

2024

The Bahamas: A Complete And Compelling Choice

*A WealthBriefing Two-Part Mini-Series On
The Bahamas Financial Services Industry*

EDITION 1

INTRODUCTION

A Palette from which the Investor can Paint His Own Picture

The Bahamas hosts the sixth-largest branch of the Society of Trust and Estate Practitioners (STEP) in the world and is home to a range of professional investment-management services of the kind that one can find in New York, London and/or Hong Kong. In this, the first mini-report in the year's series, we look at the difference between wealth management and wealth planning, the latter being essential to any high-net-worth (HNW) family that wants to beat the odds and preserve its wealth into the third generation.

As we do so, we unpack the "Bahamas Toolkit," the comprehensive range of private wealth-management options to be found in the jurisdiction.

This includes: the ICON fund structure, aimed at the Brazilian market; the Bahamas Executive Entity or BEE, which can provide a trust with resolute organisation and governance that stems from a central point and lasts for generations; private trusts; the commonly-used purpose trust – a structure which has no beneficiaries and can hold the shares of private-trust companies and other legal entities (a function that the BEE often fulfils also); and SMART Funds, which capitalise on the jurisdiction's renowned expertise with purpose trusts and help investors to act in line with their objectives and risk limits.

Meanwhile, under the *Digital Assets and Registered Exchanges (DARE) Act 2020*, The Bahamas is poised to become an important jurisdiction for small and flexible foreign firms that want to do digital-asset business all over the world from a well-regulated base that is not located in a large, densely-packed jurisdiction such as the United States, the United Kingdom, Japan, Canada or one of the countries of the European Union. It remains a magnet for people who want to set up family offices.

We also observe the political stability of The Bahamas, which helps governments of different complexions to build upon each others' achievements rather than change policy constantly. In 2018, for example, the Government established a new Policy Framework for the Public-Private Partnership Initiative, intending to create a formal and transparent method for improving, updating or creating public assets with private management and at the same time using public and/or private capital. The bold Nassau Cruise Port bond offering in 2020 was the first major result. After a general election in 2021, the new governing party wisely continued that policy.

Lastly, environmental initiatives provide some of the clearest evidence of The Bahamas's resilience and flexibility. The *Carbon Credits Initiatives Act* has put The Bahamas at the forefront of the global carbon-finance movement, as further reading will show.

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ADVERTISING SUPPLEMENT

We Create Legacies for the Future



***By Paul Winder, the Global Head of Wealth Planning at Deltec Bank & Trust Limited**

It is common to hear financial practitioners all over the world praise The Bahamas for its financial prowess and for having hundreds of banks and trust companies. This praise comes from around the world, not least from the many friends of the jurisdiction in Hong Kong, from the corporate business service providers at Vistra, which has several offices all over the world, and from the UK Ship Register, one of the world's best-performing flag registries, whose own people admire The Bahamas, amongst other places.

The island chain is, moreover, home to a host of “heavy hitters” such as Deltec Bank & Trust Limited, Lombard Odier, Pictet, Fidelity, the Royal Bank of Canada and so on. But why should a high-net-worth individual (HNWI), or an intermediary, choose The Bahamas as a base of operations? What makes our jurisdiction the best choice in a world full of choices?

The Bahamas’ main virtue lies in the comprehensive range of private wealth-management options that are often known collectively as “The Bahamas Toolkit.” This is based on an admixture of pragmatically-crafted laws, quality wealth-management services and experts of all kinds working in the jurisdiction. These formidable resources are the product of a long and stable history of good finance, punctuated by the occasional blip and correction. Moreover, The Bahamas is one of the only Caribbean countries that obey every one of the Financial Action Task Force’s famous ‘40 Recommendations.’

The Bahamas – a former British colony and now an important independent Caribbean state – sits under the mantle of the most respected legal system in the world. The English Privy Council is the supreme legal authority in the jurisdiction, as established by the *Declaratory Act 1799*, and the entire jurisdiction sees this as a great advantage.

