



THE BAHAMAS: THE CLEAR CHOICE FOR INTERNATIONAL FINANCIAL SERVICES

OUR VALUE PROPOSITION STATEMENT



Published by:

CLEARVIEW FINANCIAL MEDIA LTD

52 Grosvenor Gardens
London
SW1W 0AU
United Kingdom

Tel: +44(0) 207 148 0188
www.clearviewpublishing.com

In association with:

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- 

THE Bahamas CLEAR

CHOICE

INNOVATION
EXPERTISE
LOCATION
REGULATION

The Bahamas has always sought to provide superior financial products and services and a world class client experience in a well regulated environment. It has proven itself to be nimble and responsive to global changes – always mindful of the need to adhere to international standards.

This is complemented by the fact that the Bahamas is not only somewhere that offers bespoke private wealth management, but it is also a beautiful location to call home.

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THE BAHAMAS: THE CLEAR CHOICE FOR INTERNATIONAL FINANCIAL SERVICES

* by *The Bahamas Financial Services Board*

International financial centres such as The Bahamas play an important part in the world's economy. The jurisdiction is a 'tax neutral' environment, which is to say that its taxation avoids the distortions, and the corresponding deadweight loss, that occur when changes in price cause changes in supply and demand that differ from those that would occur in the absence of tax. Tax neutrality can also be said to ensure that the tax system raises revenue while minimising discrimination in favour of, or against, any particular economic choice. This implies that the same principles of taxation should apply to all forms of business. The Bahamas' tax system applies these principles.

Because of its tax neutrality, the economy of The Bahamas has developed to accommodate international trade. It, and many other jurisdictions, have helped to create a world in which foreign direct investment, job creation and global economic development can thrive. The Bahamas are one of the world's leading jurisdictions in the field of legitimate financial services.

Wealth management accounts for a large part of the jurisdiction's financial sector. For many high-net-worth individuals, banking and wealth management outside of one's home country is simply good business and a wise avenue for investment. There are several reasons for this.

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

The Bahamas are also the venue for a 'tax-transparent' international financial centre because their laws force businesses and other entities to disclose information to the Government about the ways in which they generate their income and the amounts of tax that they pay. The jurisdiction can also be said to be 'tax transparent' because it follows the doctrine that nations ought to exchange information with each other about people's and entities' tax affairs on request in some cases and automatically in others.

Considering the various international initiatives that affect financial centres such as The Bahamas, it is important for the world to know that it is a legitimate, responsible, well-resourced, compliant international financial centre that serves as a venue for real international business with 'economic substance' and strives for the highest possible performance of services.

'Economic substance' is a term used by the Organisation for Economic Co-operation and Development (OECD) to describe a desirable situation in which every relevant entity – in this instance in The Bahamas – conducts "core Bahamian income generating activities," is directed and managed in an appropriate manner in The Bahamas and has an adequate operating expenditure, physical presence and number of its people in The Bahamas.

A SHARED COMMITMENT

Financial services are the second most important industry in The Bahamas after tourism. Successive governments have recognised the importance of

financial services to the country's continual economic and social development. The financial sector's viability is therefore a priority for both the public and private sectors, as shown by:

- the responsiveness of the legislature and regulators to the needs and demands of the market;
- the swiftness with which this can happen;
- the balance that the regulators strike between ensuring that the financial services industry keeps its integrity and encouraging lively competition;
- a Government Ministry dedicated to financial services; and
- a shared commitment between the public and private sectors to promote and develop the industry.

The Bahamas Financial Services Board (BFSB), established in April 1998, is funded both by private enterprise and by the Government of The Bahamas. Its job is to promote a greater awareness of The Bahamas' strengths as an international financial centre.

FISCAL AND ECONOMIC STABILITY

Representatives of the International Monetary Fund, of which the jurisdiction is a member, visited The Bahamas at the end of last year. They reported: "The Bahamian economy continues to recover, with real GDP growth projected to reach 2.3% in 2018 and 2.1% in 2019; and the *Fiscal Responsibility Law* (FRL) will support the government's efforts to secure fiscal sustainability and put debt on a downward path."

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The report, referring to the visit as a 'mission,' also noted the following.

- "The team welcomed the government's transparent recognition of accumulated arrears and the budgetary provisions to clearing them, as well as the plans to put in place robust expenditure control systems."
- "The banking system has strong capital and liquidity ratios, and banks have made progress towards improving asset quality."
- "The mission welcomed the government's firm commitment to a well-regulated international financial and business sector, and recognized the significant steps [it had] taken to increase compliance with international standards on Anti-Money Laundering and Combating the Financing of Terrorism."

TAX NEUTRAL, NOT A TAX HAVEN

The financial services sector in The Bahamas has been resilient and has grown along with the world's evolving financial services industry, despite the occasional challenge. In years past, some people thought of the word 'offshore' as a tainted expression. That bygone era still, unfortunately, casts the occasional shadow on the continuing success and tremendous growth of legitimate private banking and wealth management business in well-regulated markets like The Bahamas. The jurisdiction has been and remains demonstrably unwelcoming to those who try to engage in questionable and illegal activities, with strong legal and regulatory controls in place to combat financial crime. 'Tax neutral' best describes The Bahamas as it is an environment in which profits and gains arising here are not taxed there, but where tax liabilities in other jurisdictions are not reduced.

A COMMON LAW JURISDICTION

The legal system in The Bahamas has been successful in helping the country respond well to changes in the needs and demands of the market. It is based on English common law, which is (by and large) clear and

simple for its users to understand. As an independent nation with a financial services industry bolstered by a strong public-private sector partnership, The Bahamas responds to shifts in the market swiftly and efficiently. The Bahamas belong to the Commonwealth of Nations and the ultimate court of appeal for judgments issued by Bahamian courts is the Privy Council in London.

THE BAHAMAS' ADVANTAGE

It is not by chance that The Bahamas is the most successful international financial centre in the Caribbean today. More than 80 years of thought, effort and co-operation have produced ideal conditions for (ultra-) high-net-worth individuals, their families and their businesses to manage their wealth efficiently in comfort and style.

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

- **Strategic location.** The Bahamas are situated at the crossroads of the Americas, just 65 miles off the east coast of Florida. They form an ideal hub for regional investment and business in the Eastern United States and Canada, and much of Central and South America.
- **Political and economic stability.** The Bahamas have an outstanding record of progress and political and economic stability. With more than 280 years of uninterrupted parliamentary democracy, the nation has been independent since 1973 and retains a Westminster-style system of government. Its English common law system has also aided stability greatly.
- **Wealth and asset management options.** The Bahamas offer owners of capital a broad choice between financial institutions that perform myriad services in private

banking, other types of banking, trust services, investment fund administration, capital markets, investment advisory services, accountancy, legal services, e-commerce, insurance and corporate and shipping registries.

- **Physical resources.** Bahamians have developed their land, premises and infrastructure with the facilitation of international business in mind.
- **Human capital.** The Bahamas have a highly educated home-grown workforce and a long tradition of excellence in financial services which has created a deep pool of skill and experience that people all over the world recognise and trust.
- **Investment policy and incentives.** The Bahamian Government has resolved to build an economy in which free enterprise can flourish.

INTERNATIONAL FINANCIAL SERVICES: OUR VALUE PROPOSITION

Four vital features distinguish The Bahamas from other significant international financial centres. These are regulation, expertise, innovation and location. Everything that The Bahamas offer is defined by these four words. Everything that comprises The Bahamas' value proposition (a marketing term for a service or 'feature' designed to make a product attractive to customers) springs from these distinguishing factors and the jurisdiction's future relies on them.

REGULATION

The strong regulatory regime that rules over the financial services sector of The Bahamas guarantees market integrity. During the 40 years or more since The Bahamas became a sovereign nation, successive governments have been utterly consistent in striving to observe international best practices, to co-operate with other states through mutual legal assistance, to be 'tax transparent' and to combat money laundering and terrorist finance. Bahamian regulators are well regarded around the world and are active in their membership of international groups and agencies. As we have seen, the Government

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and the private sector collaborate to ensure that their country remains a well-regulated, blue-chip international financial centre.

