

BAHAMAS

FINANCIAL SERVICES REVIEW

2010, VOLUME 12 | A BFSB PUBLICATION | BFSB-BAHAMAS.COM/REVIEW

Finding Opportunities



- **NEW COMMITMENT FOR THE FUTURE**
- **BUSINESS SECTORS & OPPORTUNITIES**
 - **LEGAL & JUDICIARY**
 - **REGULATORY UPDATES**

MESSAGE FROM THE BFSB CHAIRMAN

BFSB currently is engaged on a structured approach to assess and prioritize business opportunities. The end goal: the long-term development of our financial services industry, by differentiating ourselves and better preparing the jurisdiction and service providers to meet ever evolving challenges.

This work has arisen from our firm believe that the overriding objective of any strategic development process should be to generate action.

We also recognise that strategy implementation is an ongoing, integrated process that will require reassessment and possible adjustments or even restructuring.

By positioning itself to partner effectively with industry stakeholders, government and regulators - from its very inception in 1998 - BFSB has found itself well able to identify the challenges and opportunities that confront the sector and through these same partnerships to be proactive in fulfilling basic mandates: the continued development of an environment that is conducive to business, and the promotion of a greater awareness of The Bahamas' strengths as an international financial centre.

The Bahamas has a long history in providing financial services, which dates back to the 1930s, and the jurisdiction remains committed to

maintaining and growing its presence as a provider of high quality financial services. Market responsiveness is a key focus of the jurisdiction, and The Bahamas has been very careful to ensure that its legislative and administrative frameworks are continually refined. These strengths will play well into the action plan phase of its strategy development.

The Bahamas Financial Services Review (BFSR) was re-launched in 2006 and since that time, successive volumes have served to highlight the state of the industry, while also serving as a promotional tool for products and services on offer. This Vol. 12 focusses on areas of opportunity that have been defined in the strategic framework for the sector.

We invite you to visit our Web Site at www.bfsb-bahamas.com where you will find links to other BFSB publications, including our Brochure, Sector Guides and Legislative Highlights. ✨



Paul Winder

“

BFSB has found itself well able to identify the challenges and opportunities that confront the sector.”

MESSAGE FROM THE ATTORNEY GENERAL AND MINISTER OF LEGAL AFFAIRS

The Government of The Bahamas is proud to partner with the Bahamas Financial Services Board on ongoing programmes to secure this jurisdiction's positioning as a global player.

Worldwide developments, including the regulation of international trade and trade in services at the multilateral and bilateral levels, have presented challenges but, more importantly, also have provided myriad opportunities. International financial centres such as The Bahamas have recognised the need to move quickly towards positioning themselves to take advantage of such opportunities.

Through its significant roles in both tourism and financial services, The Bahamas has been an active player in the international arena; this has facilitated its “fit” into the evolving global economy, and adherence to globally accepted best practices and standards. International business and finance - cornerstones of the strategic framework jointly developed by The Government and BFSB - are being pursued actively in the interest of sustainable economic growth.

For its part, the Bahamas Government remains focused on providing an environment conducive to doing business, and for the quality of life that attracts so many to our shores as residents. The focus on ensuring first class products and services to sustain our financial services industry is of paramount importance. Together with BFSB, the Government remains committed to ensuring that The Bahamas remains a premier financial centre.

Indeed, the preservation and growth of the financial service industry as the second pillar of our economy is acknowledged as a “national priority”.

An integrated, proactive and consistent approach to identified objectives and targets as identified in the Financial Services Industry Vision and Strategy is imperative, and I believe the various measures undertaken in terms of the legislative and regulatory agenda, judicial reform, trade liberalisation, international cooperation measures, and ease of doing business initiatives all attest to our fierce commitment to our joint goal. The collaborative relationship between the industry and government certainly epitomises the concept of public private sector partnership; it is PPP at its best.

I congratulate BFSB on this Vol. 12 of the Bahamas Financial Services Review, which has a special focus on various areas of “opportunities” in terms of business development. And, I applaud the client-centric approach it has undertaken through various initiatives to engage with key stakeholders locally and internationally as it continues to promote the development of the right financial services platform for the evolving global markets and clientele. ✪



Sen. John K. F. Delaney, QC



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THE BAHAMAS FINANCIAL SERVICES INDUSTRY: LOOKING FORWARD

The Bahamas continues to focus on being a high quality destination for owners of capital. This focus is captured in the shared Vision of the government and private sector for the way forward: “To be a globally competitive international business centre for wealth management, capital investment in the Americas and emerging markets, and residency”.

This vision brings to bear the unique strengths of The Bahamas:

1. Our history as a trusted partner for the international business community and families worldwide, due in large part to the jurisdiction’s outstanding record of political stability, progress and stewardship, status as an independent territory providing an efficient basis of common law, and the longstanding commitment and continuity of its people and government to the industry and its clients.
2. Our ideal location at the cross roads of the Americas in a time zone that is convenient for most of the major centres in the Americas.
3. Our physical resources of land, premises and fit-for-purpose infrastructure all located in one of the most idyllic settings in the world.

The Bahamas is not resting on its laurels by relying solely on these core assets; rather, it is working towards improving the value proposition of the country. From the implementation of modern insurance legislation and regulations and a new Arbitration Act, to the modernisation of infrastructure including the construction of the new Lynden Pindling International Airport in New Providence, scheduled for completion this year, many critical steps are underway.

G20/OECD Standard of Transparency and Tax Information Exchange

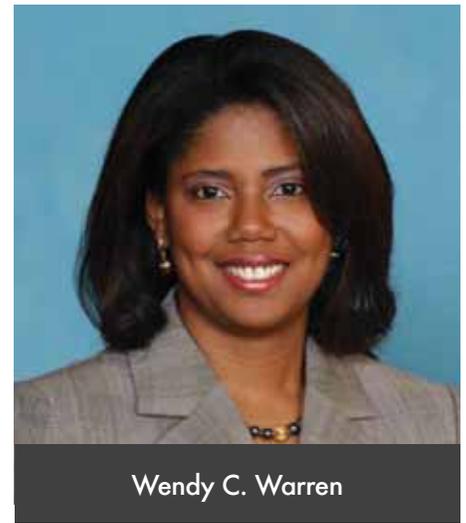
The transformation of the global economy has not left The Bahamas’ international financial services industry unchanged. With 22 tax information exchange agreements under its

belt, the centre met and exceeded the OECD standard well in advance of the G20 deadline of 31 March 2010 for IFCs to sign the requisite twelve such agreements to demonstrate their transparency on tax matters. The decision to endorse the OECD standard reinforces The Bahamas’ unwavering commitment to be a trusted jurisdiction for clients, and to be a responsible member of the international community.

The Bahamas remains strongly committed to the principle that persons have a right to privacy with respect to the conduct of their affairs. Moreover, respect for the rule of law has always been fundamental to the success and strength of the financial services industry in the centre. As such, clients can be assured that our authorities will only exchange information on agreed and transparent protocols. All of the agreements signed by The Bahamas are in accordance with the OECD model TIEA and Double Taxation Agreement.

As such, the basis on which the Bahamas will cooperate with countries is the same as all countries that adopt Article 26 of the OECD model convention. In particular, through the agreements, the centre commits to cooperate only upon requests where specific information is provided. This requirement for specific information is critical in furtherance to the Bahamas’ stated position to prevent so-called “fishing expeditions”.

In the 2002 Bahamas-United States of America TIEA similar arrangements which limit the exchange of information to specific requests that meet predefined criteria were agreed. These arrangements have been in place over the last six years, and have been respected by



the US and The Bahamas. Likewise, legislation that gave effect to the two countries’ TIEA continued to preserve client confidentiality by denying any request (1) that is outside of the agreed arrangements and procedures, (2) where insufficient evidence is provided to support the request for information (so-called “fishing expeditions”) or (3) where conditions are not agreed for stipulated safeguards of the information. Likewise, the International Tax Cooperation Act 2010 and Regulations provide a similar framework for requests for cooperation and the safeguards for the investor. These arrangements will allow The Bahamas’ international financial sector to continue to develop in an environment that adheres to internationally agreed standards.

Over a decade ago, the OECD sought to have The Bahamas implement its standard for transparency and tax cooperation. The Bahamian response to the OECD standard was to insist that all countries implement the same standard at the same time as ourselves. Notwithstanding significant changes in the world of finance, The Bahamas continues to fulfill its commitment to clients and the OECD, as the OECD standard is being implemented in all major countries providing financial services to a global clientele.

A Wealth Management Centre

The Bahamas’ strength is rooted in its long history in providing financial services since the 1930s, and reinforced by the jurisdiction’s ongoing commitment to maintain and grow its presence as a provider of high quality financial services.

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LOOKING FORWARD

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This historic involvement has created a jurisdiction that can easily be defined as established, progressive and welcoming for financial services and residency.

Established: Its established role and expertise in private banking and trust services also has given rise to a comprehensive and compelling array of financial services that includes private banking, estate planning, asset management and fund administration services; the Bahamas also provides services to the international capital markets, and to the insurance and maritime industries. Corporate registry and legal and accounting services are at the core of the multitude of services available in the centre.

The integrity and continuity offered by institutions located in The Bahamas provide a secure environment. With personnel committed to the local community, continuity of service is more predictable and stable in the country, and is the basis of its many longstanding institutional and client relationships. The centre's long tenure in financial services has also created a growing storehouse of skills and experience that is trusted by the international financial community.

The top four global accounting firms operate from The Bahamas and there is a large pool of lawyers trained in English Common law. Additionally, its English speaking society easily facilitates its integration into the global business community.

Progressive: The jurisdiction continues to demonstrate foresight through responsive, progressive developments to meet the requirements of an increasingly sophisticated financial services marketplace.

Providing specific legislation addressing the manner in which Private Trust Companies (PTCs) may be established and operated in The Bahamas is an example of the jurisdiction's responsiveness and rounds out a series of steps undertaken in recent years to respond, in a comprehensive and competitive manner, to the estate planning needs of clients.

The SMART Fund is another example, based on the recognition that a one-size fits-all-solution is not suitable for many clients. SMART Funds provide an excellent tool for families which utilise trusts, foundations or family offices to access the alternative investment world.

These legislative initiatives along with the Foundations Act, Purpose Trust Act, and the amendment to the Perpetuities Act have solidified the country's wealth management services.

Welcoming: The Bahamas is not only home to more than 250 banks and trust companies which enjoy long standing relationships with clients from around the world. In recent years, as more and more individuals have chosen to "follow their money" with respect to where they live and work, the country has become the preferred choice for many who have adopted this way of life.

With a streamlined application process for Economic Permanent Residency (EPR), the ability for individuals to work and live in the Bahamas has become even easier and more attractive. A predictable and user-friendly EPR application process, combined with the country's physical resources and infrastructure, enhances the centre's appeal as a location for



The centre's long tenure in financial services has also created a growing storehouse of skills and experience that is trusted by the international financial community."

individuals and family offices, as well as for more institutions to consider the establishment of subsidiary operations in the country. It should also be noted that government maintains a flexible immigration policy which recognises that the national development objectives are pursued through a policy suited to the needs of international firms, individuals and families.

Permanent Residency, for example, allows the holder to pass freely through immigration hassle-free and to remain in The Bahamas for the number of days the holder desires. The norm is that spouses and children may be endorsed on the permit for a one time government fee. Persons with permanent residence are for all intents and purposes treated like Bahamians except for the right to vote. Annual residency and a residency card are also available and do not require an investment in the country.

The existing investment threshold for economic permanent residence is \$500,000 on a residence. Permanent Residency with the right to work in one's own business is often afforded to the owners of capital who simply want to manage investments, whether through a family office or their home office, or to manage their business based in The Bahamas. This status means an individual automatically qualifies for the right to work here,

A Well Regulated Jurisdiction

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

Since the banking industry itself is the cornerstone of the country's financial services industry, the Central Bank of The Bahamas plays a lead role among the country's regulatory agencies and enjoys full autonomy. Its stature within jurisdiction is reinforced by its longstanding presence: the Central Bank has in fact been regulating banks and trust companies in The Bahamas since 1965. The Central Bank along with the Securities Commission of The Bahamas and the Insurance Commission adhere to the standards established by the relevant international agencies and participate actively, as opportunities are presented, within these agencies. For example, the Securities Commission became a full member of the International Organization of Securities Commissions (IOSCO) within months of being established in 1995.

This philosophy, that of operating in a globally integrated market for financial services, saw The Bahamas lead the way in first criminalizing money laundering in 1996; and it has continued to give keen attention to this area to ensure the country's counter-money laundering legislation is continually advanced to meet global best practices and standards.

Global Portal for Investment

The Bahamas is a safe, well regarded portal for global investment, particularly into the Americas. It is also a favourable location for corporate offices, ownership of intangible assets, the establishment of finance-related businesses and light industrial activity. The government is committed to building an economic environment in which free enterprise can flourish. In this regard, the National Investment Policy is designed to support an investment friendly-climate and guarantees the complementarity of Bahamian and overseas investments.

An independent nation since 1973, retaining a Westminster-based system of government, it is one of the oldest democracies in the Western Hemisphere with over 280 years of uninterrupted parliamentary democracy.

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LOOKING FORWARD

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Its commitment to political and economic stability has figured prominently in being recognized as a sound environment for Foreign Direct Investment with an Investment Grade Government Debt rating from both Standard & Poor's and Moody's Investor Services. The Bahamas is ideally located at the crossroads of the Americas. It is in same time zone as New York, with enviable proximity to the US, and Central and South America. Its physical resources are also conducive to conducting international business both efficiently and effectively. This includes:

- Information Communications Technology – three separate, fully redundant, self-healing fibre optic cables for global connectivity
- Modern office facilities
- Data Protection legislation at the OECD Standard
- Business continuity options
- Cost competitiveness
- Six major airports, including Lynden O Pindling International Airport in Nassau and Freeport International Airport. (Overall

there are more than 60 airports throughout the islands of The Bahamas)

- Ease of access, air linkages and Freeport's transshipment and free trade zone status are functional attributes that very few regional competitor jurisdictions can match.
- Available land throughout the islands, including more than 10,000 acres earmarked for industrial and commercial development in Grand Bahama.