Being a common-law jurisdiction, trusts have existed in the country since the 1920s. Roywest, the first indigenous trust company, was set up in 1936. However, legislation was in place long before that in the form of the *English Trusts Act 1898*, which was inherited as a result of the country being under British rule at the time. More trust legislation has followed and trusts in The Bahamas are currently governed by the *Trustee Act 1998* (as amended).

WEALTH MANAGEMENT V WEALTH PLANNING

Terminology is important here. Wealth management is usually defined as an investment advisory service – drawing holistically from a range of financial services such as tax planning, accountancy and banking – that services the needs of affluent clients. Typically, fees are based on a client’s assets under management (AuM) and medium-term asset growth is the name of the game. Wealth planning, on the other hand,

is at least in part an attempt to arrive at the best possible legacy that a HNWI can leave for his heirs after his demise. Few family fortunes survive to the third generation. It is therefore a vital function of wealth planners to protect HNWIs and their families from sharp practice and the consequences of their own inexperience.

“The English Privy Council is the supreme legal authority in the jurisdiction.”

THE BAHAMAS TOOLKIT

The Bahamas offers HNWIs trusts, foundations, private trust companies, purpose trusts, protectors, family offices and our own SMART Fund and ICON structures. If it is useful, the jurisdiction has it. Rarely, if ever, does a Bahamian financial institution offer pre-made or manufactured products that roll off the production line in some grotesque financial factory that pins Orwellian numbers on HNWIs. Instead, the Bahamian wealth manager pays attention to the client and his story.

The Government also had this aim in mind when it enacted the laws of the last 40 years. The main ones are as follows.

- 1991:** The *Fraudulent Dispositions Act*.
- 1998:** The *Trustee Act*.
- 2003:** The *Investment Funds Act*.
- 2004:** The *Foundations Act and the Purpose Trust Act*.
- 2007:** The *Banks and Trust Companies (Private Trust Companies) Regulations*.
- 2011:** The *Trustee Amendment Act*, the *Bahamas Executive Entities Act* and the *Rule Against Perpetuities (Abolition) Act*.
- 2014:** The *Investment Condominium Act*.
- 2020:** The *Digital Assets and Registered Exchanges Act* and the *Financial and Corporate Service Providers Act*.
- 2023:** The *Arbitration (Amendment) Act* and the *International Commercial Arbitration Act*.

This impressive collection of statutes ensures that settlors can exercise reserved powers, can avoid the imposition of foreign forced-heirship laws on their arrangements in The Bahamas (there being no indigenous Bahamian laws of that kind) and can remain free to create common-law trusts, civil-law foundations, dedicated private trust companies and family offices. The latter two are especially useful to members of HNW families who want to set up legacies, either individually or collectively. If arbitration at any time becomes necessary, then The Bahamas has recently provided clear rules on the matter.

“The Bahamian wealth manager pays attention to the client and his story.”

Central to trusts, foundations and dedicated offices are three uniquely Bahamian assets: SMART Funds, ICON Foundations and Bahamas Executive Entities.

SMART FUNDS

Stemming from the *Investment Funds Act 2003*, SMART Funds capitalise on our jurisdiction’s renowned expertise with purpose trusts (trusts created for specific purposes which have no beneficiaries) and help investors to act in line with their objectives and risk limits.

The ‘Model Two’ Fund, otherwise known as the ‘Incubator Hedge Fund,’ enables up to ten professional investors to establish a hedge fund at trifling cost that is opaque to the general public and issues redeemable shares which carry voting rights, allowing their holders to elect to change any fund’s operator.

The ‘Model Four’ Fund, known as the ‘Private-Client Fund,’ conveniently provides a family with a centralised asset-holding vehicle by which to open accounts and initiate investments while losing nothing in terms of control.

INVESTMENT CONDOMINIUMS

The Bahamas was one of the first nations that recognised the immense potential of Brazil and Brazilian entrepreneurs, yet the civil legal system of that emerging nation presented a problem for common-law, Commonwealth powerhouses such as The Bahamas.