The regulatory regime that governs the financial services industry of The Bahamas embodies, as they say, not only the letter of international best practice, as encapsulated in the overarching regulatory principles of international bodies, but also its spirit. The Bahamas' approach to the evolving international regulatory environment has been participatory and proactive. Indeed, the country has led the way in advancing the principle of a 'level playing field.'

Broadly speaking, global regulatory initiatives have revolved around three issues: the need to stop people misusing the financial system; the need to make it more difficult for people to evade taxes; and the need to increase tax transparency. Sweeping regulatory reforms in 2000, along with further measures to strengthen compliance in step with international efforts, have characterised the jurisdiction's "anti-money-laundering and countering the financing of terrorism" (AML/CFT) regulatory structure. The jurisdiction is still improving its compliance with international standards by following the policies of the Caribbean Financial Action Task Force (CFATF) and its parent organisation, the Financial Action Task Force (FATF) which is housed in the OECD's building in Paris. The FATF published its 'mutual evaluation report' (so-called for historic reasons dating from a time when one government of an FATF member-country would assess the AML/CTF controls of another) about The Bahamas in May 2017. In December 2018, in its first "enhanced follow-up report," the FATF said that The Bahamas had made progress in solving some problems that the report had listed. The international body spoke favourably of The Bahamas' efforts to comply with thirteen of its famous "Forty Recommendations."

The Bahamas have also been complying with the United States' *Foreign Accounts Tax Compliance Act 2010* (FATCA) since 2014. The jurisdiction, moreover, is a participant in The Multilateral Convention on Mutual Administrative Assistance in Tax Mat-

ters and is implementing The Base Erosion and Profit Shifting Initiative's Minimum Standards. The jurisdiction has also passed legislation in December 2018 to impose substance-related requirements on commercial entities, to eliminate preferential tax regimes and to give various people – but not the public – access to adequate, accurate and current beneficial ownership information.

TRANSPARENCY AND CO-OPERATION

Recently, in an effort to comply with criteria for tax governance laid down by the OECD and the EU, The Bahamas made changes to the laws and regulations that govern its financial sector. Other nations are making the same changes elsewhere around the globe. In doing so, the jurisdiction engaged in meaningful discussions with these international bodies and drafted new laws, the better to strike the right balance between compliance with international standards and the health of its businesses and wider economy. These initiatives include the following.

- The passing into law of the *Multinational Entities Financial Reporting Act*, which contains rules for country-by-country reporting in line with the OECD's Base Erosion and Profit Shifting (BEPS) initiative.
- The initiation of Automatic Exchange of Information (AEOI) with 35 jurisdictions (19 of which are in the EU) in accordance with the OECD's Common Reporting Standard (CRS), with the first exchanges having taken place in September 2018. The Bahamas has always insisted on following international best practice and has fared well in the "phase two peer reviews" to which the OECD's Global Forum has subjected it. In fact, The Bahamas has been deemed "largely compliant" with the OECD's existing standard for exchanges of information on request — the same rating as countries in the 'Group of 20' (actually only 19) industrialised nations such as the UK, Germany, Canada and Australia. These measures and promises send

a loud and clear message to the international financial services community that the Government of The Bahamas is serious about adhering to global standards and remaining a clean, tax-transparent jurisdiction that wants to co-operate with the tax authorities of other nations.

- The allaying of the EU's and OECD's concerns with respect to economic substance, access to information about beneficial ownership and ring-fencing by the passage of the following legislation in Parliament in December 2018.

(a) *The Commercial Entities (Substance Requirements) Act 2018.*

This Act insists on relevant entities having economic substance. The Act defines 'relevant activities' as banking, insurance, fund management, financing and leasing, shipping, distribution or service centre operations, headquarter operations and holding companies with relevant activities. All will have to show (or be able to show) the authorities that they have a substantial economic presence in The Bahamas and that they are engaging in real economic activity.

(b) *The Beneficial Ownership Register Act 2018.* This calls for the establishment of a secure search system by the Attorney General that can scan databases managed by registered agents who hold information about the beneficial ownership of entities that they manage which are incorporated, registered, continued or otherwise established in accordance with the *Companies Act* or the *International Business Companies Act*.

(c) *The Removal of Preferential Exemptions Act 2018.* This is designed to tackle the harmful tax practice known as 'ring-fencing,' which occurs when a taxing jurisdiction runs a preferential tax regime that is unavailable to certain groups of taxpayer — often domestic taxpayers or taxpayers who operate in the domestic economy. In other words, it removes tax exemptions afforded to non-residents that are not afforded to residents.

The Government of The Bahamas has stated on record that it intends



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to attain and maintain “the very highest levels of conduct as a clean jurisdiction, complying with the highest standards to prevent the abuse of its financial system by money launderers and criminal elements.” It has promised to satisfy the requests of the CFATF and the FATF. Over the last 15 months the Attorney-General and the task force that he leads have done much to address the concerns that the CFATF voiced in its aforementioned Mutual Evaluation Report. With this in mind, the CFATF re-rated The Bahamas favourably in December 2018 in respect of the following FATF recommendations.

- Regarding recommendation 1 (to do with assessing risks and applying a risk-based approach) the CFATF moved The Bahamas up from ‘partially compliant’ to ‘largely compliant.’
- Regarding R2 (on national co-operation and co-ordination) the jurisdiction moved from ‘partially compliant’ to ‘compliant.’
- For R6 (on targeted financial sanctions related to terrorism and terrorist financing) it moved from ‘non-compliant’ to ‘partially compliant.’
- For R10 (on ‘customer due diligence’) it moved from ‘partially compliant’ to ‘compliant.’
- For R12 (on ‘politically exposed persons’) it moved from ‘partially compliant’ to ‘compliant.’
- For R15 (on new technology) it moved from ‘partially compliant’ to ‘largely compliant.’
- For R17 (on reliance on third parties) it moved from ‘partially compliant’ to ‘compliant.’
- For R18 (on internal controls and foreign branches and subsidiaries) it moved from ‘partially compliant’ to ‘largely compliant.’
- For R23 (on ‘gatekeepers’ or designated non-financial businesses or professions: other measures) it moved from ‘partially compliant’ to ‘largely compliant.’
- For R25 (on transparency and beneficial ownership of legal arrangements) it moved from ‘partially compliant’ to ‘largely compliant.’
- For R30 (on the responsibilities of law enforcers and investigative authorities) it moved from

‘partially compliant’ to ‘compliant.’

- For R32 (on cash couriers) it moved from ‘partially compliant’ to ‘largely compliant.’
- For R35 (on sanctions) it moved from ‘partially compliant’ to ‘largely compliant.’

The report also looked at whether The Bahamas’ measures conformed to FATF recommendations that had changed since the mutual evaluation of 2017. It took new measures that The Bahamas took after that date into account. It then re-rated The Bahamas in respect of R18 (on internal controls and foreign branches and subsidiaries), changing its rating from ‘partially compliant’ to ‘largely compliant.’ It left the jurisdiction with its old scores elsewhere, still counting it ‘largely compliant’ with R5, ‘compliant’ with R21 and ‘partially compliant’ with R7, 8, 19, 22, 26, 27, 28 and 33.

EXPERTISE

With a track record of more than 80 years in financial services, few jurisdictions offer the wealth management facilities that The Bahamas provide. The jurisdiction’s long heritage in this area is the reason for its comprehensive body of financial law and the stability and predictability of its business environment. Thousands of Bahamian wealth management professionals work side-by-side with their expatriate colleagues in more than 250 financial institutions that call The Bahamas their home.

Private wealth management continues to stand centre stage on the Bahamian financial scene. It is facilitated by a diverse suite of products, of which banking and trust services are the centrepieces. These products and services are as follows.

a) Private banking

Private banking has come of age in The Bahamas during the past decade. The country’s banking practices and standards, regulation and supervisory controls are now on a par with those of the rest of the global banking community, although the jurisdiction continues to offer clients a great deal of privacy and confidentiality. Major legislative and regulative

changes affecting the international financial community of The Bahamas, and a more sophisticated client base, have done their part to shift the Caribbean away from its traditional role as a tax haven and in favour of capital protection and growth. Many of the world’s largest and most prestigious financial institutions have taken advantage of the country’s stable political and economic system to establish branches or subsidiary operations there, offering private banking services to high-net-worth and ultra-high-net-worth individuals and families.

b) Trusts

Since the Industrial Revolution, possibly the biggest generator of capital and the single greatest cause of wealth creation worldwide has been the private ownership of operating companies. Members of families who go into business together, and the entrepreneurs who lead those businesses, where different, are growing more and more sophisticated in terms of their investments, their strategies and their goals. Their ‘footprints’ are becoming more global as they cross borders and move their businesses into new territories and new types of technology. They are increasingly concerned with preserving their wealth and ‘succession planning’ for both their businesses and their families. In summary, their lives and the plans that they are making have become more complex.