As a further attraction, investment incentives under a number of Acts include exemption from the payment of customs duties on building materials, equipment and approved raw materials and real property taxes for periods of up to twenty years. Investors may acquire publicly-owned lands for approved developments on concessionary terms; and acquire low cost space for lease for industrial enterprises. The government additionally provides special training and retraining for Bahamian workers to ensure the continuing availability of a highly skilled labour force.

The Way Forward

Certainly we are in a period of transition as the global economy and the financial services industry adjust to the new paradigm. Nonetheless, arising from its long-standing

investment in people, policies and the environment, we are confident that The Bahamas will continue to be a leader in financial services and domiciliation/residency. It will ensure that favourable attributes for locating and servicing operational subsidiaries and assets of corporate entities wishing to undertake business or make private capital investment in the Americas are fully explored and understood by the owners of capital. ✈

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FORMING A STRATEGY: KEY STEPS

There is an often-heard claim amongst business advisors to the effect that “defining strategy is easy, it’s the implementation that is the hard part.”

WHILST THERE ARE INDEED many examples of poorly executed strategies in both the corporate and public sectors, I find continual recourse to this statement to be intellectually lazy, at best, and damaging to the creation of long-term value for institutions facing the challenge of transformation within highly dynamic markets.

Why is this so? Partly because it allows ‘leadership’ off the hook in investing in the up-front thinking and analysis often necessary for the construction of a truly transformative strategy; but, more critically, because strategy development is not seen by ‘I’ve got a day job to do’ executives as a true part of the operational activities of an enterprise. For The Bahamas, now seeking to develop as a world-class financial jurisdiction amongst choppy international waters, it is the mastery of this latter issue that could prove to be decisively advantageous. In other words, if private institutions in The Bahamas can employ their expertise in helping to establish the strategy of the jurisdiction while they get on with the day job the total value to be accrued by all is likely to grow more rapidly – not least because the deepest pools of international financial expertise tend to lie within the private sector.

Why do I claim this? Firstly I observe that, relative to The Bahamas, many other international financial jurisdictions (onshore and offshore, for want of better terms) have undertaken strategic studies regarding their future direction, yet have not begun to implement them nor to integrate this thinking into the everyday activity of the institutions hosted within them.

The attitude of individual companies remains distinctly separate from (or even adversarial to) the jurisdiction which hosts them, with constant threats of, for example, London-based Hedge Funds taking their entire business elsewhere if the host regime becomes marginally less benign.

Indeed, Cayman is already [July 2010] reporting an increase in the number of hedge funds being registered as a result of changing European tax demands. Whilst financial service companies based in The Bahamas are no less aggressive in seeking to maximise value for their owners, it is my experience that Bahamas-based executives are far more inclined to look at the value that could be created by their company’s efforts together with the Bahamas financial authorities.

An integrated approach

This generally more integrated approach and mutual support in developing a way forward is, in practice, a form of ongoing strategy development between government and the private sector – something that I have seen change for the better significantly over the recent years of my involvement in the Bahamas financial sector.

This was, in no small measure, accelerated by the government’s 2009 ‘Vision and Strategic Framework’ announcement, which set a broad direction and (for me, most importantly) a very clear tone for the future development of The Bahamas as a place to do business: namely, “The Bahamas is a globally competitive international business jurisdiction for private wealth management, international investment into the Americas and emerging markets and residency for HNWIs, creating high value jobs and business opportunities on a sustainable basis.”

The current process of strategy development (to be completed in the fourth quarter of 2010), shepherded by the Bahamas Financial Service Board and supported enthusiastically by leading private sector firms and key governmental bodies, is further proof of this integration and cooperation. This process is employing key industry and government agencies to: gather industry information; formulate “a view” of strategic opportunities; rigorously value these opportunities in a consistent and comparable



Vince Colvin

manner; act as the key input into a full strategy for the government of The Bahamas; and challenge the perceived ‘wisdom of the markets’. No one has stopped serving customers, developing new products, or chasing new customers. No government agency has taken their eye off the ball in the pursuit of their given mandates. Yet distinct progress is being made at all levels of strategy development – to the extent that opportunities being discussed are being pursued immediately wherever this is practical. An example of this follows.

It is no secret that the development of the BRIC country economies is changing the way international finance operates in every financial jurisdiction in the world – including business flows across borders. It is also clear that The Bahamas is well placed to serve much of international business flowing into and out of the Americas, due to: strong existing business contacts; well recognised tax and regulatory jurisdiction; tested and flexible Bahamian structures; accessibility, time zone and the ability to have a physical presence; competitive investment freedoms etc.

Accordingly, several potential opportunities have been identified that take advantage of the flow of funds owned by LATAM taxpayers that are booked outside of their host country, the enormous investment into infrastructure investments into the LATAM region, and the possible establishment of targeted efforts in Asia to manage monies that support commercial activity between Asia and LATAM.

No sooner discussed as part of the developing strategy, these opportunities are now being actively pursued by individual companies (as part of their daily activity) and appraised by government agencies. This is truly integration of the strategy process into the fabric of the entire Bahamas enterprise in achieving its started strategic goals.

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FORMING A STRATEGY

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An integrated process + two magic ingredients

Integrating strategy development into the every day activity, however, is not enough for the financial jurisdiction of The Bahamas to outmanoeuvre its competitors – and, given the true internationalisation of financial services, every jurisdiction in the world should be seen as a competitor for business, in exactly the same manner that a private corporation will view competition for customers. I think two other ingredients are required, namely:

Firstly, the government of The Bahamas must focus its attention on the most pressing activities in support of the most valuable opportunities identified by the strategy development process. In other words, the government of The Bahamas (like any other) has limited resources and priorities other than just financial services. Accordingly, it must take the evidence available to it and decide where it will focus to the maximum effect; whether this be changes to taxation policy, regulatory constraints, bilateral agreements, residency policy, capital requirements, the general ease of doing business in The Bahamas, etc. This includes clear decisions what it won't be doing, as much as what it will be doing. And furthermore, with the speed of development (of LATAM opportunities in particular), decisions will have to be rapid, and rapidly implemented – notwithstanding all the pressure that bear down upon governments at all times.

Secondly, key individuals must embrace a positive attitude towards change. I believe that this will naturally emerge as The Bahamas is seen to make progress with its strategic decision making. My observation is that this is beginning to occur already, but the following observations on how to accelerate change may help The Bahamas create an environment in which change might best occur.

Seven considerations in support of strategic change

1. Push past “it will never happen” and get over “but we are different”
2. Establish a ‘sufficient’ vision
3. Break the “industry or government” circle
4. Build a business case... that all buy into
5. Design-in coordination
6. Develop a clear programme of action
7. Engender the correct change management philosophy

1. Push past “it will never happen” and get over “but we are different”: Every financial centre authority and government with whom I have worked has initially insisted that “it can never work”, “we will never find the budget” and “that class of business will never establish itself here”. This is a natural reaction for such a challenging enterprise, but these quotes were from centres, such as Qatar’s QFC, who have

overcome initial resistance. Every financial centre is different, it is true, but that simply means that The Bahamas has a different set of assets to apply to its strategy.

2. Establish a ‘sufficient’ vision: This statement simply implies that it is essential for The Bahamas to establish a realistically achievable and clear goal for its financial services industry as it competes internationally for business. Switzerland and the Netherlands recently have published their visions for the future of their industry - partly inspirational and partly detailing where their industry focus will lie. As discussed above, great progress has been made on this already, with the government’s ‘Vision and Strategic Framework’ announcement.

3. Break the “industry or government” circle: It is common within every financial jurisdiction for a tension to exist between industry and the government; between the regulator and the regulated; between the direct benefactors of financial services profits and the secondary beneficiaries through increased taxation and ‘spill-over’ into the broader economy. These tensions are natural but cannot be allowed to act as barriers for mutual progress and development of the underlying jurisdiction itself. Ultimately, developing a winning financial centre is a “team sport” in which both private and public institutions have a distinct but equally important role. It is not possible for one to wait for the other - both must act together.

4. Build a business case... that all buy into: It is essential to develop a business case that is believed-in and actively pursued by everyone within the industry. Ultimately, this strategy must contain five elements:

- a clear explanation of the likely sources of direct revenue, by market
- the scale of investment required, and the sources of that investment
- a description of the risks faced in pursuing the strategy, and who will bear those risks
- the impact on the wider economy, beyond financial services
- a unifying logic behind the strategy that pulls all elements of activity together into a consistent whole

The fundamental design of business plans for any financial centre is similar throughout the world - and indeed similar to the strategies of any large corporate entity. However, as explained above, to a large extent it is not “the answer” from the strategy development that is ultimately the most important product. Rather, it is the act of building the strategy amongst the key actors, the quality of debate and the ultimate agreement with the unified direction that creates a real impetus to change.

5. Design-in coordination: It is important that The Bahamas designs any change in its financial environment to ensure there is a great deal of corporation and coordination between all parties. Tight coordination, reporting very directly into government is perhaps a most important factor to account for jurisdictional success.

6. Develop a clear programme of action: Developing a plan of action from a strategy is not a simple task. For a financial jurisdiction, in particular, it will take focused central organisation, the definition and tracking of several work streams (regulatory, tax, product development, marketing, corporate communications, lobbying etc.), clear definition of responsibilities, well-managed timelines and dependencies, well-paced milestones and excellent monitoring capability. This may sound a large enterprise, but is not necessarily too onerous if dedicated resources are in place, and provided that activities are phased properly and wasteful activities are removed.

7. Engender the correct change management philosophy: Finally, it is important to engender the correct change management philosophy in everyone who is to participate in the development and execution of the strategy. I believe that the following quote from Professor Jeffrey Sachs (Professor of Sustainable Development, Health Policy & Management at Columbia University) ably captures the attitude required in developing a coherent financial jurisdiction strategy: “I am not predicting success. I am not predicting failure. Rather than make predictions I am encouraging you to get on with the job that needs to be done.”

Closing Remark

As I write, the Business and Investors Against Tax Haven Abuse campaign is intensifying its efforts to tighten anti-tax haven regulation in the US, and the Swiss courts continue to uphold the transfer of financial information to Washington. Difficult times indeed! But I also note that the Reserve Bank of India reports an upward trend in outward investment from India to IFCs and that the British government has toned down its aggressive rhetoric in the consideration of a more “informed, consistent and balanced” debate on the role of offshore centres. Exciting times indeed! Positioned as it is in this changing world – physically, legally, intellectually, financially – there is no reason for The Bahamas to consider “difficult times” at the expense of “exciting times.” Attitude and integration is all it takes – oh, and a lot of hard work. ✨

About The Author: Vince Colvin is an independent advisor to major banking and insurance institutions and to government ministries around the world. He has been a senior strategy partner at two global advisory firms and has 18 years experience in the formulation of corporate strategies at board and cabinet level, plus deep experience of the development of international financial centres – it was Vince who led the wholesale development of the Qatar Financial Centre and the financial strategies for the cities of Istanbul and Tel Aviv. He holds masters degrees from both Cambridge and Manchester University and is a Fellow of the Institute of Mathematics and Its Applications.

WHERE IS THE STRATEGIC FUTURE FOR GLOBAL WEALTH MANAGEMENT?

.....THE 10 TRILLION DOLLAR QUESTION

TACKLING THE QUESTION OF the strategic future of the global wealth management industry is not an easy task. This is an industry traditionally steeped with confusion, mystery and myth. Apparently the market is fragmented, very specialist and by inference very small, while the clients are unlike normal financial services consumers and the product range offered to them is unique – and has to be unique every day. Many believe the industry thrives in this reality.

To us, based on several decades of scrutiny of data and the changing demands of the client, it is often a wonder, given these assumed conditions, how there is an industry at all. The true reality is very different. In fact there is a massive industry and – we recognise this is a contentious statement – it is a sleeping giant of the retail financial services industry. The challenge for the next decade is to not just wake up this industry and the firms operating in it but to get it strategically moving in the right direction.

We believe there is at least USD10 trillion up for grabs and at the end of this article we will give you a sense of what this client base is planning. To date, the global industry now actively manages for a fee approximately USD16.5 trillion in assets for individuals with over USD1 million in net investable assets. Moreover, the industry's asset under management (AUM) levels have bounced back by USD2 trillion from last year's financial crisis. Such strong top line numbers have the industry excited.

Yet, there are three key questions that need to be addressed:

1. Is the industry in its current form worth being involved in?
2. Who is the industry really attractive to in terms of future clients?
3. How sizeable is the future market?

Addressing the first question - this is the thorniest issue. Based on our annual benchmark assessment of the business performance of nearly 250 wealth managers across the world which we estimate is nearly 85% of the entire market of lead operators, the industry is not in good health in spite of a rebound. While assets bounced back this was due to market performance and not due to new client money inflows.

Indeed, while it has been widely reported that personal wealth has increased by between 5-10% globally among the wealthy, these newly generated assets have not been booked with the banks. Worse still, the profit margins of the private banking units have declined markedly in the past 12 months. The reason behind this dip has been a continuing pressure on fees and increased consumption of lower premium fee assets by the clients. Moreover, given the industry's penchant for growing the human element of its service model above all else, it is also an expensive business solution to operate.

