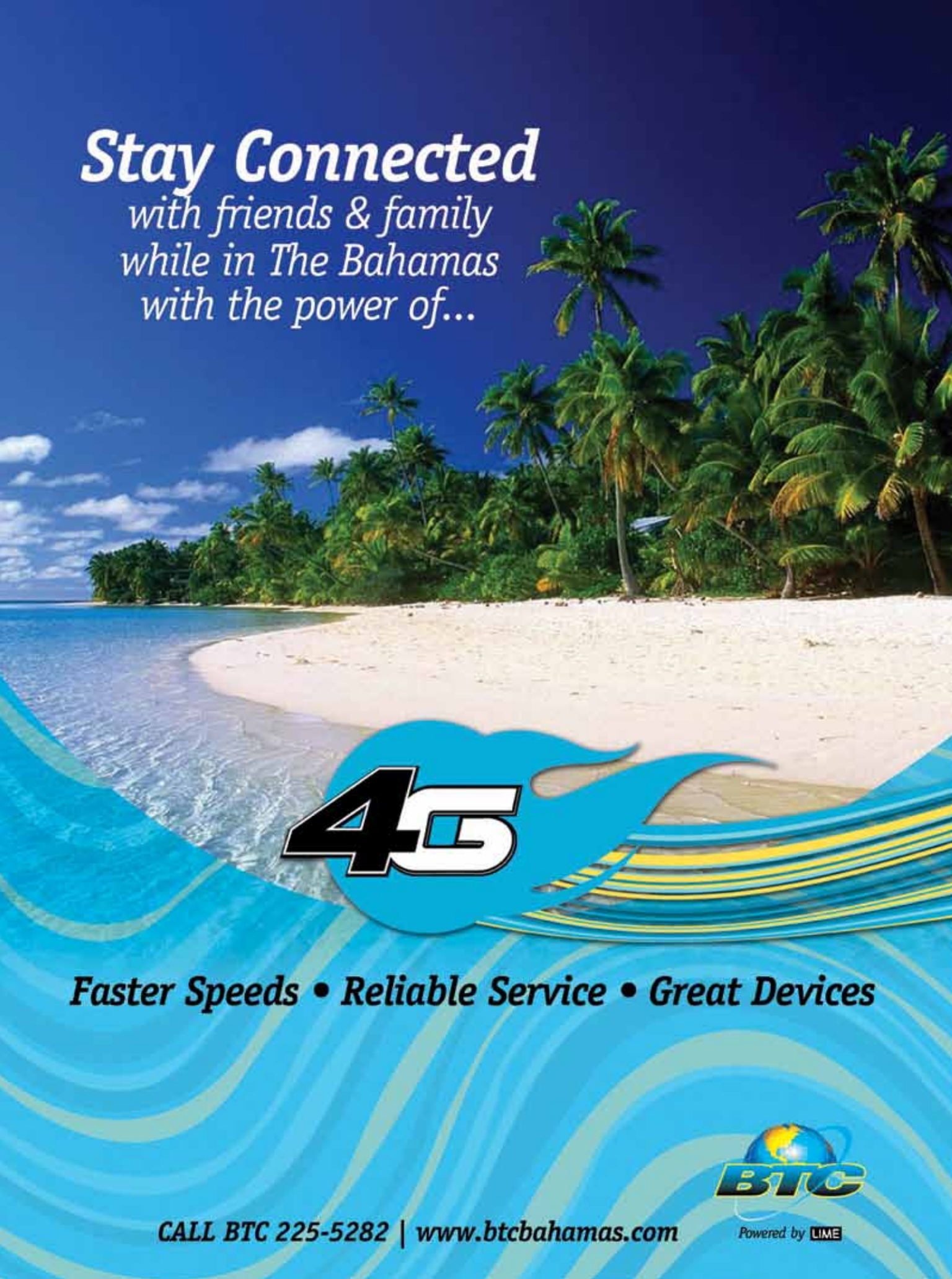
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