The Bahamas have some of the most innovative and sophisticated trust laws in the world. This provides a robust and fertile proving ground for tailored structures that meet the most discerning needs of HNWIs and their families. In The Bahamas they are able to choose perpetual trusts, protective trusts, trusts for purposes both charitable and non-charitable, private trust companies to administer the trusts of related settlors, trust substitutes such as foundations and pure governance structures such as The Bahamas Executive Entity. The Bahamian trust is a model of robustness and flexibility. Trust legislation in The Bahamas has always been ‘cutting edge’ and other jurisdictions often use it as the standard to follow.

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c) The Bahamian Foundation

Trusts are not often used in civil jurisdictions. More than ten years ago The Bahamas became the first common-law country to pass its own foundation legislation, thus creating a viable alternative for wealth planning and protection. This has reinforced the jurisdiction's well-earned reputation for innovative structuring.

d) The flight of the BEE

The Bahamas Executive Entity (BEE) provides the wealth manager with a nimble and innovative approach to his ever-changing needs. The BEE solves complex governance issues in fiduciary and wealth management structures, particularly with respect to share ownership in Private Trust Companies. It identifies persons willing to act in any number of governance roles in wealth structures.

e) Captives added to private wealth offerings

Captive insurance is another area of recent expansion. The Bahamas are not a newcomer to captives, but this avenue of investment took a back seat during a recent period in which the jurisdiction concentrated on developing wealth management, trusts and estate planning. This is certainly not the case now, as the opportunity for captives to play a part in wealth management is undeniable. Segregated cell legislation is a prime example of Bahamian activity in the captive market. It provides the assets and liabilities of each account with robust statutory protection, keeping them truly separate and distinct from those of other accounts. Cell captives benefit from the natural economies of scale that such structures create. Bahamian regulators, too, have responded vigorously to the demand among small-to-medium-sized enterprises for a cost-effective means of captive insurance or self-insurance while still upholding international standards.

A DEEPLY KNOWLEDGEABLE AND SKILFUL DOMESTIC WORKFORCE

The financial sector's skilled domestic base of labour works alongside a

talented core of expatriate experts in major international institutions and locally-owned financial institutions. With a sweeping knowledge of products and an enviable track record of service in the business, professional people who work in financial services in The Bahamas are intellectually creative. This has helped the jurisdiction become – and remain – a place where firms can tailor innovative products and services to fit the needs of clients and the demands of the market.

INNOVATION

The Bahamas have long been forward-thinking and responsive to the demands of markets, using legislation to create innovative, client-centric products and services that satisfy the most modern regulatory requirements. Such innovation, as we have already said, can be seen at work in the country's evolving and often ground-breaking trust legislation. It has also thrust The Bahamas into the vanguard of the investment funds industry with the introduction of SMART Funds and the Investment Condominium (ICON) fund.

SMART FUNDS

The Bahamas' evolving investment funds sector is beginning to attract major attention from fund managers and has already added a new dimension to the jurisdiction's wealth management and advisory capability. The Bahamas recently experienced an upward trend in investment fund registrations. The jurisdiction owes its success in this area largely to the investment vehicle known as the SMART (Specific Mandate Alternative Regulatory Test) fund. Even with more institutionally-focused templates such as the SMART 7, Smart Fund Models (SFM) have been used as cost-effective investment fund vehicles for families, family offices and related investors.

The SMART fund concept was conceived in the spirit of risk-based regulation. Its creators took stock of the fact that investment funds often needed to have flexible structures and reporting requirements. Regulation of each fund is adjusted to the

risk profile of the fund; there is a cap on the number of investors who may invest in many of the templates. It is permissible for the investors to waive the production of audited financials in favour of semi-annual performance reports. SMART funds are numerous and there are many types of them.

Promoters have an open opportunity here — if they wish, they may ask the regulator to approve a specific business case for a fund. If the regulator grants its approval, it can then impose a risk-based licensing and supervisory regime on the fund that it has created for it. Other funds can then use the new template and can even set new parameters and requirements for it.

A NEW ICON FOR FUNDS

The Bahamas have learnt from the niche-marketing success of SMART funds and taken the same innovative approach to the creation and introduction of the ICON – the Investment Condominium Fund – with the aim of meeting the needs of Latin American and especially Brazilian investment managers.

The ICON is yet another example, along with the foundations law of 2004, of The Bahamas creating products and aiming them at groups of clients with very different cultural and legal backgrounds. The ICON provides an alternative legal structure for investment funds that, inherently, is familiar to Brazilians and people in countries with similar civil laws. Plans are underway to develop a similar product that caters to other jurisdictions.

THE INVESTMENT FUNDS OVERHAUL

A complete overhaul of the law that governs the regulation of investment funds is nearing completion, with the Securities Commission of The Bahamas (SCB) in the driving seat. The overhaul includes an updated *Investment Funds Act* and some forthcoming changes to the securities industry's legislative regime as a whole. It is expected to make The Bahamas more competitive and contains the following key changes.

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- Changes in the definitions of 'Bahamas-based funds' and 'non-Bahamas based funds.'
- Changes in the triggers for the licensing of funds.
- The ability to appoint international administrators without them having to be licensed.
- The introduction of licensing requirements for fund managers and regulatory oversight for custodians.
- The establishment of an Alternative Investment Fund Managers Directive (AIFMD) regime with a view to The Bahamas qualifying for an EU 'passport.'

LOCATION

The unique geographical location of The Bahamas, which are situated just fifty miles off the coast of Florida and serve as a gateway between different parts of the Americas, gives this set of islands an undeniable advantage over others.

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

Most importantly, individuals, family offices and institutions always find a warm welcome when they come to The Bahamas, a jurisdiction that is attractive to both business and the enjoyment of life.

To meet the diverse and sophisticated tastes of travellers and residents alike, The Bahamas offer something to suit every taste: rest and relaxation, family fun, entertainment, adventure and exploration. With outdoor attractions aplenty, luxury resorts, golf courses, casinos, restaurants, shopping and miles of sandy beaches, there is no shortage of exciting things to do.

Gated waterfront communities packed with lifestyle amenities such as tennis courts, spas and marinas are attracting more second and third home buyers

from North and South America, Europe and the Far East.

One of the newest and most popular investment vehicles is the condotel, a condominium or single family residence that the owner can convert into fully-furnished, luxury piece of accommodation, managed by a resort company and rented out when he or she is not in residence. The Bahamas, a service economy, is accustomed to providing concierge residential management services for homeowners who are away.

Private islands are also available for purchase.

Direct flights are available to The Bahamas from 18 US cities and from Canada, the UK, Europe and Panama and the country has numerous ports of entry and marinas.

"The Bahamas are attractive to both business and the enjoyment of life"

Commercial passengers, private jets and goods shipped from Freeport (the main city on Grand Bahama) enjoy pre-clearance to the United States. US pre-clearance for commercial passengers also exists from Nassau.

Excellent private schools exist in New Providence and Freeport, several of which have been internationally accredited by the European Council of International Schools and the National Association of Independent Schools, the two bodies that accredit the leading European and North American schools. There are two major hospitals in New Providence and one in Grand Bahama, staffed by internationally-trained doctors capable of handling all major procedures. Medical facilities in the United States are also easily accessible from The Bahamas.

RESIDENCY

The Bahamas offer foreigners a pathway to permanent residency (which is not the same as citizenship or tax residency). Permanent residency allows in-

dividuals to enter, live and work in The Bahamas. The Government's immigration policy is flexible and suited to the needs of international firms, individuals and families. Permanent residents can pass freely through Immigration and remain in The Bahamas for as long as they like. Usually, spouses and children are endorsed on permits in return for one-time government fees.