After working with Brazilian experts and gauging the legal requirements of Brazilian HNWIs most thoroughly, we established the Condominium as a convenient way in which they could pool assets for collective-investment purposes – often for properties with high potential.

The Condominium exploits our expertise with purpose-driven investment funds and civil-law foundations. It follows the common-sense principle of limiting investment liability to whatever an investment touches, while leaving growth potential uncapped. No investor should expose his global property portfolio to creditors.

THE BAHAMAS EXECUTIVE ENTITY

In 2011, The Bahamas abolished the Rule Against Perpetuities, allowing Bahamian trusts to survive *ad infinitum*. This opened a portal to a new realm, unlocking the market potential of our jurisdiction in its dealings with all things to do with legacies. The life of a trust can now be unlimited, lasting three, four, five, or six generations.

Every trust needs firm organisation and governance that stems from a central point. A ‘protector’ – a person whom the settlor has chosen to exercise powers over the trust, who is not himself a trustee – is a traditional way of providing this. Such a person can act as a voice of wisdom and guide the trust through times of danger, but one individual cannot do this for generations.

The Bahamas established the Bahamas Executive Entity or BEE as an answer to this problem. It institutionalises this role and is a good way of guiding structures that multi-generational dynasties use, such as long-standing foundations or private trust companies. However, a BEE’s use extends beyond just acting as a protector, as a BEE can perform the role of any office of a trust or of a legal person. The persons that comprise a BEE receive limited liability for multiple jurisdictions, counter-intuitively enabling them to fulfil their fiduciary obligations – for example, when defined in a foundation charter.

PRIVATE TRUST COMPANIES AND PURPOSE TRUSTS

Private trust companies, at their core, contain multiple voices of reason that belong to trusted advisors who maintain complete discretion on principle. These are rare virtues, but essential for effective wealth planning. Furthermore, they de-limit the constraints inherent in institutional ‘packaged’ trusts while consolidating affairs under a single roof. Private or visionary-type investors are naturally encouraged to consider a private trust company as soon as practical.

“The Bahamas has recently provided clear rules for arbitration.”

The Bahamian professional trustee envelops the purpose trust, which enforces the private trust or holding company, which consists of multiple family trusts. This provides the necessary structure for an effective, unlimited estate plan that aims to tie certain assets or parental goals to certain family members or friends. In other words, it is a holistic blank canvas for wealth planning that puts the senior HNW at the helm.

Finally, the purpose trust itself, absolutely protected by The Bahamas’ *Fraudulent Dispositions Act 1991*, allows for unlimited freedom in the pursuit of investing happiness. It establishes a two-year statutory limitation from the date of disposition (e.g. transfer) within which a creditor can claim assets, but he must prove fraudulent intent. Thereafter, the assets settled in the purpose trust may not be attacked or challenged as belonging to the trust.

One must be mindful, however, that any trust set up with an intent to defraud is invalid. What we Bahamians do, and what we do well, is to think innovatively when tailoring structures to create responsible legacies. This is the right way to plan for the future.

OUR FUTURE

The *Digital Assets and Registered Exchanges Act 2020* and its descendant, the *DARE Act 2023*, are testaments to the growing prominence of digital assets. They relate to major cryptocurrencies such as stablecoins, but also to the technical freedoms presented by smart-contract technology. They allow for transparent, objective, code-driven instructions to govern every structure that we have discussed so far.

In the meantime, protected investment funds lend themselves well to the volatility inherent in a new asset class that is still making its mark.

You may win, you may lose, but frankly, with structured planning, you are more likely to succeed.

“The purpose trust allows for unlimited freedom in the pursuit of investing happiness.”

Consider the potential of a 10% allocation to cryptocurrency within an investment fund, itself within a governing purpose trust, which also holds allocations to privately-incorporated equity (SMART) and real-estate (ICON) funds. I shall leave that calculation to you.

As a parting gift, I shall add that the assets under management in the Bahamian jurisdiction stand at more than \$50 billion, contained in

more than 680 licensed funds. Deltec itself, with employees and partners located globally, manages and guides nearly \$3 billion of that amount. This article has shown how that is done.