Such a prognosis based on the financials is very worrying. In essence, at an industry level the



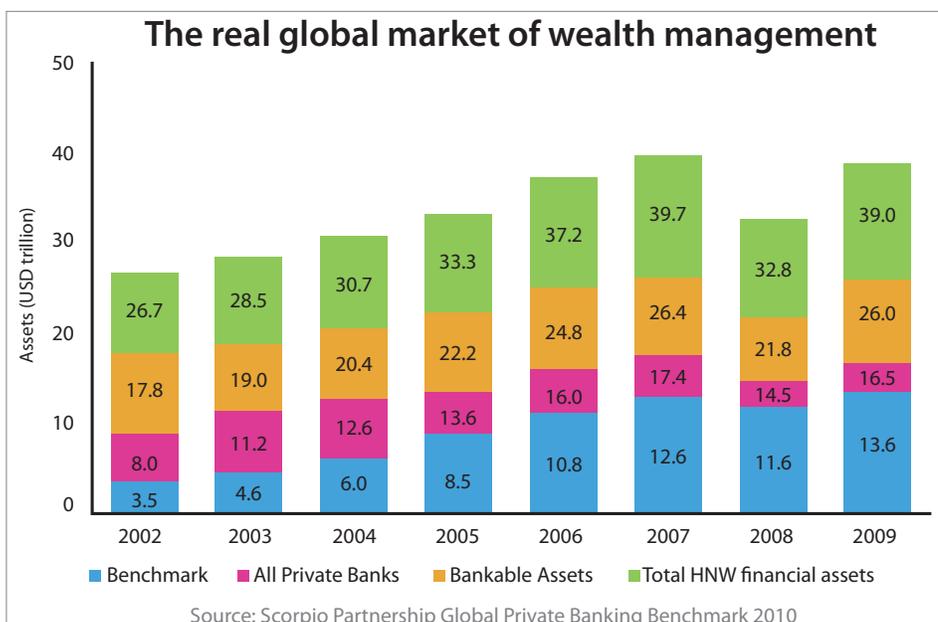
Sebastian Dovey

current worth of being in wealth management is not evident – there are far too many red numbers in the financial data. And this red is not new; it has been there for several years. At times we even suggest to certain financial groups they are ignoring the realities that their wealth units are draining net negative contributor to the bottom line. We do not like being a doomsayer – and we also quickly point out this situation can be rapidly resolved if the financial group reconsiders the strategic orientation of the business model. To do this, the groups need to set aside their preconceptions of wealth management as a small enclave of business servicing a limited few individuals with anything they choose to want any time. Such a service approach can be very satisfying at a personal level, but it is not overly economic and it is certainly not scaleable. More fundamentally, it is not going to enable wealth management business models to effectively capture the market opportunity of the next decade of wealth.

So, we come to the second question of who the industry is really attractive to in the future market landscape. The reality is the industry is in the business of asset management rather than safe keeping and preservation. The stakes are higher, but equally the earnings are greater too. The challenge for the industry in this paradigm is to be realistic over which clients it can serve consistently at a profit level that sustains the model. In our view the answer to this is to focus all efforts on the mainstream wealth market – by this we mean clients with the ability to hold accounts between USD250,000 and USD2.5 million with a single institution. This is the market we characterise as part of the retail financial services world – think of it as the business class segment in an airline.

The margins and scale of opportunity here are much more evident than in the higher levels of wealth. This touches on a client population worldwide in the tens of millions rather than the tens of thousands that the wealth industry often considers itself to be in. To many readers this is the obvious answer. We agree too. Yet, having worked in over 35 countries on wealth strategies and with more than 150 financial institutions

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GLOBAL WEALTH

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it is apparent to us that most in management are in denial about this reality – they keep wanting to go further upstream. They all want to crowd into the first class cabin – and yet there is not enough new business to go around and the financial data proves it.

Indeed the real issue is that most of the industry does not yet understand how to efficiently target and service this core consumer base. In fact, the industry typically presents to this client base an over-rich proposition which either the client does not need or has no reason to consume and certainly not at the price offered.

Therefore, the model is over-delivering and this would, in our view, explain why the cost-income ratios of the industry are so poor relative to the market requirements. Notably, those firms that get the mixture right and strategically attack this audience are achieving margins that are between 25-40% greater than their higher wealth level segments.

Crucially, it is not just about the product and service mixture but it is also about leveraging the other institutional tools to target and retain customers in this proposition that is also a key component. In our view, for example, branding is a major tool while the onboarding process – such as financial planning and asset and

liability management procedures – is central to developing a “sticky” account.

Indeed, based on the thousands of client insight feedback points we have had over the years it is clear this is the strategic market of interest for the industry. Targeting this client is essential. They are the “lost clients” who are too big to be in the main retail channels – in their eyes – and too small to be in the classic private banking world of old – again in their eyes. These are the clients that actively want to go upstream and financial institutions that can work with them on this ambition will benefit. They are the aspirational wealth creators.

They are the future. They need service and products now. They need a modern private bank. So, we come to the last question of how big the future market is. The immediate answer is USD10 trillion. Minimum. The answer is partly there in the graphic above. In today’s wealth management world the agreed total amount of investable assets available is USD39 trillion.

What we do know is the current industry manages USD16.5 trillion of this amount. What we also believe, based on those interviews with investors, is that for every investable dollar owned it is only likely that no more than two thirds of it will be farmed out to professional advisors, with the balance being handled directly by the client. Therefore, the real market opportunity is USD26 trillion at today’s valuations. Thus the gap between what is currently serviced by professional advisors and what could be serviced is nearly USD10 trillion. This is a critical number.

The big question behind this is what can the industry do to attract this money into its world? We know from the benchmark data that last year very little came into the industry so this community of USD10 trillion dollars is not yet convinced to make the shift. We also know this gap has not closed much and it is our strong belief that the bulk of this business is among the target market discussed earlier in this article.

Finally, the belief is that in this decade it will be the primary battle for the industry to shift this client base into its world. This is because if the industry

fails to do this, and remains convinced of its current strategy of targeting the “higher” wealth community, then it will at best miss one of the biggest opportunities the industry has ever experienced or, at worst, it will go out of business. So, the key strategic issue to answer is who are these clients and what do they want? Put simply, these are wealth creation clients.

They are the current lieutenants of industry around the globe either in employment or running the leading businesses of tomorrow. These clients are technically alert and they are financially conscious – that does not sound too much like the private banking client of old. Moreover, they have a clear sense of value and quality when it comes to paying for advice and products. All of these statements are not just conjecture, these are based on the facts of years of research and study by our team into the behavioural patterns of the next wealthy client.

What worries us is that the industry is still not listening to the demands of these clients – typically they remark these clients are either too small or not relevant to their business model. What the banks are missing is the growth curve of these clients. Based on our annual global client insight survey this target audience is expected to quadruple its asset base inside a decade and their average wealth last year was USD2.5 million. When we asked them this year how they were doing on that plan they virtually all remarked they were on target. In our view, these are exactly the clients the industry needs. They are the future of wealth.

Based on this alone, we argue strongly that the future strategy of the wealth management needs to focus on this market. We predict good fortunes to all that do. ✨

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

He is a lecturer at The Swiss Finance Institute (formerly the Swiss Banking School) for its executive MBA programme, speaking on family offices and wealth management. He is also a regular commentator on the wealth management industry in the press and at conferences and academies. He is also the creator and faculty director of the International Wealth Management Academy developed with the Financial Times Group.

Sebastian holds a first class BA (Hons.) degree in Modern History from University College London and was awarded a MSc (Econ.) with distinction from the London School of Economics.

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INTERNATIONAL TAX LANDSCAPE: CHANGE IS THE NEW BUSINESS AS USUAL



Andy Todd

I have been privileged to attend some first-rate executive training over the years, but one of my stand-out memories is of a mini-MBA course joint delivered by London Business School and Wharton. Managing change was a common theme throughout the course, but one phrase in particular has stuck with me: “Change is the new Business as Usual”.

THE POINT WAS OF course that the business landscape has changed fundamentally over the years, and in ways that few have accurately predicted; that the pace of change continues to accelerate; and that the way in which businesses respond to those changes – whether reluctantly (or not at all), or with agility – will increasingly become perhaps the key determinant of commercial success or failure.

It has been a genuine pleasure to be involved for several years now with the work of the BFSB, and I am delighted at the way in which The Bahamas financial services (FS) sector is taking seriously the need to engage positively with the change agenda through working with Government to build on the 2009 Strategy Statement. One of the areas which will impact the future development of the sector is tax - which has seen its share of seismic changes in recent years. In this article, I offer brief observations on three recent changes in the international tax landscape which seem to me to be of particular significance, and a personal view of the implications for the development of The Bahamas’ FS strategy.

One of the most striking features of the last couple of years has of course been the OECD’s progress in pushing forward its agenda to increase implementation of Tax Information Exchange Agreements (“TIEAs”). The OECD recorded that around 200 were signed during 2009 – over

eighty percent of the total number in existence at that time – and a similar number of Double Tax Conventions were updated or signed to implement the full Article 26 standards of transparency and information exchange. Progress has been such that the OECD’s progress report released in August 2010 showed all jurisdictions to have now committed to the internationally agreed standard with just four jurisdictions yet to conclude any agreements.

It is worth pausing for a moment to reflect on the enormous shift in the political geography that this wave of activity represents, triggered and given real impetus by the global financial crisis and “tax evasion scandals” in Liechtenstein and Switzerland, which galvanised political will to an unprecedented extent.

However, the indications are that the legal and regulatory mechanisms now in place have not yet begun to be used to anything like their full potential, and so the OECD is now talking very explicitly in terms of moving to the “next phase” of the programme, acknowledging that this will be the real test of what has been achieved.

The Peer Review Group established by the Global Forum will play a key role in this “bedding down” process: the Group’s remit is to assess, over a three year period, the technical (regulatory and legal) framework of information exchange,

and the extent to which information exchange is happening in practice. Although it is likely that tax information exchange will receive less media attention in the coming year, the level and pace of activity will if anything increase. Recent developments in respect of multilateral agreements and the updated Convention on Mutual Administrative Assistance point, for example, to an emphasis on lowering the hurdles for information exchange and a refocusing of attention on the developing countries agenda. Secondly, and of almost equal significance to my mind (although having received less attention until quite recently), has been the introduction by the US of the Foreign Account Tax Compliance Act measures (“FATCA” - now contained in the Hiring Incentives to Restore Employment Act, but the previous name has stuck).

Briefly, these provisions are an attempt to prevent perceived tax abuse by US persons using offshore financial facilities by forcing financial institutions to enter into an agreement with the IRS to identify and report US account holders, or suffer a punitive withholding on financial flows from the US. Unilateral action of this sort would have been almost unthinkable before the financial crisis and the stand-off between the US Government and UBS, and the scale of

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NEW BUSINESS AS USUAL

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implementation required for global financial groups is vast. And yet these groups are now in the process of gearing up to implement the measures, and lobbying activities are focused on how the detailed regulations will be framed, rather than whether they will be introduced.

The entire process has been a demonstration of what can happen when a sufficiently powerful political force with enough at stake (given some of the estimates of tax loss through offshore facilities) loses patience with the speed of change and takes decisive action – in effect, telling the business world to get in line, or else. I believe that FATCA will have the effect of rebasing companies’ (and possibly other governments’ – we know that other jurisdictions are watching with interest) expectations around information exchange. It is also, I think, likely to mark a sea change in capabilities – both in the private and public sector – to deal with the exchange of information.

To date, I suspect that one of the reasons that the predicted shift towards automatic information exchange (as opposed to the TIEA model of on-demand exchange) has not materialised has been governments’ concerns about their ability to deal with the potentially enormous levels of data that would be generated. The experience of implementing FATCA may reinforce the point – or it may mark the beginning of a decisive shift towards automatic exchange. The message is that the information exchange model (including TIEAs) is likely to be dynamic rather than static. Thirdly, I believe the effects of the global financial crisis will continue to focus tax authorities’ minds on addressing perceived tax leakage, and will give legitimacy to their attempts to do so. There has been an enormous amount of activity in this area over recent months.

To mention only two recent examples, India recently has moved to strike out certain long-standing benefits contained in the India-Mauritius Double Tax Agreement (a common route for inward investment into India), and to introduce a broad anti-avoidance rule; and France and Germany have both put forward measures to limit benefits from transactions involving “tax haven countries” (in the case of France, the 12 TIEA threshold is explicitly built into the definition of a “non-cooperative jurisdiction”). At the same time, governments

recognise the imperative to maintain, and even enhance, fiscal competitiveness: the UK has embarked on a series of consultations affecting key pillars of its international tax framework, with an explicit objective of increased competitiveness. The resulting changes alter the balance of the competitive landscape, and both companies and jurisdictions will be actively looking to exploit the opportunities that this offers.

So what are the implications for the financial services industry in The Bahamas? What I offer here is very much a personal perspective.

Firstly, that an approach of strategic engagement with the developing political process around tax information exchange remains valid. The “new world” of widespread information exchange is in one sense here to stay; in another sense, it is only an evolutionary step. The OECD’s intention is to consolidate, but also to accelerate the pace of change, and it remains as important as ever for The Bahamas to be planning ahead for the next stage of development – both from the perspective of safeguarding its existing position, but also increasingly to identify ways to leverage tactical competitive advantages.

Whether it is better to be a first-mover or to play a waiting game will vary on a case-by-case basis, but it is always better to have planned ahead and to have an agreed strategy. By positioning itself as one of the 30 countries represented on the Global Forum’s Peer Review Group (and with the strong visual statement of hosting the third meeting of the Group in July), The Bahamas has firmly aligned itself with the emerging international consensus around tax information exchange; from that vantage point, it should stay attuned to the likely future direction of travel and manage its own responses dynamically.

Secondly, that the complex interaction of global regulatory, commercial and tax developments will continue to create new competitive opportunities. For example, one of the interesting observations of the work that Deloitte performed for the review of the British Offshore Financial Centres led by Michael Foot was the extent to which the jurisdictions which had most to gain from any loss of competitiveness by these centres would be, not other no- or low-tax jurisdictions, but those with extensive treaty networks. Panama is now explicitly pursuing development of a network of Double Tax Agreements, to give it access to investment structures that might previously have been

unavailable because of frictional withholding tax issues that such Agreements mitigate. The lesson is that models that have worked to date are not necessarily the appropriate ones going forward, and a readiness to explore new options with an open mind is among the most valuable of assets.