The investment threshold for economic permanent residence is B\$750,000 (the Bahamian dollar is on a par with the US dollar) on resident property. Permanent residency with the right to work in one's own business is a good option for an individual with a family office or someone who simply wants to manage his investments or a business that does not interact with the Bahamian economy. An individual who achieves this status qualifies automatically for the right to work in The Bahamas.

With an investment of B\$1.5 million or greater, there is an expedited application process.

"Annual residence" is another alternative to residency in The Bahamas and, as the name suggests, it is renewable every year. A "homeowner's resident card" does not confer any of the privileges of permanent residency, but it does help the holder to move freely through Immigration at any port of entry.

THE BAHAMAS: THE CLEAR CHOICE

The Bahamas' world-class regulatory regime and its historic determination to remain an honest international financial centre, as evidenced by its most recent commitments, show that it wants to protect its key assets. Regulation, as it relates to international initiatives, is the canvas upon which The Bahamas' wealth-management expertise, innovative client-centric products and services and unique tropical location combine to make it an increasingly clear choice for institutions and individuals who want the best of financial services.

Prepared by The Bahamas Financial Services Board. Contact us at <https://bfsb-bahamas.com/>

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THE BENEFITS, THE BEAUTY AND THE BUSINESS SENSE OF RESIDING IN THE BAHAMAS

* by Chester Robards, in collaboration with Gonet Bank & Trust Ltd

A red carpet has been rolled out for today's high-net-worth individuals who want to make The Bahamas their top choice for relocation. This carpet is more than 500 miles long – the approximate length of the island chain.

The Bahamas is the clear choice for anyone who wants to find a new jurisdiction in which to reside. From Walker's Cay in the North to Inagua in the South, the islands of The Bahamas have long been a veritable playground for the wealthy. Princelings, oligarchs and billionaires have strutted, sailed and flown the length and breadth of the islands to find their own little pieces of paradise.

The Bahamas have evolved over the years into a bona fide Mecca for new and old wealth alike.

When The Bahamas' international banking industry developed in the last century, it brought with it the promise of fresh investment and new options for wealth management and estate planning. Its growth also, of course, inspired high-net-worth

individuals to begin to emigrate to the country to manage and support the operation of these financial companies.

This country of 700 islands and cays became independent of Great Britain in 1973 and prospered thereafter, its laws and policies making it a wonderland in which foreigners could invest and live.



*It is by **anticipating**
and **acting** that
we stay the course.*

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Designed and built by daring and visionary navigators the Gonet Monofoil is a concentrate of innovations foreshadowing the future sail boats of the America's Cup.

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Wealthy individuals and their families consider relocating to tropical areas like The Bahamas for many reasons: a higher quality of life, an attractive business environment, retirement, tax neutrality, opportunities for business expansion...the list goes on.

“Many businesses are already headquartered in the city of Nassau”

Many jurisdictions promote themselves to HNWIs and entice businesses to move their operations and headquarters there. Such countries as the United Kingdom, Monaco, Dubai and Switzerland all have a long-standing reputation for attracting business people and wealthy families, but each brings with it unique challenges including the inability to actually purchase property at competitive prices and an absence of tax neutrality. The Bahamas offer the perfect combination of permanent residency (not to be confused with tax residency); a first-world infrastructure; a well-regulated and reputable full-service international financial centre; proximity to the United States; and even access to parts of Europe through direct flights. In short, this warm-water destination has no rival.

The Bahamas does not have an investment-for-citizenship programme, but one can expedite their acquisition of permanent residency by purchasing a residence, starting at US\$750,000. Many companies are on hand to move an investor easily and seamlessly through this process.

The Organisation for Economic Co-operation and Development (OECD) wants to ensure that people who seek permanent residency in The Bahamas are doing so in accordance with the country's laws. The Government of The Bahamas has been working diligently to ensure that this is not a problem for permanent residents. Policy makers are developing a protocol that will draw a clear distinction between permanent residency and tax residency, as these clearly ought to be two separate constructs.

The authorities of The Bahamas levy no income tax, capital gains tax or inheritance tax – an added incentive for residing there. Families that want to domicile their wealth in The Bahamas have their pick of first-class financial institutions. The Bahamas are the only country in the Americas outside the United States and Canada that offers such a wide range of benefits to residents. Profits and gains arising in The Bahamas are not taxed there. Nonetheless, if a resident has tax liabilities in other jurisdictions, these are of course not reduced.

The Government, through its Commercial Enterprises Bill, plans to make it easy and convenient for businesses to domicile their headquarters or sub-offices in The Bahamas. Many businesses already find it convenient to be headquartered in the city of Nassau with modern conveniences and the delights of a genuine tropical island just outside.

Grand Bahama is poised to become a mini Silicon Valley of the Caribbean. Abaco is still the boating capital of The Bahamas. Cat Island has retained its old-world charm. Andros is a labyrinth of adventures to explore. Harbour Island remains a playground for the rich and famous. All of these experiences are at your disposal. The range of options to choose from in terms of real estate, moreover, is ever-growing. From Palm Cay, Port New Providence and Treasure Cove in eastern New Providence to Old Fort Bay, Lyford Cay and Albany in the West, areas for upper-middle-class and high-net-worth individuals are still growing and being developed.

The developments at the extreme ends of New Providence offer gated access, beach and canal access at a range of prices for homes and vacant land. Of those, Albany (with such residents as Joe Lewis, Tiger Woods and Justin Timberlake, to name but a few) and Lyford Cay, the home of Sir Sean Connery, are the most exclusive communities, with private golf courses, restaurants and mega yacht parking.

In between those most easterly and westerly of developments have sprung up such places as One Ca-

ble Beach, Balmoral, Caves Point, Thirty Six on Paradise Island and the residences mixed into the Baha Mar property. Ocean Club (located on Paradise Island, where Oprah Winfrey built one of her homes) is another exclusive community. Still under development are projects such as Goldwynn at Cable Beach and the development that recently broke ground on Paradise Island, Sterling Hurricane Hole.

“There will be a clear distinction between permanent residency and tax residency”

Families that reside in The Bahamas are sure to encounter some of the best educational facilities in the region. Windsor High School, the Meridian School and Lyford Cay School cater to children in western New Providence, while St Andrews is strategically located near Palm Cay, Treasure Cove and Port New Providence. Dionisio D’Aguilar, the Minister of Tourism and Aviation, recently said that the Caribbean is being developed into one of the most desirable places to visit, work, live and do business in the world.

The Bahamas, while clearly an excellent choice for business and wealth management, are also replete with options for recreation, including sport fishing, boating and golfing, on some of the most pristine shores in the world. The islands feature world-class restaurants in some of the most prestigious hotels in the Caribbean. Numerous islands are dotted with unspoiled turquoise beaches and they all enjoy an average of almost eight hours of sunshine per day. The climate is always comfortable and, of course, the Bahamian people are among the friendliest and most welcoming in the world. For those of you who need a Plan B in your life, that B is The Bahamas.

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BAHAMIAN TRUSTS AND FOUNDATIONS – THE FACTS

* by Kamala Richardson, Associate, Higgs & Johnson

In the face of ever-evolving international standards of regulation, the global landscape of financial services and wealth management is in a constant state of flux. This has never been more true than in the past two years as international financial centres or IFCs have had to adjust at almost break-neck speed to the diktats of the Organisation for Economic Co-operation and Development and the European Union, which call for the substantiation of ‘economic presence,’ for the removal of preferential tax regimes and for more and more disclosures of all kinds to the tax authorities by corporate entities. On the whole, IFCs have responded by passing laws to require corporate entities to have ‘economic substance’ on their soil, to remove any preferential tax breaks that entities owned by non-residents may receive and to create registers that divulge the beneficial ownership of those entities.

The Bahamas’ compliance came, towards the end of 2018, in the form of the *Commercial Entities (Substance Requirements) Act*, the *Removal of Preferential Exemptions Act* and the *Register of Beneficial Ownership Act*. As a result of more and more regulation, the detractors of IFCs have called the usefulness of corporate entities in private wealth management into question. However, the diversity of The Bahamas’ offerings in the wealth management sphere – which include trusts and foundations – will help it to remain a steadfast and vital player in the international financial and wealth management markets.