So, if you are a HNWI and you have not yet explored The Bahamas and what it has to offer, is your legacy really set up to reach its full potential?

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ADVERTISING SUPPLEMENT

Recent Developments in a Dynamic Financial Centre



*** By Antoine Bastian, the CEO of Genesis Fund Services Limited**

Over the past decade or more, The Bahamas has experienced several turbulent economic events that have created fiscal challenges for the country. The economic impact of such events – including natural disasters, blacklistings and COVID-19 – have been challenging and have redirected the government, regulators and the private sector to work harmoniously to reimagine The Bahamas’ workplace to ensure that the jurisdiction continues to have a stable, growing and robust economic future.

Strong legislative reforms, public-private partnerships, new tax perspectives and new financial and environmental projects are all a part of The Bahamas’ response and have made its financial services industry more resilient and flexible than ever.

KEEPING ON TOP OF WORLD EVENTS

The global dysphoria on the subject of taxes has certainly not been avoided in The Bahamas. The tax-related demands of the Global North over the past 20 years have driven Bahamian politicians to walk a tight-rope, balancing the role of adopting new global tax ideologies – ideologies that are focused on keeping The Bahamas as a relevant financial centre – and, at the same time, striving to convince industry stakeholders that a change in tax ideologies is prudent from a long-term perspective. The Bahamas’ ambition has been to rethink the ideas of tax ideologies and tax reform in a modern, global and transparent way.

“Bahamian financiers have ridden the recent global wave of standard-setting with flying colours.”

While this article is not intent on providing a chronology of The Bahamas’ time on and off the FATF and EU grey-list and black-lists respectively, the intent is to celebrate The Bahamas’ vigilance and determination to progress a financial services sector that is a part of the global plan for the eradication of tax evasion, money laundering, terrorist financing and counter-proliferation (AML/CFT/CFP). The completion of the National Risk Assessment and subsequently the National Identified Risk Framework Strategy was the cause of legislative amendments and new enactments to help the sector by creating a more robust and compliant financial services industry. The *Beneficial Ownership Register Act 2018* is a case in point – although the Register of Beneficial Ownership is not accessible to the general public and only a designated officer of a regulatory authority may request a search. Bahamian financiers have ridden the

recent wave of global standard-setting that has resulted in far more onerous AML and tax regulations in all nations, and they have emerged at the other end with flying colours. Few Caribbean jurisdictions can comply with the highest standards while still being able to help HNWs and family offices find creative solutions to their problems nimbly and quickly.

CREATIVITY IN THE CRYPTO-WORLD

The Bahamas, though, has done more than simply acquiesce to global demands of AML and tax transparency. Successive governments have been creative in their approach to continue to develop and grow the financial services sector. Like the ground-breaking SMART Fund models in 2003, The Bahamas demonstrated more innovation, agility and resilience in the financial-service sector by the introduction of the *Digital Assets and Registered Exchanges (DARE) Act 2020*. The Securities Commission of The Bahamas (SCB), in consultation with other regulators and industry professionals, embraced the idea that cryptocurrencies and digital assets were going to be a part of the economic global landscape and that The Bahamas was going to be part of it also. The desire to regulate a burgeoning financial-services space properly was an important aspect of jumping into the digital-assets space and becoming one of the first jurisdictions with a strong legislative and regulatory programme in the digital-asset space. Despite the negative press of the FTX fall-out, The Bahamas has seen significant growth in the sector and is amending the *DARE Act* with the aim of making a greater appeal to those managers, exchanges and investors to be a part of a well-regulated and comprehensive legislative programme.

The new amendments are timely and should include some of the crypto-policy recommendations issued by IOSCO that are “designed to improve global standards of regulation of crypto-assets...set out how clients should be protected and how crypto-trading should meet the standards that apply in public markets.”