Thirdly, that now – as always – it is important to avoid the temptation to focus on tax in isolation from the wider business strategy. At the macro level, the tax environment is an important factor in establishing the attractiveness of a jurisdiction to business, but only one. At the micro level, tax anti avoidance legislation tends to regard as abusive situations where a tax regime encourages inflows of capital or profit without commercial substance. Tax therefore needs to be an integral part of the overall package on offer. The recent signing of a TIEA with Canada presents – as I have previously had the benefit of discussing with BFSB members – a route to accessing new market opportunities, but it will not do so in isolation from the other elements of The Bahamas’ commercial environment which may need to be developed to capitalise on those opportunities.

The task which the FS sector in The Bahamas has set itself is to develop a strategy for a long-term industry model which is sustainable, but also flexible and agile. To develop an integrated strategy for tax should be a key component of that work. Being able to challenge assumptions about the right tax model to facilitate that strategy may mean the difference between success and failure.

Change is the new Business as Usual. I wish the BFSB and its members every success as they attempt to remain winners in this ever-changing environment. ✨

About The Author: - Andrew specializes in insurance and leads the tax component of Deloitte’s International Financial Jurisdiction (IFJ) proposition. He worked on the tax element of the Qatar Financial Centre project and has advised Israel and another Middle East country on the design of their tax systems.

He has also worked on the Tax Panel and Life Tax Committee of the Association of British Insurers (ABI), which represents the views and concerns of the major UK insurers.

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BAHAMAS FINANCIAL SERVICES BOARD: BAHAMAS TAX INFORMATION EXCHANGE AGREEMENT Q & A

ON MARCH 20, 2010, The Bahamas achieved the G20 standard on Transparency and Cooperation in Tax Matters. This standard was first promulgated by the Organisation for Economic Cooperation and Development (“OECD”) in the 1990s. In 1998, the OECD sought to have 40 plus countries, including The Bahamas, adopt this standard. The Bahamas, in a 1999 presentation to the OECD, insisted on a level playing field. This principle was formally accepted by the OECD in 2002 and represented in a communiqué issued by The Bahamas in 2002. For more than 10 years, The Government of The Bahamas held firm to this principle and kept faith with the industry; likewise in 2009, The Bahamas, as an integrated member of the international community, moved to implement the standard immediately following global consensus and the achievement of its key pre-condition. Over a 12 month period culminating in March 2010, The Bahamas successfully concluded 19 agreements to achieve the standard. As of July 1, the enforcement date of the International Tax Cooperation Act, The Bahamas had inked 22 Tax Information Exchange Agreements (“TIEAs”).

During the past year, many have posed questions regarding the G20 standard The Bahamas sought to achieve. With the enactment of the enabling legislation BFSB is pleased to provide an overview of The Bahamas’ policy and legislative response.

What is the G20 Standard?

The G20 specified that a jurisdiction must have 12 agreements that meet the OECD standard for transparency and tax cooperation. The OECD standard provides for exchange on request of foreseeable relevant information for the administration or enforcement of the domestic tax laws of a requesting party. This standard has now evolved away from the 12 agreement litmus test. In an OECD Global Forum on Transparency and Exchange of Information for Tax Purposes report “Terms of Reference. To Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes”, the standard is clarified as follows: “Ultimately, the standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who

are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws, this should be drawn to the attention of the Peer Review Group, as it may indicate a lack of commitment to implement the standards”. The full extract is included in the endnote 1.

What steps have been taken by The Bahamas?

Subject to numerous conditions and protections set out in bilateral agreements, The Bahamas agrees to provide on request information that is relevant for the administration or enforcement of the domestic tax laws of a requesting party.

What is the level playing field The Bahamas sought?

In 2002 The Bahamas advised the OECD that a level playing field was required prior to its implementing the OECD standard; specifically, The Bahamas “would protect its economic interests and fiscal autonomy in all negotiations with the OECD. The Bahamas considers the establishment of a level playing field among all OECD members and also those non-member jurisdictions with which it is materially in competition in the provision of cross-border financial services to be critical to its economic interests”.

During the 2nd week in March 2009, Hong Kong, Luxembourg, Macau, Singapore, Switzerland and many others agreed to adopt the G20 standard. By March 13th, all major international financial services jurisdictions had committed to the OECD Standard for Transparency and Cooperation in Tax Matters, advancing significantly the level playing field sought by The Bahamas. On this basis, the Prime Minister of The Bahamas announced on March 23, 2009 that The Bahamas would immediately seek to meet the G20 Standard of a minimum of 12 agreements in compliance with the OECD Standard.

Do TIEAs impose greater burdens of transparency and cooperation than Double Taxation Agreements (“DTAs”)?

The Standard can be adopted through a TIEA or Article 26 of the Model Convention with respect to Taxes on Income and on Capital without reservation. The Global Forum report referenced above, “Terms of Reference. To Monitor and Review Progress towards Transparency and Exchange of Information for Tax Purposes”, states “Article 26 provides for the same standards as the Model TIEA Agreement”. The Global Forum Report continues: “some aspects of Article 26 are beyond the scope of the standards. For example, Article 26 allows for automatic and spontaneous exchange of information which is not included in the Standard.”

Do these agreements permit fishing expeditions?

The Global Forum in defining its requirements states that the Standard does not permit fishing expeditions. The Bahamas TIEAs require that not only are all requests submitted in writing but that the submissions must be specific in nature. The Government has designated the Minister of Finance, an individual of significant presence in The Government of The Bahamas, as the Competent Authority for TIEA requests.

Prior to a request being submitted to the Minister of Finance, an experienced team will review and analyse the request. The Bahamas has tremendous experience with such reviews having signed its first bi-lateral cooperation agreement in 1988 and its first TIEA (with the United States of America) in 2002. The Minister of Finance has the ability to draw on all arms of Government to support his own review, including the Office of The Attorney General.

The Bahamas’ history of Common Law, its in-depth experience gained with anti-fishing reviews over the years and the high degree of specificity included in agreements provide a firm platform for the prevention of fishing expeditions. Significant assurance can be taken in light of procedures and human capacity to determine the legitimacy of any request.

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TIEA Q&A

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Does the person for whom a request has been received have any rights?

This person has a number of important rights, including access to judicial review. Other safeguards include adherence to applicable standards of limitation and that this person receive, at a minimum, the same treatment that would be afforded to a taxpayer in the requesting country. Moreover, the request can only be submitted to The Bahamas where a designated senior public official in the requesting country has authorized its submission to the competent authority in The Bahamas.

What are the practical steps involved in implementing the Standard?

Location of Information: The Bahamas does not enforce direct taxation, as such information that may be sought will not be held by the Minister of Finance (“MOF”). Regulations in The Bahamas demand that certain minimum information is held with the financial institution.

Need to Make a Request. The Government cannot share information without the person’s knowledge: Should the Government approve a request, the MOF will make a request to the holder of the relevant information. As a result, in the majority of enquiries regarding private individuals, the MOF will have to submit a request for information to a financial institution.

No Gag Order Key to Access to the Courts: There are no legal constraints to prevent a financial institution from advising a client of the request from the MOF. With the client having a right to be informed of any request for information, the client must decide whether the request is likely to be valid or whether, based on their knowledge, it represents a fishing expedition. Further, the client is best able to assess whether the requesting country has indeed exhausted all efforts prior to approaching The Bahamas’ Competent Authority. Should the client wish to pursue judicial review, the holder of the information would be informed and action initiated in the courts of The Bahamas.

Is the Court or Judicial Review required?

In each request for information, judicial review is not required. However, the holder of information has full access to the courts, should he/she wish to challenge The Bahamas’ consent to cooperate. The protocols are established to provide (1) that no information is shared prior to the notification of the holder (2) the person, if different than the holder, is informed and (3) the holder of information has the opportunity to seek judicial review.

Can a requesting party approach a person in The Bahamas directly for Information?

No, the TIEAs specifically prevent this direct approach. If a requesting party would like to interview or conduct an examination of a person in The Bahamas, the requesting party may only approach The Bahamian authorities. Only where the person in The Bahamas voluntarily agrees, and any additional conditions the Minister of Finance might impose are met, can the requesting party approach a person in The Bahamas. Further there have been allowances to ensure that the day to day operations of concerned institutions will not be impacted by the implementation of these TIEAs.

Who can submit a request to The Bahamas?

Where The Bahamas has a TIEA with the country, an authorized senior official in the competent authority may submit a request for information. Some have expressed the view that junior civil servants in the competent authority, judges, and other persons interacting with a taxpayer may seek to request information under the TIEA. This broad access to the provisions of the Bahamas’ TIEAs is specifically prevented; each agreement and relevant protocols specify the person(s) authorized to represent each country. Further, there are measures in place for the verification of any person submitting a request.

Can The Bahamas effectively administer the TIEAs?

Since 2004, a team in the Ministry of Finance has been in place to administer the TIEA with the United States of America (“USA”). During the negotiating process for the 2009/2010 TIEAs, this team was augmented with additional experts from the Office of the Attorney General as well as the Central Bank of the Bahamas. Congruent with The Bahamas meeting the G20 standard, more attorneys and other support resources are being secured for the Unit within the Ministry of Finance.

Are there any new record keeping requirements?

Existing law requires the keeping of records for 5 years. The TIEAs do not mandate timeframes, and should information not be available at the time of any request, it would be possible for an institution to so indicate as long as it can be shown that this is consistent with Bahamian law and internal policies.

Why is the MOF the Competent Authority rather than the Office of the Attorney General (“OAG”)?

At the time of the TIEA with the USA, the MOF was designated the Competent Authority. Further to that decision, the institutional knowledge for the negotiation

and administration of TIEAs rests within the Ministry Of Finance. Industry continues to support this historical designation as it is considered proper and convenient to have a divide between pure tax requests and other international requests, the latter being the purview of the OAG.

Will The Bahamas share information on an automatic basis?

There are no protocols in The Bahamas that permit cooperation in tax matters on an automatic basis. Based on the existing regulatory standards, there is no basis to anticipate that automatic exchange of information will be introduced in the foreseeable future. In particular, the adherence by the Government of The Bahamas to the Level Playing Field principle over a ten year period is evidence of the consistent application of policy across political parties as is the measured level of commitment to a competitive financial services sector. 

1 - Extract from an OECD Global Forum on Transparency and Exchange of Information for Tax Purposes report “Terms of Reference: To Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes”. As agreed by the Global Forum’s Sub-group on Level Playing Field issues in its paper Taking the Process Forward in a Practical Way (November 2008), a country is considered to have substantially implemented the standard of exchange of information for the purposes of this Global Forum assessment if it has in place signed agreements or unilateral mechanisms that provide for exchange of information to [the] standard with at least 12 OECD countries.

This benchmark was considered to be an appropriate dividing line at that point in time, between those countries that are implementing the standards and those that are not. However, this benchmark was recognised as part of a staged process and would have to be re-evaluated as circumstances evolved. In addition, in conjunction with the G20 Leaders’ meeting in London on 2 April 2009, the Secretary-General of the OECD issued a progress report determining that a country that had signed agreements with 12 jurisdictions, whether OECD countries or other jurisdictions, would be considered to have substantially implemented the standard on exchange of information. It is apparent that for some jurisdictions, 12 agreements are likely to be too few to allow for exchange with all relevant requesting countries. Ultimately, the standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws, this should be drawn to the attention of the Peer Review Group, as it may indicate a lack of commitment to implement the standards.

THE BAHAMAS FINANCIAL SERVICES COMMITMENT, CONTINUITY AND CONSISTENCY

(This article complements the TIEA Q&A and was developed in response to questions on The Bahamas' continuing stance on privacy.)

ARISING FROM ITS LONG-STANDING investment in people, policies and the environment, The Bahamas will continue to be a leader in financial services and domiciliation/residency.



Vision Statement: To be a globally competitive international business centre for private wealth management, capital investment in the Americas and emerging markets, and residency.”

COMPELLING AND COMPETITIVE PLATFORM FOR PRIVATE CLIENTS

The Bahamas remains strongly committed to the principle that persons have a right to privacy with respect to the conduct of their affairs. This right, set out in the United Nations Charter Article 17, provides for the right of every person to be protected against arbitrary or unlawful interference with his/her privacy, family, home or correspondence, as well as against unlawful attacks on his/her honour and reputation. The charter provides everyone with the right to the protection of the law against such interference or attacks. The Bahamas supports this legitimate right to confidentiality through its common law, Data Protection (Privacy of Personal Information) Act, 2003 and various legislative provisions.

Moreover, respect for the rule of law always has been fundamental to the success and strength of the financial services industry in The Bahamas.

As such, clients can be assured that The Bahamas will only exchange information on agreed and transparent protocols.

When the Organisation for Economic Cooperation and Development (“OECD”) launched an initiative in 1998 that sought to improve transparency and information exchange in tax matters, The Bahamas, as a sovereign nation, sought in 1999 and, again in 2002, to protect its economic interests and fiscal autonomy in all negotiations with the OECD. The Bahamas considered the establishment of a level playing field, where all OECD members and major finance centres agreed to implement the same standards, to be critical to its economic interests.

By mid-March 2009, a significant leveling of the playing field was achieved with the commitment by all OECD countries and major financial centres to the OECD standard for information exchange. The Bahamas Government, with the support of the private sector, agreed to begin to negotiate suitable arrangements that meet the OECD standard for information exchange on March 25th, 2009. (There are two mechanisms for agreeing to cooperate on tax matters: (1) the OECD approved Article 26 in Double Tax Treaties/Agreements or (2) Tax Information Exchange Agreements.)