TRUSTS AT-A-GLANCE

The Bahamian trust is a long-standing fixture in the international wealth management market and is a favourite amongst trust practitioners the world over because it protects assets well. The jurisdiction has always observed trust law because its legal system is deeply rooted in the ancient common law of England. In modern times, however, its Government has supplanted much of the old English law by innovative statutory reform. *The Trustee Act 1998* is the epitome of that reform and provides the cornerstone of Bahamian trust legislation. Although it is derived from the English *Trustee Act 1925*, it has taken on a life of its own.

One innovative feature of the *Trustee Act* is that it displaces the rule in *Saunders v Vautier* [1841] by

barring beneficiaries from terminating or modifying a trust if such action would defeat a material purpose of the settlor in creating the trust. It also permits an extensive arrangement of powers to be reserved to the settlor (or to any other person, for that matter), which is a marked departure from English common law. This is particularly interesting in the light of the English High Court’s recent decision in the case of *JSC Mezhdunarodny Promishlenniy Bank v Pugachev 2* [2017], in which it declared that certain trusts governed by New Zealand law were illusory because the economic settlor, Mr Pugachev, was deemed not to have divested himself of his beneficial interests in the trusts’ assets – or, to put it another way, the trusts were a part of a sham which was intended to conceal his control of the assets settled in them.

A key factor in the court’s ruling was that the terms of the trusts reserved extensive powers to the protector, who was none other than Mr Pugachev himself, and that these powers included the right to remove trustees with or without cause. New Zealand law, as applied in the case, is similar to English law in that it does not recognise the concept of reserved powers. Bahamian law, on the other hand, does. The *Trustee Act* permits powers to be reserved to a settlor of a trust (or to any other person, such as a protector), including the power to appoint the settlor as the protector of a trust and also the power to remove trustees, and provides expressly that

a trust cannot be invalidated by reason of such powers being reserved to the settlor. It is therefore unlikely that the English court would have arrived at the same conclusion – and practically impossible that a Bahamian court would have done – if the trusts in the Pugachev case had been governed by Bahamian law.

The Bahamian Government made its most recent amendments to the *Trustee Act* in 2016 with the aim of re-asserting the rule in *Re Hastings-Bass* [1975] which was eroded by a decision in 2013 in the conjoined appeals of *Pitt v Holt* and *Futter v Futter*. The rule in *Re Hastings-Bass* allowed trustees to apply to a court to void an exercise of their power where they either failed to take into account relevant considerations or took into account irrelevant considerations. However, in *Pitt v Holt* and *Futter v Futter* it was decided that only beneficiaries could apply to the courts in these instances and that the exercise of power must involve a breach of trust by the trustee in order for those beneficiaries to do so. The amendments to the *Trustee Act* in 2016 have removed these conditions where a trust governed by Bahamian law is concerned, thereby preserving a useful means by which trustees can ‘unwind’ the unintended and harsh consequences that may flow from an exercise of their power.

The *Trustee Act* is underpinned by a cadre of supporting legislation. One notable piece, the *Fraudulent Dispositions Act 1991*, forms the crux of the

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Bahamian asset protection regime. This Act limits the time and the circumstances in which the creditor of a settlor may claim against the assets of a trust. Creditors are only permitted to claim against trust assets if the transfer of the assets to the trust was made at an undervalue with an intent to defraud creditors who would be prejudiced by the transfer. Only in these circumstances are creditors given a period of two years within which to make their claims – otherwise, their claims are statute-barred. Although other IFCs such as Anguilla, Bermuda and the Cayman Islands have similar fraudulent disposition legislation, the limitation period in The Bahamas (2 years) is significantly shorter, with Bermuda's and the Cayman Islands' limitation periods being 6 years and Anguilla's being 3 years. A person who embarks on a speculative business venture may therefore take advantage of this and insulate his assets from creditors ahead of time in case the venture fails.

The *Trusts (Choice of Governing Law) Act 1989* also protects the assets of Bahamian trusts. This Act clarifies the conflict-of-laws rules as they relate to Bahamian trusts and prevents the Bahamian courts from recognising or enforcing foreign judgements that rest on matrimonial or forced-heirship claims made against the settlor or a beneficiary of a trust. A Bahamian court cannot let any person, including the spouse of a settlor or the beneficiary of a Bahamian trust, attack the assets settled in that trust through the courts of a foreign jurisdiction.

Another notable piece of supporting legislation is the *Rule Against Perpetuities (Abolition) Act 2011*, which abolished the requirement for a

trust to have a perpetuity period. As such, trusts may exist in perpetuity. This enables settlors to make better provision for generations to come. Also, when a trust is a component in a commercial structure, it is afforded the same potential to exist in perpetuity as a company in that structure.

RE-DISCOVERING THE FOUNDATION

The foundation is a relatively new addition to The Bahamas' wealth management arsenal. Although Bahamian practitioners have never been strangers to foundations, these structures were only formally introduced into Bahamian law by the *Foundations Act 2004*. The foundation is originally a creature of civil law, with similarities to both a trust and a company. Under Bahamian law, for example, foundations may have beneficiaries (as do trusts) and are separate legal entities capable of holding assets and being sued in their own names (as are companies). The dualistic nature of the foundation therefore makes it an apt choice for a stand-alone entity that might hold and administer wealth for the benefit of a family, or for a component of an international estate plan. In this latter capacity, it can be used to hold assets for investment and re-investment.

Under Bahamian law, a foundation is required to ensure that one of its main purposes is the management of the assets settled into it. Its primary purpose must be to carry out the wishes of its founder as set out in its constitutive documents (i.e. its charter and/or articles). It may engage in commercial activities such as the buying and selling of further assets as long as those activities are incidental or ancillary to its main purposes. In the context of fa-

miliar wealth management, the main purpose of the foundation may be, for instance, to provide for the financial welfare of family members, inclusive of their maintenance and education. In order to ensure that it has assets to do this, it may trade its assets to produce the necessary flows of income. In a large commercial structure, it may be used as a holding vehicle for the shares of one or more companies.

The governance of a foundation can look very much like that of a company, with officers appointed to make decisions for it and to undertake its day-to-day management, much like company directors. In the event of no officers being appointed, a foundation council or some other similar body governs it. In addition, the founder of a foundation may reserve powers to himself in a manner similar to the reservation of powers permitted for Bahamian trusts. These powers might allow him to appoint and remove officers or foundation council members, or to veto distributions of the foundation's assets. Every foundation in The Bahamas has to be registered with the Registrar of Foundations and must have an initial endowment of assets valued at least US\$10,000 or its equivalent in another currency.

LOOK AGAIN!

Over the years, The Bahamas have continued to adapt, and re-adapt, their wealth management offerings wherever possible, keeping abreast of trends in financial services and wealth management. In doing so, the jurisdiction has placed its trust and foundation offerings, which are undoubtedly progressive and easily tailored to clients' needs, in pride of place in the competitive world of IFCs.



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DIGITAL ASSET REGULATION ON THE HORIZON IN THE BAHAMAS

* by Aliya Allen, a partner at Graham Thompson

Trust is an important factor in any transaction. Contractual promises are based essentially on trust, though we know that courts are available to help us enforce them. By the same token, digital payment systems (and, for that matter, any transactions) are based on trust. People, however, are inherently untrustworthy – this is the sole reason why trusted intermediaries exist.

The urge to solve this problem of trust in electronic payments was the basis upon which Satoshi Nakamoto premised the white paper that conceptualised Bitcoin, for the technology used to make that currency viable was the original Blockchain.

“Mining is an energy-intensive, computing-intensive process and an arms race has begun”

The white paper said that there was a need for a peer-to-peer digital payment system comprising a trustless digitally distributed ledger, verified and confirmed by a cryptographic consensus and immutable in nature.

Paradoxically, the creation of a trustless digitally distributed ledger actually restores trust and confidence between parties. The ledger that Nakamoto used is reliable and, because of the disintermediated trust model on which it is based, it is absolutely trustworthy.

WHAT IS A BLOCKCHAIN?