Furthermore, the Executive Director of the SCB has indicated that the amendments that are expected later in 2024 will also provide a

better legislative framework for stablecoins, making The Bahamas one of the few countries with such legislation. The amended *DARE Act* should redefine conflicts of interest, the custody of digital assets and digital assets being held off-balance-sheet. Notwithstanding the confidence of the *DARE* regime, the anticipation is that The Bahamas will be an important digital-asset jurisdiction for “the rest of the world,” meaning that smaller and more flexible firms not targeting larger regulated jurisdictions like the US, Europe and Canada to do digital asset business will have an opportunity to participate in a global marketplace and, at the same time, participate in a well-regulated jurisdiction.

“The Bahamas will be an important digital-asset jurisdiction for the rest of the world.”

WHY POLITICAL STABILITY IS VITAL

The growth in financial services is testament to the stability of The Bahamas’ democracy. From one governing party to another, and in many cases, policies are not changed or scrapped but rather enhanced and developed for the better of the country at large. In 2018, the Government of The Bahamas established a new Policy Framework for the Public Private Partnership Initiative (PPPs). The intention was to create a formal and transparent methodology of enhancing, updating or creating public assets with private management and at the same time using public and/or private capital. After a general election in 2021, the new governing party continued the PPP policy. The bold Nassau Cruise Bond offering in 2020 was the first major transformative initiative. The overall total debt and equity raised by the Nassau Cruise Port PPP initiative was approximately \$300 million. This phenomenal capital raise has directly and significantly contributed to an economic boom and the inflow of money from tourism to The Bahamas. The offering for the port demonstrated the government’s ability to modernize the downtown core of Nassau and successfully upgrade the nation’s number-one industry, without the need to borrow or tax its citizens.

CARBON CREDITS

Environmental initiatives provide some of the clearest evidence of The Bahamas’s resilience and flexibility. The *Carbon Credits Initiatives Act* has put The Bahamas at the forefront of the global carbon finance movement. Under the terms of Article 6.4 of the United Nations’ Paris Agreement, and in particular the United Nation’s Carbon Offset Platform (see <https://offset.climateneutralnow.org/>), which promotes the avoidance and removal of greenhouse emissions from the atmosphere via projects in the developing world, The Bahamas Government’s enactment of these dynamic pieces of legislation now provides a regulatory framework for the accreditation and transactions of blue-carbon credits. The Bahamas has also enacted the *Carbon Credit Trading Act 2022*. This legislation now enables the Securities Commission of The Bahamas to regulate the trading of carbon-credit securities related to

this new asset class and also allows broader rights participation in the fast-growing voluntary carbon markets.

While the current legislation allows entities or individuals to manage the monetization of blue-carbon sales or trading, the Government remains the owner of the sovereign assets and, under the current arrangement, will receive 92.5% of all proceeds of carbon-credit sales after operational costs. The proceeds will be used to fund The Bahamas’ Sustainable Development Goals as defined by the United Nations CCC.

By monetizing its blue-and-green carbon assets through credit issuance, The Bahamas will unlock new financial flows to support, among other things, marine and coastal conservation, ecosystem restoration, clean energy and resilient infrastructure, all of which in turn increase its carbon sequestration capacity and reduce greenhouse gases. At the same time, the effects of a carbon-credit economy can create new sustainable businesses and job opportunities in the fields of environmental science and marine biology oceanic carbon measurement, mangrove and seagrass stewardship, and beyond.

GROWTH AND CHANGE IN A FICKLE MARKET

The Bahamas is actively cultivating a financial service that includes carbon trading and carbon finance, conservation management and sustainable economic development with the support of global partners and stakeholders. This new initiative has the potential to reconfigure the economic landscape of The Bahamas because these activities are all aligned closely with UN Sustainable Development Goals such as poverty eradication, quality education and life below water.

“Legislation now provides a framework for the accreditation of blue-carbon credits.”

Overall, in this fast-paced and fickle financial-service environment, the Bahamas’ government, regulators and service providers are adapting continuously to the tides of global change and are continuing to demonstrate an out-of-the-box approach to maintaining a resilient financial service centre. At the same time, The Bahamas is ensuring that growth and change are predicated on a robust, compliant and modern legislative infrastructure that keeps the financial-services industry stable, progressive and proactive.

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