All of the agreements signed by The Bahamas are in accordance with the OECD standard as reflected in its model TIEA and Double Taxation Agreement (“DTA”) Article 26. As such, the basis on which The Bahamas will cooperate with countries is no greater than those countries that adopted DTA Article 26. In fact, the OECD Global Forum has confirmed that TIEAs do not provide for spontaneous or automatic information exchange; whereas DTA protocols can provide for spontaneous and automatic information. In particular, through

its bilateral agreements, The Bahamas commits to cooperate only upon requests where specific information is provided. This requirement for specific information is critical in furtherance to The Bahamas' stated position to prevent so called “fishing expeditions”.

Further, the well established confidentiality for those who live or conduct business in The Bahamas will continue. Most importantly, The Bahamas will retain a legislative and administrative system that respects both the privacy of its clients and preserves the banking confidentiality in its financial services sector. In The Bahamas information on clients is maintained by the financial institution. Therefore any request for information is subject to two reviews. First, The Government of The Bahamas will undertake a focused review of the request in accordance with Bahamian law; consistent with the well established procedures that have existed under the Mutual Legal Assistance agreements since the 1980s. Second, should a financial institution receive a request for cooperation, the client will be fully informed. The financial institution and the client have full access to the courts of The Bahamas should they wish to challenge the request for cooperation. See Bahamas Tax Information Exchange Agreements Q & A (Pages 14-15).

The commitment to adopt the G20/OECD standard does not find The Bahamas unprepared. In the 2002 Bahamas-United States of America TIEA similar arrangements which limit the exchange of information to specific requests that meet predefined criteria were agreed. These arrangements, which have been in place over the last six years, have been respected by the United States and The Bahamas. Likewise, legislation that gave effect to The Bahamas-United States of America TIEA continued to preserve client

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BAHAMAS FINANCIAL SERVICES

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confidentiality by denying any request (1) that is outside of agreed arrangements and procedures, (2) where insufficient evidence is provided to support the request for information, so called “fishing expeditions”, or (3) where conditions are not agreed for stipulated safeguards of the information. Moreover, the client has very clear rights under this agreement, including access to the courts of The Bahamas.

The Bahamas’ Approach to G20/OECD

The insistence of the government on clarity and unequivocal language with respect to a level playing field, particularly as it relates to timelines and standards, was strongly supported by industry in 2002. Likewise the industry in 2009 supported the decision of the government, in conjunction with the governments of other major financial centres, to agree to endorse the OECD standards on transparency and effective exchange of information through defined and agreed protocols.

The Bahamas has demonstrated that as a sovereign nation it is an active contributor to the discussion on a range of global matters and that it is determined to act in a responsible manner. In particular, The Bahamas is an active participant in the international dialogue concerning the regulation of international financial services. Specific to the dialogue on cooperation in tax matters, The Bahamas has been an effective member in the Global Forum and its various sub-committees. Based on its energetic engagement, in September 2009, The Bahamas was elected to membership of the OECD Peer Review Group; a group comprising members of a re-vamped OECD Global Forum.

The Peer Review Group is responsible for developing a programme of peer reviews to monitor progress of the implementation of the tax information exchange standards among the 90-plus members of the OECD Global Forum. The Group also monitors this progress in identified international financial centres that are not currently members of the Global Forum. To be certain, the Government of The Bahamas is committed to safeguarding this important segment of the Bahamian economy by ensuring that The Bahamas remains a well regulated jurisdiction which meets evolving standards for

offering international financial services. This decision will serve to reinforce the respect for personal privacy and the use of appropriate means for cooperation among countries. We believe this is in the best interest of clients and the international financial services industry of The Bahamas.

THE WAY FORWARD

Over a decade ago, the OECD sought to have The Bahamas implement its standard for transparency and tax cooperation. The Bahamas’ response to the OECD standard was to insist that all countries implement the same standard at the same time as The Bahamas. As the rules for global trade and financial services were transformed over the past 24 months, The Bahamas continued to fulfill its commitment to clients and the international community,

We expect 2010 and beyond to continue to be one of transition as the global economy and the financial services industry adjusts to the new paradigm. BFSB remains unequivocally engaged in the pursuit of an ever-improving platform for owners of capital to conduct their international business, to manage their private wealth and to make The Bahamas their home. ✨

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THE BAHAMAS MARITIME INDUSTRY A WEALTH OF OPPORTUNITIES

THE BAHAMAS MARITIME AUTHORITY (“BMA”) maintains one of the world’s leading ship registers. Its principal functions are to register vessels, enforce ship safety requirements and achieve and maintain the highest possible international standards in its fleet, crews, shipowners and its staff, which includes teams of inspectors worldwide.

The Bahamas’ well established legal system is based on English Common Law. The country offers a wide range of inter-related services from its own ports, together with the multiple facets of its cruise ship industry (and dry dock and container port industries, to name a few segments) through to its centres of excellence in shipping law, financial services, insurance and ship brokering. This makes for a comprehensive maritime cluster, backed by the absence of income tax, corporation tax and sales taxes. At the heart of these services is The Bahamas Maritime Authority, one of the world’s premier and most respected flag administrations. The Authority’s influence spreads across the world, from the major shipping and shipbuilding nations to the International Maritime Organisation (“IMO”). The Bahamas is one of the largest financial contributors to the IMO and also plays a significant part in the development of global shipping policies. The Bahamas is especially proud to be a member of the IMO Council.

The BMA is represented around the globe with offices in The Bahamas, Hong Kong, London, New York, and representatives in Germany, Japan and Greece. Before the end of 2010 it plans to have fully staffed offices in Athens. These offices are staffed by maritime experts with a wealth of knowledge and expertise to support Bahamas Registry shipowners and to develop new business. The BMA is overseen by an influential management board, appointed by The Minister of the Environment. This ensures that the Government has close oversight of the Authority’s direction and is able to gain guidance

on maritime matters to enable it to formulate appropriate policies and laws. The BMA’s Managing Director, who is based in London, reports to the board.

Why do shipowners flag with The Bahamas? There are ten principal reasons:

- The Bahamas is a quality international register and owners are proud to fly the Bahamas flag;
- The Bahamas is a maritime nation and understands the needs of owners;
- The fleet is young and the BMA actively encourages younger ships to join the register;
- The Bahamas Ship Registry deals with quality owners and ships and can be proud of both;
- It represents a wide cross section of ship types and nationalities of owners;
- The fleet has one of the finest records for port state inspections. As a result owners can be confident that their fleet will not be especially targeted by inspectors;
- The BMA is always alert and responsive to the needs of owners. With highly qualified staff in a number of locations around the world it is in a position to provide a timely response and provide expert assistance and support wherever it is needed;
- It is a powerful voice in world shipping, influencing the development of world shipping policies and international legislation;
- The Bahamas is a member of the IMO council and an active and respected participant in its work;
- The BMA listens to the suggestions and concerns of its shipowners and reflect and represent their interests, through a very close working relationship with the Bahamas Shipowners Association; and
- It offers a quality service without a premium price.



Ian Fair

Yacht Registry

The continued growth of the world’s yachting industry, despite the global economic downturn, has prompted the BMA to launch its own Yacht Registry. This complements The Bahamas’ interests in tourism, ship services and its extensive cruising waters, which are so popular with boaters. Although independent from the existing Bahamas Ship Registry, the new Yacht Registry will offer the same level of expertise and dedication to service and safety, with technical teams accessible around the clock to deal with any and all problems or issues encountered by yacht owners. Unlike other yacht registers, the Bahamas Flag, with the full support of the Bahamas Government, offers a complete and unique package; world beating tourist facilities; and some of the best and most accessible cruising waters in the world. This is complemented by a wealth management industry of many years standing, world class residence opportunities on many islands, excellent port and marine services throughout the islands and a competitive taxation regime.

Given the nation’s position in the passenger ship sector, the development of a Yacht Register was a natural extension to its service offering. With The Bahamas’ links in the financial, wealth management and tourism sectors, the Yacht Registry completes the Bahamas “brand” with a comprehensive suite of services to persons wishing to make The Bahamas their home. To ensure the success of this venture and to offer the highest possible level of customer service to yacht owners, a special section has been created within the BMA dedicated to this initiative.

Worldwide Maritime Industry

The maritime industry is steeped in history. When one bears in mind that approximately 90% of the world’s trade goes by sea and if

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CHANGING DYNAMICS OF THE HEDGE FUND INDUSTRY AND HEDGE FUND ADMINISTRATION



Dirk Simmons

THE GLOBAL FINANCIAL CRISIS of 2008 fundamentally changed the dynamics of the key building blocks of the hedge fund operating model - namely the reliance on a single prime broker for trading and operating infrastructural support, the bias toward internal operations, the use of administrators on an “as needed basis” and the hedge fund industry’s rigid and recalcitrant position on transparency, fees, terms and regulation. As the global financial crisis recedes, its impact on the future hedge fund operating model is beginning to crystallize into four distinct themes of focus.

The first theme is that the failures of Bear Sterns and Lehman Brothers have created market conditions that have intensified and accelerated the trend of hedge funds seeking to diversify and reduce counterparty risk and operational dependence on a single prime broker.

Secondly, the institutionalization of the hedge fund investor base and the intense competition amongst investment managers to attract additional investor capital has created a shift in the balance of negotiating and bargaining power away from the managers to the investors. Further, the hedge fund industry’s recent poor investment performances, the failure to meet investor liquidity demands, conflicts of interest and the numerous instances of industry fraud have created an “expectations gap” between the investment managers and their investors, with investors seeking a better alignment of their long and short-term objectives with those of the managers with respect to fees and terms.

Thirdly, the institutional investors noted above have also increased the depth and intensified the focus of their due diligence on managers and other third party service providers, namely administrators. As a result they are exerting their negotiating power to nudge investment managers to re-define the standards of disclosure and transparency within their funds. Investment performance, whilst still important

is no longer the primary allocation driver for these institutional investors. Investors are also interested in what’s behind the numbers and, consequently, they are insisting that investment managers intensify their business and operational focus by improving their internal operations and infrastructure, outsourcing critical operational and valuation functions to non-conflicted third parties and improving corporate governance, business practices and risk management processes.

The final theme is the anticipation of increased regulation of the hedge fund industry driven by the industry’s public image challenges and external forces that continue to blame hedge funds for the meltdown of the global financial system in 2008, notwithstanding an abundance of objective evidence to dispel this erroneous perception. This article briefly examines the implications of the four themes noted above on the evolving opportunities, challenges, risks dynamics and expectations facing the hedge fund industry and administrators in today’s marketplace.

Traditional Hedge Fund Administration Role and Activities

The traditional role of the hedge fund administrator was principally predicated on the premise that the fund’s administrator typically performed the necessary but relatively mundane clerical and administrative back-office supporting activities of the fund, thereby allowing the investment manager to focus on the core portfolio management process. The administrator activities typically included NAV calculation, transfer agency services, corporate secretarial services and communicating with and reporting the NAV to the fund investors.

Historically, this traditional model often relegated the fund administrator to a very limited role for the investment manager, very much in the background of the hedge fund industry.

Between 2000 and early 2008 hedge fund assets, driven primarily by increased institutional allocations, expanded by more than 20% per year. These years of rapid expansion were marked by transformations in the hedge fund investor base as well as transformations of the marketplace’s perception of the role of the hedge fund administrator, their service offering and the expected quality of that service.

During this period, the larger administrators made significant investments in technology, systems and skilled human resources. They also diversified their service offerings, standardized procedures and processes and undertook Type II SAS 70 certifications, thus making their services more professional and institutionalized pre-2008. As a result administrators, though also negatively impacted by the 2008 financial crisis, were nonetheless comparatively well positioned to benefit from the aftermath of the crisis.

The Prime Broker Dilemma

Prior to 2008, hedge funds were almost universally deemed the riskiest part of the global financial system. By the time 2008 rolled around, the specter of increased counterparty risk for hedge funds with respect to certain prime brokers was already beginning to gain momentum. However, most small and medium sized funds lacked the resources and internal operational capabilities to move to a multi-prime model without causing major disruptions and significantly increasing their operating and business risk. This was because for small and medium sized funds, prime brokers were usually the sole provider of leverage and financing; they lent hedge funds securities to short and provided significant infrastructure support for trade processing, execution, aggregating and clearing trades as well as providing many back and middle office functions, including custody of assets and cash.

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HEDGE FUND INDUSTRY

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Most of the larger more established funds had the resources, internal infrastructure and capabilities to move to the multi-prime model before 2008; however, their prime relationships were often split by fund, trading market or trading strategy which in essence still left the fund's legal entities exposed to counterparty risk.

The sudden demise of Bear Sterns and Lehman Brothers dramatically upended this old dynamic and consequently created a dilemma for most hedge funds. The impact of the failures of Bear Sterns and Lehman, the financial crisis that followed and investors increasing demands to diversify counterparty risk have created market conditions which have forced hedge funds towards a multi-prime model. However, whilst the move to the multi-prime model diversifies and reduces counterparty risk, the trade-off is that hedge funds must now also tackle the ensuing operational risks from having to outsource or support internally the functions previously performed or subsidized by the prime brokers. Additionally, hedge funds must also outsource or internally support multiple execution platforms such as complex reconciliations, trade allocations, counterparty risk monitoring and collateral management.

The New Definition of Transparency

A direct consequence of the prime broker dilemma and the desire to diversify counterparty risk has been investors' renewed attention to the custody of hedge fund assets. This renewed attention to custody by investors, coupled with the numerous instances of industry fraud and renewed regulatory scrutiny essentially compels the hedge fund industry to address the transparency issue. As a condition of investing, institutional investors are demanding greater portfolio, investment risk and investment philosophy transparency, more frequent reporting of portfolio risk attributes and independent confirmations that assets do in fact exist. Investors not only want greater visibility into the hedge funds portfolio but they also want a basic understanding of the manager's philosophy and capability to generate sustainable alpha.