A blockchain is a digital online ledger of transactions maintained by a decentralised network of computers around the world. These computers are called nodes. The ledger itself is just computer code which is universally and publicly accessible and can be displayed through many different graphical user interfaces. It is often described as pseudonymous – transparent but anonymous.

CRYPTO-CURRENCY AND MINING

A crypto-currency is generally a digital representation of a unit of value. When somebody ‘mines’ a unit of it, that unit is awarded to him when he validates a transaction on a blockchain successfully. In terms of the validation of transactions, there are two different consensus mechanisms: (i) proof of work and (ii) proof of stake. When trying to ‘prove work,’ the ‘miner’ tries to solve computational puzzles/algorithms which, by design, he can only do by brute force, i.e. by trying all possible combinations. It is a slow and costly way of obtaining a financial reward. Proof of stake is a type of algorithm by which a crypto-currency blockchain network aims to achieve a distributed consensus.

This digital representation of a unit of value can be transferred from one user to another without intermediaries. The ‘price’ or ‘value’ of a crypto-currency is based on a rate of exchange at one of many cryptocurrency exchanges. This rate depends on various factors such as levels of adoption and demand.

Bitcoin, in particular, incentivises the miner through proof of work by awarding him new bitcoins each time he discovers or validates a new block. Bitcoin is limited in supply – there will only ever be 21 million Bitcoins in the world. In addition, there is a decreasing supply because the number of bitcoins generated per block goes down by 50% every 210,000 blocks or every four years. More than 80% of bitcoins have already been mined and by 2140 they will all have been. Mining is an energy-intensive, computing-intensive

process and a computing-power arms race has begun as miners scramble to be the first to solve the problems that they face. Nobody knows how the miners of the future, faced with diminishing returns, will continue to be incentivised.

CUSTODY

This digital representation of a unit of value can be ‘stored’ in a private wallet, but the ‘wallet’ is really a software programme accessible on or through a device such as a computer, tablet or phone. The programme holds the digital credentials or ‘private keys’ which the user needs to access his crypto-currency holdings online.

Crypto-currencies may be stored in different ways.

- **With a custodian.** The owner of some crypto-currency might entrust it to a crypto-exchange which keeps his private keys for him.
- **Direct – private wallet – hot storage.** An online wallet is a software programme which holds the digital credentials or private keys required to access the user’s cryptocurrency holding.
- **Direct – private wallet – cold storage.** This is an offline wallet (such as a software programme managed offline) which holds the digital credentials or private keys that the user needs to access his stash of crypto-currency. This makes it less susceptible to hacks.

A SOLUTION TO DE-RISKING?

We live in a world in which many countries, including small island states, are grappling with the phenomenon







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of 'de-risking,' the phenomenon of large financial institutions ending or restricting their business relationships with clients (or categories of clients) in an attempt to avoid, rather than manage, "money-laundering risk" and other forms of risk. Crypto-currencies are at once seen as a solution to the de-risking problem and as a major risk which, in turn, invites further de-risking. There were early hopes that people might use crypto-currencies as bridge currencies in the style of BIT-PESA, which facilitates money transfers to and from Nigeria, Uganda and Tanzania using bitcoin. The transfer of funds in a peer-to-peer settlement would seem to be immune to any de-risking measures.

Another proposed remedy is to use blockchain technology as immutable proof of the true risk profile of any institution. A distributed immutable database could create a shared repository of "customer due diligence information," i.e. information about this-or-that customer's background, identity and finances. Compliance officers at correspondent banks that deal with the database could peruse it, paying special attention to the history of the relevant customers' transactions. The banks could then analyse these relationships in a truly risk-based way.

ICOS – BOOM OR BUST?

Initial Coin Offers (ICOs) are essentially a means by which a start-up business raises funds, typically to develop an application or service, by accepting such funding for tokens issued on the blockchain. There is typically a pre-ICO stage in which a private sale of tokens occurs. At this point, if the token has merit, early-stage venture capitalists and investment funds may participate and may receive preferential treatment because of the size of their investments. Tokens come in all shapes and sizes but can be divided loosely into three types.

- **Utility Tokens** – e.g. tokens which accord the holder a right to access the service or application, usually once the utility of the platform in question has been established.
- **Security Tokens** – e.g. tokens whose value is linked or backed

by an underlying asset such as oil, gold or a company's shares, or which pays a defined or guaranteed return linked to the company's profits or the right to convert tokens into equity.

- **Payment Tokens** – e.g. tokens that people can use to settle payments.

In 2018 more than US\$12 billion was raised in ICOs, even though the values of tokens have decreased significantly and fewer ICOs are actually hitting their funding targets.

ICOs have truly democratised the process of raising funds. A person with a great idea can acquire all the funds he needs to put it into practice in a far cheaper manner than he would if he were financing it traditionally. However, it is thought that roughly 55% of all ventures funded by ICOs are doomed to failure for a whole host of reasons including fraud, lack of experience, lack of talent and unrealistic goals.

Generally speaking, the financial regulators of The Bahamas viewed the wave of ICOs which peaked in 2016/2017 with a wary eye. Today, they appreciate the innovative nature and promise of blockchain technology, but are worried that it might create problems for the financial system. Nevertheless, in 2018 the Securities Commission, the Central Bank of The Bahamas, the Ministry of Finance and the Compliance Commission (which regulates 'gatekeepers' or, in the parlance of the Financial Action Task Force, Designated Non-Financial Businesses and Professions or DNFBPs) collectively asked themselves whether prudential regulation was necessary (or even feasible) for crypto-currencies.

On 7 November 2018 the Central Bank published a discussion paper in which it proposed to limit the ways in which its domestic licensees might deal with the sector, the better to avoid systemic problems. It suggested that it should only allow them to 'sponsor/promote' initial coin offerings if they undertake no obligations on their balance sheets. It also proposed to forbid banks to accept deposits of crypto-assets from clients

but to allow them to provide off-balance-sheet custody services. This is interesting because crypto-asset custody is often referred to as the 'holy-grail' or 'missing link' that might help crypto-investments to become 'institutionalised,' i.e. to be used – and allowed to be used – freely by financial institutions of the old-fashioned type. It is an encouraging sign that the Central Bank, though conservatively, supports the idea of its licensees doing this.

The Securities Commission initially adopted a wait-and-see approach to the sector. To date, it has not issued any formal public pronouncements on the subject but has spoken to international experts about the regulatory landscape. It is interested in casting its regulatory net wider, with a view to encouraging development in the sector. Financial firms in The Bahamas are expecting to see some rules emerge for the registration/regulation of ICOs, wallet providers and crypto/digital-asset exchanges in the coming year.

The Central Bank has firmly disavowed the term 'crypto-currency' in favour of the term 'digital asset.' It does this to distinguish payment tokens from fiat currency/legal tender which can only be attributed to chattels and money to which such character has been attributed by law, i.e. by or with the authority of the state. It has expressed no firm view about whether or not to regulate utility tokens but it should be noted that the Securities Commission wishes to make new rules for the registration of utility tokens, security tokens and payment tokens.

The laws of many jurisdictions view digital assets as chattels or property rights that are represented by unique records on distributed ledgers. It should be noted that at present, because of the lack of a broad "financial instrument test," most jurisdictions' laws do not automatically deem securities tokens to be securities.

If the Government of The Bahamas were to amend the *Securities Industry Act 2011*, securities tokens might be subject to the same disclosure laws as other commonly traded assets



and white papers that precede ICOs might have to be registered within strict time limits before they are distributed.

“Crypto-asset custody is often referred to as the Holy Grail or Missing Link”

AML/KYC STANDARDS

It should be noted that the *Financial Transactions Reporting Act 2018* and the *Proceeds of Crime Act 2018* refer to virtual currencies as ‘cash.’ This means that a financial institution or DNFBP which is accepting ‘cash’ or deposits of virtual currencies, or otherwise facilitating their transfer and exchange, will have to comply with the two Acts, which might also apply to wallet providers and firms licensed under the *Payment Systems Act*.

Of course, it is fully expected that the Securities Commission will pass rules to subject certain types of digital asset businesses to the usual anti-money-laundering and “know your customer” standards.