Bridging the Expectations Gap

The end of the "dot com" era and the 2001 terrorist's attacks on the World Trade Centre contributed greatly to the 2000 – 2002 equity bear markets when most asset classes experienced double digit losses. During this period, the relatively small hedge fund industry driven by financially sophisticated high net worth groups, innovative investment managers and investment strategies that promised to be uncorrelated to

the equity markets on average enjoyed stable positive returns. The positive returns hedge funds provided investors during this period gave the growing industry immense credibility and strategically positioned the industry to benefit from the asset bubble and the entrance of institutional capital from 2002 to 2007. By the end of 2007, hedge fund assets had grown to almost two trillion dollars compared to about five hundred billion dollars at the end of 2000.

The significant growth through 2007 had four primary implications for the industry. The first was that entry barriers were significantly lowered and less savvy managers began entering the hedge fund space merely mimicking the successful investment strategies. This resulted in greater convergence amongst strategies and less dispersion amongst hedge fund managers. The second was that the industry began to use more leverage and illiquid strategies and the average portfolio was constructed with much greater equity beta exposure and thus became correlated to the equity markets. The third was that this growth period re-affirmed and strengthened the investment managers' negotiating and bargaining power. This power was often used by the managers to either ignore or pay very little attention to the needs and concerns of investors and investors seeking to remain in the good graces of managers frequently acquiesced to the managers. Finally, the extravagant wealth, earned by some managers during this period, did very little to improve the public image of the industry.

The increased leverage, illiquidity, convergence of strategies, equity market correlation and public image issues left the hedge fund industry poorly positioned to confront the crisis of 2008. The ensuing poor investment returns, massive redemption requests, redemption gates, redemption suspensions, perceived conflicts of interest and lack of transparency served as a catalyst to transfer the reigns of bargaining and negotiating power to the investor and created an expectation gap between investment managers and their investors. Investors were no longer content to acquiesce to the managers.

To bridge this expectation gap, the institutional investors have increasingly asserted their new found power by encouraging investment managers to enhance internal operations and engage more independent, non-conflicted third parties to perform more critical operational, valuation and administrative functions.

The Changing Role and Dynamics of the Hedge Fund Administrator

The industry's tremendous growth phase through 2007, masked the weaknesses in the hedge fund operating model, as strong investment returns drove ever increasing asset allocations to hedge funds. The global financial crisis upended the old operating model and disrupted the asset flows

to hedge funds; however, most research suggests that this disruption is temporary.

Most investors believe that the value proposition of the hedge fund industry remains intact, namely diversification away from equity market volatility and greater alpha potential. Consequently, investor sentiment is still bullish on the hedge fund industry with unprecedented growth being forecasted over the next three to five year horizon. While still committed to the industry's value proposition, investors nevertheless strongly feel that the industry must change. These changes will have the following implications for the industry and hedge fund administrators.

Transformation of the Traditional Service Offering

Future industry growth is likely to be segmented between two classes of investors. The first is the mega sophisticated institutional investors with an endowment style approach to investing and sufficient size, in-house expertise and resources to run a successful investment program. The second class of investors is projected to be high net worth groups with less sophistication, fewer resources and the tendency to chase performance and utilize the "follow the herd" mentality. The key differentiators will be resources, experience and expectations with respect to transparency, reporting and service offering.

This investor segmentation, coupled with the four themes noted above are likely to be the key drivers propelling the transformation of the administrator's service offering. The traditional service offering of monthly NAV calculations, investor relations and corporate secretarial services will continue to experience growth, primarily from the second class of investors and funds with smaller asset sizes. However, the traditional offering will likely become increasingly commoditized and price sensitive, which when combined with the low cost of switching administrators will result in an increased competitive environment and lower profit margins as smaller, niche administrators begin to focus exclusive on this space.

The more interesting transformations are being driven by the first class of investors and the larger funds with brand recognition. These investors, who are for the moment, the industry power brokers are now demanding more robust internal operations, support for managed account platforms, more outsourcing of critical functions, real-time data on risk reporting, clearing information, independent confirmation of asset existence and valuation, the adoption of the multi-prime model, enhanced and more frequent reporting and more transparency with respect to portfolio, philosophy, and processes.

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HEDGE FUND INDUSTRY

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The primary implication for administrators in addressing these new investor demands would be how to optimally integrate and leverage its global workforce to address the necessary staffing, manpower and capacity requirements as more specialized human capital is required to perform the new front and middle office activities administrators will be taking on, and to price and process the illiquid OTC products to generate real time data. These staffing issues will be further exacerbated by the fact that most administrators are currently operating at or near capacity and the increasing demands of some of the larger new institutional investors to have certain front and middle office activities performed from onshore domiciles.

Further, as hedge funds move to the multi-prime model, the cost, effort and complexity of consolidating data across systems will increase, driving most managers to seek an outsourcing solution. This is an excellent opportunity for administrators to assume a more integral and

strategic role in the hedge fund's investment process where service offerings of administrators and traditional prime brokers may overlap. These services can include margin and collateral administration, cash management, custody, counterparty monitor for additional accounts and points of contact, order management across multiple primes, portfolio and other data aggregation and risk reporting, managing trade allocations, reconciliations and break resolution for NAV reporting.

By expanding their service offering to include the above services, administrators of hedge funds are projected to be one of the primary beneficiaries of the changing dynamics of the hedge fund industry due to the financial crisis. Administrators have emerged from the financial crisis as pivotal and important strategic market participants standing at the epicenter of the resurgent hedge fund industry, ideally positioned to bridge the expectations gap noted above by partnering and collaborating with investment managers to navigate the bumpy ride that most hedge fund Investors have experienced over the past two years to a softer and safer landing destination.

Whilst the destination, in terms of the idyllic operating and business model, service offering and regulatory environment, is yet to be fully defined by the marketplace, the journey to that destination, particularly for the hedge fund administration industry appears to present some interesting opportunities and challenges. ✨

About The Author: Dirk Simmons joined Citco in June 2000 as Vice President. Prior to that time he was employed with PricewaterhouseCoopers where he specialized in the investment and bank and trust sectors. He is a member of the American Institute of Certified Public Accountants (CPA), the Bahamas Institute of Chartered Accountants (BICA) and an Associate member of the Chartered Institute of Bankers of England and Wales (London ACIB). He holds a LL.B. (Hons.) Law degree from the University of Wolverhampton in the United Kingdom, a Bachelors degree (Hons.) in Accounting & Economics from Belmont University in the United States of America and he is the holder of the Chartered Financial Analyst (CFA) professional designation

MARITIME INDUSTRY

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one accepts that this is unlikely to change in the foreseeable future, then the industry has an excellent long term future. On top of that, when one considers the ever growing number and popularity of passenger carrying vessels, including cruise ships and car ferries, then one can see a very bright and exciting future for the world wide maritime industry.

What are the challenges facing the maritime industry? To highlight a few:

- Climate Change and Green House Gas issues. It is clear from the conference in Copenhagen last year that there is much to do and the maritime industry needs to be vigilant in ensuring that its interests are properly represented. Transporting goods by ship is already one of the cleanest and greenest methods of moving natural resources and goods around the world.
- Piracy. Many nations of the world, and especially the IMO's leaders, are to be highly commended for their active involvement in this most vexing and critical issue. Without better governance in a number of parts of the world this problem will not be alleviated soon.
- World economic downturn. This has had a marked effect on the maritime industry as a result of a lowering of export volumes, general world trade and individual travel. There are, however, promising signs that a slow recovery is in progress.

- Maritime Labour Convention and ILO issues. These have the potential for a significant impact upon shipowners.

Turning to our opportunities, the BMA is optimistic for the future and particularly for the following:

- The Yacht Registry;
- The newly introduced Bahamas Arbitration Act, which is the preferred form of dispute resolution for the maritime industry;
- The new offices in Greece and Hong Kong which will extend our reach;
- The new Maritime Institute in Freeport, Grand Bahama, which is a joint venture between some of our owners and The College of The Bahamas;
- The further development of a maritime cluster. The Bahamas has so many facets to its maritime industry and believes that by linking them more closely together, the sum of the whole will be greater than the parts;
- As the third largest contributor to the GDP of the country, after tourism and financial services, the maritime sector has the ability to further influence development and establish closer ties and encourage areas of mutual development, rather than keeping the segments of the economy on separate paths. A good example is the shipping conference in Athens, Greece known as Posidonia. This is held biennially and is the largest such gathering in the world. The Bahamas had a stand at the 2010 exhibition, which was a joint venture between the BMA, Bahamas Tourism

and The Bahamas Financial Services Board, together with some private sector participants. In this, it offered in one location much of which The Bahamas has to offer; it was very well received and resulted in much good comment and enquiries.

- The third Bahamas International Maritime Conference to be held in Freeport, Grand Bahama in February, 2011.

In a few words, the BMA is very excited about the future! Quality and excellence are the key words for the Bahamas Ship Registry and the BMA is proud of its reputation in the maritime industry. The Bahamas is a proud island nation steeped in the history and traditions of the sea. Today, it offers a unique maritime cluster: a major hub for the shipping industry; world renowned tourism facilities; pristine cruising water; an excellent wealth management industry; and excellent port, marine and ancillary services.

What more could you want! ✨

About The Author: Ian D. Fair has been involved in the financial services industry in The Bahamas since 1969. He is currently Deputy Chairman of Butterfield Bank (Bahamas) Limited and Chairman of Bahamas First Holdings Limited, the largest general insurer in The Bahamas. He was also the founding Chairman of The Bahamas Financial Services Board (BFSB) from April 1998 until September 2002, and is currently the Chairman of the Bahamas International Securities Exchange Limited (BISX) and The Bahamas Maritime Authority (BMA).

INSURANCE - POWERFUL PLANNING TOOL

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AS A FINANCIAL PRODUCT, it enjoys the leverage that comes from the computation of insurance rates as a function of the law of large numbers. For estate creation purposes, insurance when held in the proper structure can be payable for the benefit of a surviving family free of estate tax. If there can be a magic financial vehicle, then its insurance. Life insurance is a product that is acquired when there is a perceived liquidity need. Sometimes a salesman has to work hard so that his or her clients finally see this need. Ignored or not, it exists. Insurance provides an assured source of cash even for people who have large net worths. Just because someone is wealthy doesn't mean they will have the funds readily available to meet their estate costs, tax, property conservation and family or business survival needs.

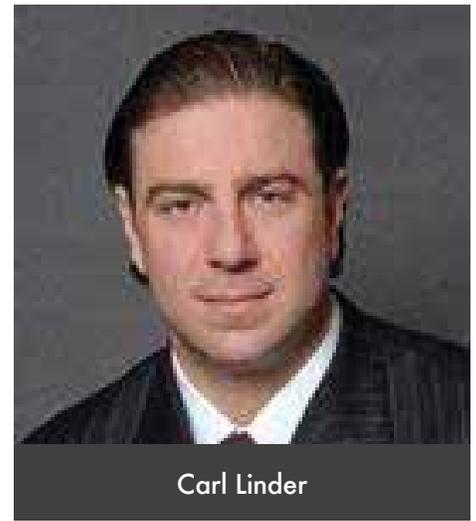
In terms of personal estate planning, insurance can provide the immediate cash that can solve the income replacement needs of family members who are surviving the decedent. For many families, even wealthy ones, when the income earner dies, the ready available cash which has been paid, say on a monthly basis, disappears. Many times, a substantial amount of cash is needed to pay accumulated debts and expenses or to pay off mortgages or other debts which have been personally guaranteed by the decedent.

Life insurance is a complex financial product. Evaluating different insurance policies is, even for the experts, difficult to do. There is a plethora of variables and, as a result, it is difficult to do comparison shopping. Of necessity, the acquisition of insurance should be done in consultation with an experienced professional advisor.

UNDERSTANDING INTERNATIONAL PRIVATE PLACEMENT LIFE INSURANCE POLICIES

Life Insurance ("International Private Placement Life Insurance") was developed by insurance companies primarily to meet competition from mutual fund type investments. If nothing else, the insurance industry is very creative and extraordinarily competitive. Essentially, International Private Placement Life Insurance is a life insurance policy which allows the policy owner to choose the investment advisor that will direct the investment of the cash values within a selection of various global investment vehicles. These are usually stocks, bonds, mutual funds international real estate funds and many other options.

International Private Placement Life Insurance is valuable to people who need or desire to maintain large amounts of assets that are segregated into independent cell structures that are not commingled with the assets of the insurance company or other policyholders, thus giving the policyholder more comfort that their assets are more in the control of their chosen investment advisor, in relation to their cash values and other policy assets. Due to the variable nature of policy investments, these life insurance contracts do not generally have a fixed return and the policy owner bears the risk of the investments which support the policy values. If the investment advisor chooses strong investments, well then the policy will become quite valuable. The reverse is also true. There is a risk that the market value of the underlying assets will drop causing the policy value to decline. Risk and reward are part of everyday life to an investor.



Carl Linder

Most International Private Placement Life Policies allow the policyholders through their appointed investment advisor to switch their investments in the underlying funds, usually several times a year. Generally, there is no charge for the transfer of funds between the underlying investments. These transfers are tax-free. The income which is earned by these investments underlying the policies cash values may be accumulated tax-free or tax-deferred. This depends on whether or not the gains are distributed during the policy owner's life or are funded at death.

International Private Placement Life Insurance is not a perfect insurance plan for all purposes. The major drawback is that the policyholders bear all the risk of the investments. Unlike traditional and whole life policies, there is no minimum schedule of cash values. No fixed return. The policy cash value is equal to the market value of the underlying assets which are generally held in segregated cell accounts.

If the market is down when the insurers dies, then the death benefit may be significantly less than would otherwise be payable under the guaranteed minimum benefit of a whole life policy. Where an International Private Placement Life Insurance policy provides flexibility with regard to changes in premiums and death benefits there is the possibility that the policy could become a modified endowment contract or MEC. This is not good for tax purposes. If a policy is classified as a MEC, then the distributions under the contract are taxed under the interest first rule rather than the cost recovery rule.