SMART CONTRACTS

Smart contracts are self-executing and self-enforcing contracts memorialised in computer code. For them to be valid, the law must state that electronic transactions are valid. The Bahamas have been quite forward-looking in this regard; the *Electronic Transactions and Communications Act 2003* says that in the context of the formation of a contract, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of electronic communications.

An ‘electronic communication’ is defined as information which is communicated, processed, recorded, displayed, created, stored, gen-

erated, received or transmitted by electronic means. It should be noted that there are key exclusions from the standpoint of Bahamian law, including the creation, execution, amendment, variation or revocation of (i) a will or testamentary instrument, or (ii) a trust, or (iii) the conveyance of real property or the transfer of any interest in real property.

If a deed is required to be registered, or ought to be registered, to preserve priority in *section 3 Registration of Records Act*, it cannot be expressed or agreed electronically because of the methods of authentication on which the Act insists. Therefore, at least for the moment, it is not possible to transfer or convey real property located in The Bahamas by means of a blockchain. It is also not possible to have a self-executing will or trust from a Bahamian law perspective. Some day in the future, of course, this might change.

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FUNDS DOMICILED IN THE BAHAMAS CAN COMPETE!

* by Antoine Bastian, Genesis Fund Services Ltd

The *Mutual Funds Act 1995* first subjected the investment fund industry of The Bahamas to 'self-regulation,' with the *Investment Funds Act 2003* upgrading the regime to something that Allyson Maynard-Gibson, the former Minister of Financial Services, described as a 'genuine' regulatory structure. When that much-needed second Act came into force, practitioners and consumers alike knew that The Bahamas would now have the regulatory and legislative means to compete with Bermuda and the Cayman Islands, which at that time had vibrant and growing fund industries.

Although the *Investment Funds Act* brought in such positive innovations as the Specific Mandate Alternative Regulatory Test or SMART fund (which, I believe, has become one of the leading private-label funds in the world) and imposed generally good regulation on the fund industry in The Bahamas, it fell short in some areas. Moreover, institutional and professional funds, along with international fund administrators, in The Bahamas have not grown at as great a rate in the past few years as those to be found in other financial centres.

"The Bill proposes to level the playing field for administrators by transferring burdens to the fund managers and the operators"

Over the past few years, the Securities Commission of The Bahamas has worked hard with the local financial services industry to revise the *Investment Funds Act*. Its modernising objective has been twofold: to improve The Bahamas' fund business and to subject it to international best practices. The result has been a new Investment Funds Bill which ought to become law this year.

The proposed law is intended to broaden the regulatory powers of the commission to take in new people and entities, to protect investors from sharp practice to a greater degree than before and to protect the

reputation of The Bahamas. From a fund administrator's point of view, moreover, I think that it also contains several things that will make life easier for fund management firms.

THE REMOVAL OF ONEROUS BURDENS FOR FUND ADMINISTRATORS

Genesis Fund Services Limited has been an Unrestricted Fund Administrator since 2003. We have grown and developed during this period but have also watched several large international fund service providers leave the jurisdiction because of the burden of responsibility that the law placed on their administrators.

Sections 25 and 26 Investment Funds Act 2003 govern the administrator's job. *Section 25* states that the investment fund administrator (or operator of an investment fund) has to use reasonable efforts to ensure that the investment fund complies with any direction given to it by the commission in accordance with the provisions of the Act. *Section 26* says that the administrator of an investment fund has to use reasonable efforts to ensure that the investment fund does not carry on or attempt to carry on business as an investment fund in a manner contrary to any provisions of the Act.

Administrators as described by the Act are also seemingly equal to operators, whose jobs burden them with weighty responsibilities that take in the corporate governance of fund structures, risk management and much else besides. This is not the

case for other jurisdictions such as the Cayman Islands and Malta, where the job of the administrator is simply administrative.

The Bill proposes to level the playing field for administrators by transferring these burdens to the people who ought to have to shoulder them: the fund managers and the operators. In the latter category are: directors in the case of companies; trustees for unit trusts; general partners for partnerships; and governing administrators for investment condominiums. Clause 52 of the Bill lays out a more realistic set of jobs for administrators – something that ought to help The Bahamas compete more easily with rival centres.

It reads: "Obligations of an investment fund administrator:

- (a) provide the principal office for an investment fund that it administers in or from The Bahamas;
- (b) pay the fees for each investment fund for which it provides the principal office in The Bahamas;
- (c) ensure that each party related to an investment fund is fit and proper as prescribed by the Commission;
- (d) make such reports to the Commission regarding the investment funds for which it acts as the investment fund administrator as the Commission may require."

An administrator should never be immune to liability for gross negligence and wilful deceit. By the same token, however, an administrator should never have to bear the burdens of governance and risk management.



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The Bill, in its present form, promises to place fund administrators in The Bahamas on the same footing as those in competing jurisdictions.

CLEARLY DELINEATED JOBS FOR FUND MANAGERS

The current law speaks very generally about the jobs that it expects fund managers to do. The Bill suggests that the operators should shoulder these burdens. Fund managers have exposed The Bahamas to various risks in the past, so it is right that the Government is proposing to subject managers and operators to more stringent requirements.

The 'fit and proper' yardstick against which the Bill seeks to measure people who manage and govern funds is to be stringent and will become a vital method by which regulators gauge practitioners' knowledge and/or experience.

Clause 64 reads: "An operator of an investment fund shall use reasonable efforts to ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to the provisions of this Act."

The Bill mentions the *Securities Industry Act 2011*, which was designed to

regulate the business of investment managers and advisors. However, the *Investment Funds Act 2003* provided an exemption across the board for the managers of funds domiciled in The Bahamas. The new Bill makes a bold, clear and important attempt to identify the real risks that beset the industry and will undoubtedly weed out non-professionals from the jurisdiction.

It is good to note that fund managers who manage or intend to manage standard (retail) funds, or funds organised in any jurisdiction outside the European Union, will have to be licensed. This stipulation is to be found in the Bill's preamble and is meant to protect members of the public who invest in funds.

It is also good to know that professional managers, i.e. "managers with substance and knowledge," are to have easier access to the jurisdiction because they will have to be registered but not licensed.

Clause 26(4) proposes to let the regulator register a person as an investment fund manager if he -
 "(a) intends to manage professional funds or SMART funds;
 (b) intends to manage any investment fund in a jurisdiction, other than the EU, whose equity interests are offered to accredited investors only; or

(c) is licensed or registered in a prescribed jurisdiction."

OTHER CHANGES

Finally, it is exciting to note that the legislative changes will make The Bahamas comply with the European Union's Alternative Investment Fund Managers' Directive (AIFMD). This should allow Bahamian investment funds to be marketed in the European Union under the authority of the NPPR (National Private Placement Regime). The Bill is going to put The Bahamas once again on an even keel with other competing jurisdictions outside the EU.

"The Bill is meant to protect members of the public"

The Bill is a welcome change for the fund industry of the Commonwealth of The Bahamas. It will help the jurisdiction continue to grow, develop and compete in the field of funds and fund administration, not only in the Caribbean but also in the world as a whole.

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FxPro Global Markets Ltd is authorised and regulated by the SCB (license no. SIA-F184).

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FXPRO: IN LINE WITH REGULATORY BEST PRACTICE

Any brokerage company that sees its main mission as the provision of accessible service to international clients has to pay an enormous amount of attention to the law. Some firms take the laudible decision to go one better, insisting on working only in well-regulated regions.

REGULATORY DIVERSIFICATION: WHERE IT BEGAN

Multi-regulation, i.e. the regulation of a firm by many regulators, is an essential feature of the trading business and people often view a company that has to answer to many regulators as more reliable than others. An established international company that wants to guard its good name ought to gravitate towards regulators in its chosen region of operation whose standards are high. It also ought to choose jurisdictions which offer excellent depository insurance before it puts its products on the market.

As a leading global online broker, FxPro does this by offering its services only to traders in jurisdictions that follow strict rules and procedures. This allows every customer to draw from a wide palette of trading options while benefiting from remarkably prompt order execution, which often takes less than 13 milliseconds.

FxPro's services are in high demand in more than 170 countries. We are always looking all over the world for new opportunities to expand our clients' portfolios and have chosen The Bahamas as the next place in which to set up offices.