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INSURANCE

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The “cost recovery rule” essentially treats the amounts received as the return of the policyholder’s investment in the contract. Under this rule the policyholder is entitled to recover the full amount of the investment and any funds distributed in excess of that are then treated as taxable interest or gain in the policy. These additional amounts received generally include policy dividends, lump sum cash settlements of cash surrender value, cash withdrawals and amounts received on the partial surrender of the policy.

International Private Placement Life Insurance policies also have variable tax consequences. Generally an International Private Placement Life Insurance policy can retain capital gain income on a deferred basis. With an International Private Placement Life Insurance product capital appreciation loses its character as capital gain under certain circumstances. When there are distributions from the insurance company to the policy owner because of a withdrawal or a surrender of a policy, the amount received becomes taxable as ordinary income tax rates.

While the maximum or marginal tax rate is set to rise to 39.6%, it is well known that the effective rate can be much higher due to certain computational complexities within the operations of the Internal Revenue Code. However, the policy is not drawn down; then clearly the increase in value will increase the available death benefit which can be structured to be received by the beneficiaries free of any income tax as well as estate tax.

ADVANTAGES OF AN OFFSHORE INTERNATIONAL PRIVATE PLACEMENT LIFE INSURANCE

There are certain significant tax and planning advantages to having an offshore insurance policy. For tax purposes an offshore policy and a domestic policy must meet the same rules. That is, there is nothing available offshore that cannot be available onshore in terms of insurance product design. However, offshore insurance companies do have policies available which meet the U.S. rules but which are not offered by U.S. companies (953(d) companies). As discussed earlier, one of the most important aspects of some offshore insurance policies is that they allow the policy owner to utilize the services of one or more independent investment advisors.

The tax code specifically provides that the use of an independent investment advisor shall not be prohibited. Thereby, the independent advisor can choose to have investments in both public type investments as well as private type

investments and not be restricted to mutual funds offered by an insurance company. The most important advantage for non-US policyholders in acquiring an offshore versus on-shore policy would be certain taxes that will not be applied to offshore policies (excise and state based taxes). There is a level of security that can be gained in an offshore policy that is not available domestically. In The Bahamas, for example, the underlying insurance law provides that assets which are held in segregated asset accounts of an insurance company will not be subject to the claims of the insurance company creditors. The assets held in these segregated asset accounts can only be paid to the policy owner in the event of the liquidation of the insurance company. In the case of a domestic policy, the policy owner is an unsecured creditor of the insurance company and thereby must rely on the financial solvency of the insurance company in order to be assured of the policy benefit being paid off at death. This risk, which is significant, is avoidable in an insurance policy which has been issued offshore under the right insurance law.

As a practical matter, an offshore policy gives a high level of asset protection for the assets held under the policy. Most states provide for some amount of protection for life insurance proceeds but not fully. Even some states, such as Florida, have other laws which may still drag the insurance policies into a lawsuit and become available to creditors. For example, while Florida exempts life insurance proceeds as well as the cash surrender value, there have been cases which have held that the acquisition of the insurance was a fraudulent conveyance even if the proceeds are otherwise exempt. By acquiring an offshore policy, it is possible to gain a much higher level of real wealth protection. In a world full of risk, there is no sense taking avoidable risks.

Additionally, for Non-Resident Non Citizen (“NRNC”) policy owners who have US resident/citizen offspring, International Private Placement Life Insurance can have dramatic benefits for such a type of family. A properly structured International Private Placement Life Insurance Policy can successfully avoid applicable foreign tax rules related to ownership of US assets (other than US real estate). If the policyholder and insured are NRNC and the policy has US citizen/resident beneficiaries, then at death the policy assets will be exempt from federal estate tax in the United States and the beneficiaries should inherit the assets estate tax free under Section 2105(a) of the Internal revenue Code.

The Income tax situation can be quite advantageous as well. If the policyholder is a NRNC of the United States, the deferred income created under the International Private Placement Life Insurance Policy will usually be exempt from United States Federal Income Tax in the hands of the NRNC policyholder.

Please take note that dividends may not be subject to deferral and may be subject to a 30% withholding at the US source but trading stocks will be exempt. These rules are quite different if a NRNC establishes a foreign trust with US citizen/resident beneficiaries. Under current proposed legislation, these types of trust vehicles MAY have to be reported by such US citizen/resident beneficiaries even if no rights have vested in such persons. International Private Placement Life Insurance Policies can avoid this reporting.

CAPTIVE INSURANCE

Captive insurance is insurance or reinsurance provided by a company that is formed primarily to cover the assets and risks of a parent company, group of affiliated companies or unrelated companies offering similar goods or services. Captive insurance is essentially a self-insurance insurance company with a limited purpose and is not available to the general public. It is a replacement or add-on for traditional types of insurance and is a great risk management tool under the appropriate facts and circumstances.

Captive insurance is becoming a more common choice through which a company may be able to preserve some costs related to insurance and can protect itself financially while having more control over how it is insured.

Large corporations along with many smaller company operations are finding it quite difficult to find affordable traditional insurance policies to cover their risks and assets. Premiums are rising at incredibly rapid rates, increasing the need for companies to seek out alternatives such as captive insurance. Many companies have chosen to not carry insurance, leaving them very exposed to potential business ending losses. Some companies have risks that are difficult or impossible to cover.

Increasingly, traditional insurance companies are setting up their ratings structures without considering actual loss experience but, rather, based on actual analysis of market trends, bringing less coverage to the market place, forcing companies toward alternatives. Other hurdles include but are not limited to issues related to high deductibles and loss control, which can nullify current policies or prohibit the acquisition of new policies.

Types of Captive Insurance

There are five basic types of captive insurance. The most common is the Single Parent Captive, in which an insurance or reinsurance company is formed simply to insure the risk of a parent company or its affiliates, which are not insurance companies.

Continued on page 29

ASSET MANAGEMENT

Clients' assets testify to their personal history. Often the result of years of hard work, they represent a fair reward for the risks taken. And they demonstrate the clients' strong sense of commitment and taste for innovation. That is why the job of an asset manager is to grow this wealth.

THE FACTS

The stock market crash of 2008 radically altered the fundamentals of portfolio management for private clients. This naturally hurt the weakest investment management concepts, but it also affected models that for years had proven remarkably robust. One of the most striking examples has been funds of hedge funds, which after more than 15 years of gains, suddenly stumbled amid a wave of widespread panic and forced sell-offs. It is also interesting to stress the extent to which institutional and private investors reacted differently. Private investors shattered the goodwill that this investment model had accumulated over recent years.

By deserting the market in droves, private investors showed that their investment prerequisites were liquidity, transparency and simplicity. This points up the limitations of delegating investment decisions to a third party. Discretionary portfolio management allows a private investor to entrust the management of his or her portfolio to an investment professional, who has the benefit of a constant flow of information and a powerful logistical infrastructure. These professionals have the experience needed to react swiftly and effectively to changes in market conditions.

"Seek performance, of course, but don't give up control of assets."

This comment also holds true when choosing conventional funds. Under the strange title of "open architecture", it was the core concept of portfolio management for many years. It consists in constructing a portfolio using processes with varying degrees of complexity and explicitness to select and layer funds. Naturally, this process is harnessed to serve an investment strategy. But just how reliable and credible is it when marketing gets involved? This sort of wide-ranging delegation somehow reduces portfolio managers to "wholesalers", who end up distributing other people's funds, with the preconception that "others" are better placed to manage their clients' wealth. The investment management industry is thus on the horns of a strategic dilemma. Clients entrust

their wealth to a bank because of its financial soundness, the confidence it inspires, and its skill as a manager. But by selling funds or funds of funds, the bank sends this very same capital right back out the door. Recent trends in fund selection and the very different reactions of institutional and private investors show that similar funds with similar track records do not elicit similar reactions when faced with the same crisis. Consequently, it would be wrong to lump the two types of investors together. It is necessary to create funds specifically designed for private clients and suited to their risk profiles. Delegation does not disappear, but it is no longer the central feature of the asset management process.

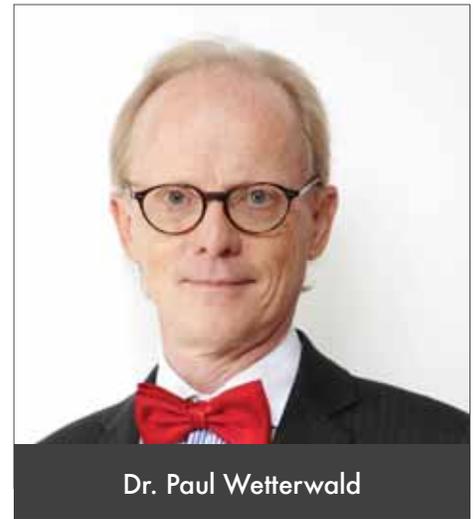
CASE STUDY

Banks like Crédit Agricole Private Banking through their asset management teams can craft an investment strategy and asset allocations suited to the risk profiles of its private clients. These institutions are able to create core portfolios using investment building blocks, managed by their teams, with the help of underlying assets that satisfy those key requirements of liquidity, transparency and simplicity.

ADVANTAGES

Portfolio management at Crédit Agricole Private Banking takes these prerequisites into account. Its unified team delivers outstanding performance. Its investment process was completely redesigned in 2008 and is based simultaneously on dynamism and discipline. Close relationships with account managers ensure a deeper understanding of clients' expectations. For example, the main fundamentals of the Crédit Agricole Private Banking investment policy include:

- Implementing a dynamic asset allocation strategy.
- Developing in-house investment vehicles specifically suited to the needs of its private bank clientele: Credit Agricole's Bel Air funds are designed by fund managers specialising in fixed income and equity



Dr. Paul Wetterwald

management. They combine direct selection of stocks and bonds with fund selection.

- Delegating specific skills to selected partners, notably in commodities management and, more recently, alternative investments.
- Controlling risk through a disciplined management process monitored by its risk management unit, supported by reliable back office processing and independent oversight by its portfolio guardian.

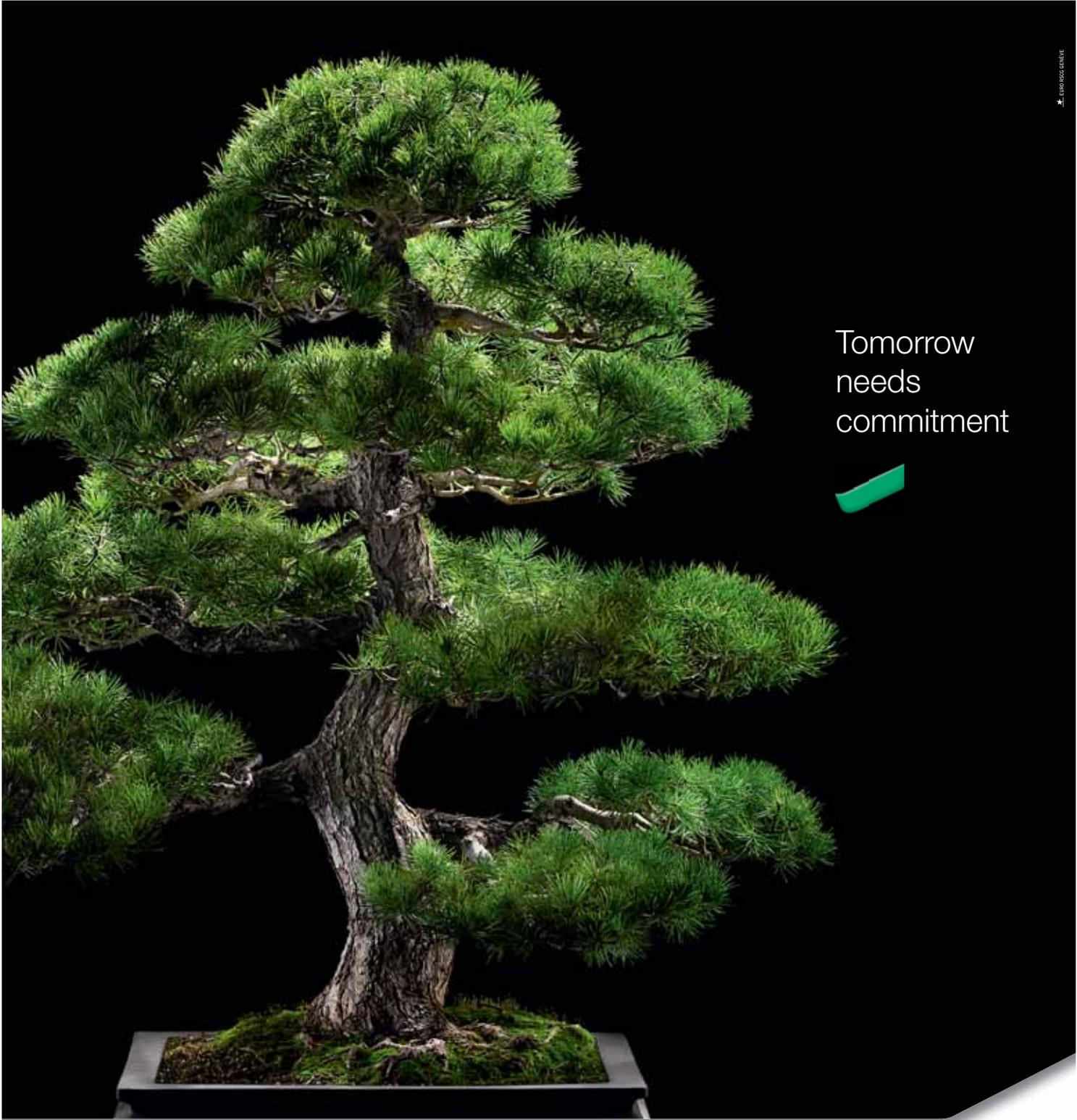
DIVERSIFIED OFFERING

Credit Agricole's flexible and varied offering takes into account the goals and expectations of its private clients.