In the words of Charalambos Psimolophitis, the CEO at FxPro Group: "FxPro always does its best to provide a positive trading experience. This applies both to the execution without any dealing intervention – NDD, and the trading conditions.

We work in regulated regions only and urge our colleagues to do the same. In addition, we never neglect an opportunity to further strengthen our reliability by obtaining an additional licence."

HOW WE CAME TO CHOOSE THE BAHAMAS

The Bahamas have very reasonable business rules and the Securities Commission of The Bahamas has an impeccable reputation. The Government, moreover, follows the globally accepted anti-money-laundering policy of the Financial Action Task Force and adheres strictly to the Common Reporting Standards established by the Organisation for Economic Co-operation and Development.

FxPro's move into The Bahamas will allow it to increase the number of services that it offers and will also provide it with ample opportunities to embark on marketing campaigns. It offers a broad variety of services that are of a very high quality and which satisfy very high standards.

In 2018, our company was honoured with the title of "Best Forex Trading Experience" at the UK Forex Awards. We plan to not only keep up the standards we have set but also to supersede them. It is very satisfying to think that our licence in The Bahamas will now contribute to this goal.

When FxPro Global Markets Limited applied to the Securities Commission for a licence, the regulator reviewed its application and submitted it to a six-week check. It then formally issued the firm with licence No. SIA-F184 – a recognition of its flawless business reputation and willingness to provide all relevant authorities with the right information.

The next step for the company was to open the local office. The maintenance of such an office is a prerequisite for companies that do business under a Bahamas 'A-class' licence – a licence that the regulator can

only issue to companies with official representatives and developed infrastructure in the region. In 2017, FxPro opened its doors for business at the Lyford Financial Centre, PO Box N 7776, Nassau.

THE VERY BEST TRADING PRACTICE

FxPro strives, in the most dynamic way possible, to provide traders with all the top-notch tools that they need. Under the supervision of The Bahamas Securities Commission, it provides such modern trading platforms as MetaTrader 4, MetaTrader 5, cTrader and FxPro Edge.

The firm offers contracts for differences (CFDs) for 6 asset classes: Forex, Stocks, Spot Indices, Futures, Spot Metals and Spot Energies. It provides its clients with high-level liquidity and expanded execution without dealing intervention, allowing traders to benefit from tight spreads and competitive prices.

FxPro is keen to provide its customers and the authorities with all the right information and keeps its clients' funds secure according to the highest standards. For this reason, it insures all traders' deposits with major international banks and separates them completely from its own capital.

Our company is at the forefront of new progress in the forex industry and our best practices are perfectly in step with the excellent regulatory regime of The Bahamas. Stay tuned for more developments at fxpro.com!

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FAMILY OFFICES – A GROWING AREA OF BUSINESS IN THE BAHAMAS

* by Linda Beidler-D'Aguilar, a partner at Glinton Sweeting O'Brien, counsel and attorneys-at-law

As families try to gain greater control over their financial affairs, family offices have risen to play a vital part in the cohesive and coherent management of their business interests, along with the domestic and personal affairs of their members.

Although people are always wrangling over the kind of governance that family offices and their associated structures should have, there is no question that present political and regulatory conditions suggest that substance prevails over form. Anyone who wants to establish an offshore family office must take "permanent establishment" regulations (which govern fixed places of business which usually generate direct-tax liabilities in the jurisdictions where they are situated) and "controlled foreign company" (CFC) rules into account. He or she must also contend with rules that relate to tax, residency and immigration while overseeing and managing things competently.

"Financial institutions, lawyers and accountants are readily available in the islands"

The Bahamas' legislative and regulatory regime gives such people the opportunity to create effective and efficient structures for family offices that comply with financial regulations. Service providers (including financial institutions, lawyers and accountants), skilled professionals and staff are readily available in the islands. The Bahamas' proximity and direct flights to major cities such as Miami, New York, Toronto and London, as well as the opportunity for families and their trusted advisors to take up residence and purchase property there, are highly advantageous for long-term strategic planning.

This article examines the ways in which family offices can take a holistic approach to "succession planning" –

the handing over of wealth from one generation to the next – while creating durable governing structures at the same time.

WHAT IS A FAMILY OFFICE?

A family office is a vehicle that can provide the family or families that it represents with a broad range of services, covering domestic administrative matters (e.g. travel arrangements, staffing and housekeeping), sophisticated support for long-range business, tax and estate planning. This last includes the supervision of trusts and the management of investments that may be outside the family's main operating businesses.

REASONS TO ESTABLISH A FAMILY OFFICE

When a family uses a single comprehensive structure, it can spot evolving opportunities and evaluate its overarching objectives with ease. When such a structure controls that family's various interests and keeps an eye on its obligations, its affairs are likely to be stable over a long period of time.

"There are direct flights to Miami and New York"

A family office also helps the family evaluate the goods and services that firms offer it and can also keep information about relatives' lives confidential because it consolidates advisory services, wealth management, income distribution and other services for them inside a structure that they themselves own. This is the antithesis of a piecemeal review of disparate elements in isolation from one another.

HOW A FAMILY OFFICE CAN PLAN RELATIONS BETWEEN THE GENERATIONS

A family office facilitates "generational planning," the means by which one rich generation plans the lives of a later one, and can avail itself of a broad variety of tools that help it do so. Wills are, of course, a common means of such planning, but are rarely good at helping people manage their dynastic interests from beyond the grave. Trusts (stalwarts of common law practice) and foundations (structures originally established under civil law codes), on the other hand, have been developed with the explicit aim of helping people to plan the lives of others for decades and perhaps even centuries ahead.

The overseeing and management of family trusts or foundations can be placed in the hands of third parties who report to a family office. Alternatively, the family office may itself establish a Bahamian private trust company (PTC) for the express purpose of acting as the trustee of this-or-that trust or group of trusts; equally, it can act as the founder or supervisory party to a foundation. A PTC commonly takes the form of a limited liability company and its board of directors can include members of the family in question as well as trusted advisors and independent third parties.

Consequently, the family may retain a measure of control over the strategic management of the assets without prejudicing the validity of the underlying trust or foundation. If the family establishes the structure with an unlimited life-span, subsequent generations can help to govern it.

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SUCCESSION PLANNING AT A FAMILY OFFICE

An increasing number of family offices are being established by patriarchs and matriarchs who have, through their own efforts, established the businesses and interests that those offices are destined to oversee. Their knowledge and expertise cannot, however, be the sole basis for current and future planning if those family offices are to prosper over long periods. They might require the following.

- The preparation of a family constitution or charter which may encompass such concepts as the family's overarching aspirations and goals, the things that it values, the missions of its businesses, the jobs and responsibilities of family members and various third parties (persons and entities) that work for it, and policies, procedures and processes that might resolve disputes that arise in crucial areas (business or otherwise).
- A regular evaluation of the executives (who may or may not be family members) who work at the office, along with a continual

assessment of the jobs and responsibilities that people at the office shoulder.

- The development and augmentation of knowledge and skills through formal training, plus an encouragement of the flow of information between people in the office and between family members and their internal and external advisors.
- Plans of action to help the family live up to its social responsibilities and further its philanthropic interests.

THE GOVERNANCE OF A FAMILY OFFICE

Much of this planning depends on the amount of time that the members of this-or-that family wish to devote to their tasks, their willingness to deal with internal and external advisors and their attitudes towards the disclosure of information about themselves to people outside the office.

A family that wants to derive the greatest benefits from its office ought to take corporate governance very seriously.

The family in question – and its advisors – ought to ensure that the people in its office have the right skills and expertise to do their jobs, even if those people come from its own ranks. Governance is not solely the province of directors and officers; people perform important functions at lower levels as well. The proper management of the family office's books and records is of the utmost importance, not least because adequate accounting records and the comprehensive compilation of information (internal and external) is necessary if the office is to meet its multitudinous reporting requirements. In order to please financial regulators, more and more family offices are paying more and more attention to the hiring of qualified staff members and the use of third-party consultants with the right reporting skills who can review compliance and risk management procedures, the better to follow the increasingly sophisticated obligations that regulators are imposing on them.

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