- Risk-profiled management, where the principal risk indicator is equity allocation.
- Flexible management with personalised risk limits and the ability to make adjustments continuously and apply the Bank's investment strategy.
- High net worth management is available to clients seeking a bespoke portfolio.
- Absolute return management aims to outperform the money market whatever the conditions.
- The Bel Air family of funds offers investment advice for different asset classes.



About The Author: Paul Wetterwald, 54, holds a doctorate in economics from the University of Geneva. He has been active in portfolio management for the past 25 years. He joined Crédit Agricole Suisse in 2005. His areas of expertise include macroeconomics, asset allocation and institutional portfolio management. Before joining Crédit Agricole Suisse, his experience had earned him a position as head of institutional investing at a Geneva bank for five years, and then as Chief Investment Officer of Crédit Lyonnais (Suisse) S.A. from 1991 to 2005. Before beginning his banking career, Dr Wetterwald spent 10 years as an academic, conducting research in Switzerland and the USA.



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Wolfgang Reichenberger

WHY WE CAME HERE

Maybe not many of the readers have heard about Inventages, unless you are a professional in biosciences, nutrition or a private equity investor, and we are not promoting our name in public. But if you google our name, you will find that we are the world's foremost venture and private equity investor in the vast and fast growing field of nutrition, prevention, medical foods and dietary supplements. What was a niche still 10 years ago, somewhere nestled between Pharma and Consumer Goods, has become an attractive field for new startup companies, venture and private equity investors and almost all companies in the adjacent fields of pharmaceuticals and food.

Inventages was started about 10 years ago by Dr. Gunnar Weikert, a German MD with experience in the pharma industry and venture capital. At about the same time, my former employer, the Nestle group, began investing in startups and venture funds engaging in emerging ingredient and nutrition companies, and chose Inventages as partner for those investments. As the investments were growing, Inventages had to consolidate its activities in one jurisdiction, and the global search for the best location started.

The usual suspects all around the world were analyzed, but The Bahamas won the beauty contest, for various good reasons: the solid partnership legislation, particularly the Smart Fund framework, rapid approval process, proximity to the large US market (where the investing and consulting activity in our field is very strong), a good reputation, and expected high quality of living for the expat staff.

WHAT WE ARE DOING HERE

Since the early decision, we grew our business constantly and continuously, employing today

over 10 staff, mainly in our newly opened offices at Caves Village. The staff comprises investment professionals who screen, analyze and negotiate investments, and supervise those, then accounting and admin staff, dealing with the investment and accounting records, and office staff keeping the whole thing running. The current location is our 4th office, as we grew the business, and needs changed. While 3 office moves in 4 years were somewhat disruptive, we always managed to settle quickly in the new locations.

The investment staff, including myself, have to undertake frequent travel to visit existing or prospective portfolio companies, most of them in the US, and eastern Canada. Good connections and on-ground immigration facilities in Nassau are a great asset for those activities.

But most meetings and conferences are held virtually. We have a high-speed connection through Cable Bahamas, and are able to channel various video, voice and data transmission in parallel, without interruptions.

Telephone connections are good, including mobile phones, but there are certain limitations. Roaming options for visitors (from Europe, Asia) have improved, but some foreign operators still have no roaming with BTC, and BTC so far has no iPhone option.

Quality of life was an argument to come here, and none of us has been disappointed. Even I, a mountain and classical music buff, started snorkeling, fishing and private flying to the Family Islands, keeping my weekends as busy as ever. Visitors will enjoy all the facilities built for tourism, and expats benefit from a wide choice of restaurants.

Finding excellent experienced staff for the investment functions is still an issue: we search

for individuals with bioscientific or medical backgrounds, with MBA and Venture/PE experience. While this sounds demanding, there are many individuals out there corresponding to that profile, and passing our interviewing process. But when the question is raised, to which of our 4 worldwide locations to transfer, Nassau normally ranks last behind London, Geneva and Auckland. Reason? Mostly their partners are working or want to work in comparable positions, which are easier to identify in those locations than here on the Island. Additionally, a wife wanting to work here needs a separate work permit, the husband's permit giving her only residence, but not work authorization.

Talking about work permits -- in general, access to local authorities is easy compared to any other country in which I have worked in the past. I have met many government ministers, including the Prime Minister and Deputy Prime Minister, and they all offered help when needed. I am confident they would assist if I called on them.

In terms of networking, there are various aspects in Nassau. Of course this is not London, Boston or New York, where you may easily meet peers or counterparts at the pub or café around the corner, but there are plusses too. There is a growing community of direct investors on the Island, be it wealthy individuals (who already "jumped in" and financed amounts or companies which were still too small for our focus), family offices and other fund managers. The first deals "made in The Bahamas" are around the corner!

And, not to be forgotten, when discussions with counterparts in New York or Boston protract, especially during winter months, those individuals are quickly on a plane, to have dinner on a terrace overlooking the sea, and leapfrog into a deal the next day in our conference room!

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PRIVATE EQUITY DEALS

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WHAT IS NEEDED TO MAKE THE BAHAMAS EVEN BETTER

So, do we have everything? Well, it is almost paradise, but there are areas which we as the financial community, and in collaboration with BFSB and the Bahamas government, can improve. We are still too shy to promote our Bahamas as the ideal location for many financial services, more than just private banking and fund administration. The Bahamas has to diversify, and become a truly all-round financial centre; it has the basis for it. Don't forget that a possible political opening in Cuba (and the US) could lure some of The Bahamas' tourism away, and financial services would be an even more important foundation of The Bahamas' economic future.

While infrastructure is generally top class, there are areas for improvement. Telephone services

and roaming as mentioned. Fragmented public transport (e.g., no bus from/to airport) and dilapidated taxis may look exotic and romantic to the tourist, but professional visitors are normally less amused.

The financial services community here depends also on collaboration with the Bahamas government. I found the process to obtain work permits transparent, and professionally managed, and I would hope that the government would respond to any future needs relative to growing the financial services community in this country.

Many places in this world claim that their difference is the people. And while this is essentially true everywhere, you will find in The Bahamas a country with a great blend of friendliness, particularly to the foreign resident or visitor, professionalism and a can-do attitude. Private Equity investors are picky and very difficult to please, but opening a Bahamas office may be one of the best investments they ever make, and the one they'll never want to exit. ✨

About The Author: Wolfgang Reichenberger is General Partner of the world's largest VC Fund specialized in Nutrition, with committed capital exceeding USD 1 billion. Under the Inventages Group, he is a Partner of its founder Dr. Gunnar Weikert, with 35 portfolio Companies in health, wellness and nutrition.

During a 29-year career at the world's largest food Company, Nestlé, he successfully led different functions and overall operations in Europe, North and South America, Asia and Oceania. For over 4 years, he was part of the 6 member governing admission body at the Swiss Stock Exchange, and constituted the Task Force of European CFOs shaping accounting and governance rules in cooperation with the IASB and the EU. He is a member and active contributor to the Bahamas Financial Services Board.

He also has served on Boards of independently run Companies listed in the United States and Switzerland

INSURANCE

Continued from page 25

The Group Captive is owned by a group of companies that are unrelated and are looking to pool their risks into one company in which the insurance risks and claims exposure are shared.

An Agency Captive is a reinsurance company owned by a separate insurance company to reinsure their client's risks. Reinsurance is a technique used to spread the risks among many companies, where the risks are basically sold off to other unrelated insurance companies. These globally based companies share the risks of a catastrophic loss with other insurance companies, including the captive itself.

The Association Captive is an insurance company which is formed and owned by an industry, trade or service group strictly for the benefit of its members.

The last type of captive insurance is the *Rent-A-Captive*. A Rent-A-Captive can be a more economically efficient and more time efficient way to gain the benefits of a captive insurance company. Generally, a segregated cell is set up off of another captive insurance company and the risks of the insured are managed through the parent captive. There are many specific rules related to these types of captives and they may not work for an intended purpose.

The financial benefits of captive insurance are significant. Premiums are generally lower due to the many built-in fees and costs related to

traditional insurance. Profits of the captive are not generally motivating factors in the process of self-insurance. Moreover, companies are looking to cut expenses while providing the needed coverage for their risk pool. Companies are looking to provide themselves with low cost insurance coverage. Captive insurance can be a more pliable option because the company can adjust its appetite for the proportion of assuming risk or the amount of reinsurance depending on revenues or other factors of the Company and other outside expenses.

The processing and payment of claims is another benefit with captive insurance. This process can be greatly streamlined to be more effective with limited delays, as is not the case with some of the commercial insurance providers. Policies and procedures can be enacted and amended without the same corporate procedures as in commercial insurance companies. Additionally, excess premiums not paid out in claims can be recouped by the parent company when claims are moderate or non-existent.

Like traditional insurance, captive insurance can cover several types of risk. Captive insurance can underwrite all types of liabilities, property damage, employment matters, indemnities and many other risk type pools.

CONCLUSION

Modern estate planning is designed to meet both presently known concerns and with flexibility to adapt to future contingencies. Regardless of the point in time, there will be needs for cash to meet financial requirements – taxes,

debts, income replacement, to name but a few. Insurance as a financial product is in a unique position to meet these real life financial needs. When using offshore insurance which can be held in offshore holding vehicles, this important financial product becomes all the more a powerful planning tool, especially in the case of a NRNC policyholder who may have US citizen/resident children or beneficiaries.

Additionally, captive insurance can be a great tool for a business owner looking to self-insure. Captive companies can provide the same benefits as traditional commercial insurance companies, while potentially preserving excess premiums for the captive owners. In reviewing any estate and tax planning, captive insurance should be one of the topics on every client list, especially for the large business owner or owner of a group of affiliated companies. ✨

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About The Author: Mr. Linder graduated from San Diego State University with a B.A. in political science in 1992. After working for three years for the State of New Mexico as a probation/parole officer, Mr. Linder attended Yeshiva University – Benjamin N. Cardozo School of Law and received his J.D. in 1997. Additionally, Mr. Linder received his LL.M. in Taxation from the prestigious law school of New York University. Mr. Linder has been chairman and/or a speaker at various Florida Bar and other conferences related to trusts and estates and taxation. Additionally, Mr. Linder has written various articles and book chapters on similar subjects.

THE MOST ADVANTAGEOUS LOCATION!

Grand Bahama Island is the most northerly island in The Bahamas, an archipelago of 700 islands and cays located 65 miles off the coast of Florida and just 30 minutes by air. Its diversity and continued economic and political stability are some of the reasons why so many international companies call Freeport, Grand Bahama, home.

NOWHERE IN THE REGION will you find a better centre for tourism, industry and trade, with luxury communities, state of the art telecommunications capabilities or an unsurpassed quality of life. Grand Bahama's many competitive advantages, including its tax-free status, have transformed Freeport into a major investment centre with an exceptionally high standard of living.

Tax Free Environment!

Grand Bahama Island offers companies the benefit of operating within a tax-free environment under the landmark Hawksbill Creek Agreement. This agreement established Freeport and granted investors a wide range of economic concessions and benefits. Under the terms of the Hawksbill Creek Agreement, companies within the Freeport and Lucaya area are exempt from income tax, capital gains tax, property estate tax and import and export duties. Key benefits of Freeport, Grand Bahama:

- Duty exemptions for all capital development and supplies for business operations.
- No taxes on Profits, Capital Gains, Income & Real Property.
- Duty free housing for Business Licensees and their employees.
- Well Planned Touristic and Residential Communities.

A Growing Industry!

The Bahamas is one of the world's principal international financial centres, with more than 250 banks and trust companies licensed by the Central Bank of The Bahamas. The country's progressive legislation, regulatory structure and

highly-skilled workforce have attracted many of the world's largest and most prestigious financial institutions to the jurisdiction.

Here in The Bahamas you will find a full range of financial services and products, including: asset management and protection, commercial banking, brokerage services, company formation & administration, information technology services, insurance services, investment management, fund administration, private banking, maritime registry, support services (back office) and trust services.

On Grand Bahama Island, financial services companies that open offices in Freeport enjoy superb corporate and living space, affordable land costs, and unsurpassed lifestyle options, while taking advantage of a modern infrastructure, cutting-edge technology, availability of skilled manpower, convenient and efficient air and sea transportation options and a growing demand for services by new businesses.

World Class Infrastructure!

Since its inception, Freeport has developed as a master planned city under the management of The Grand Bahama Port Authority, Limited (GBPA). What started out as barren pine lands have now become well planned residential communities, industrial and commercial business districts. Grand Bahama offers first class amenities and infrastructure including:

- World-class communications infrastructure and power generation facility
- Paved streets and highways, with sidewalks
- Fiber Optic Cable throughout Island
- Highly trained labour pool



Ian Rolle

Superb Quality of Life!

As Freeport continues to develop, GBPA is steadfast in its mission to pursue the orderly development, growth and administration of Freeport, to promote an internationally competitive, diversified economy and to create a quality of living consistent with best world standards. GBPA is committed to ensuring that Grand Bahama Island flourishes through sustained economic and community development. Grand Bahama Island offers an incomparable quality of life, whether as a business or vacation destination. Freeport is the best planned city in the Caribbean, a perfect mix of business, residential and recreational facilities in an area that offers a high standard of living for the island's population. Freeport residents enjoy the best amenities, without the typical big city stress.

To meet the diverse and sophisticated tastes of travelers and residents alike, Grand Bahama Island offers something to suit every taste. There is no shortage of exciting things to do, from miles of natural pristine beaches, fine dining and excellent shopping to scuba diving, deep-sea fishing or golfing. From eco-tours, kayaking or snorkeling to movie theatres and family attractions. In addition to its balmy sub-tropical climate, Grand Bahama Island offers modern amenities that just make life comfortable; such as, excellent education and healthcare facilities, low utility rates and planned residential communities.

An Unbeatable Place to Invest, Live and Visit! Grand Bahama Island offers an incomparable quality of life, whether as a home or favourite vacation destination.

Continued on page 32

...Discover endless opportunities

GRAND BAHAMA ISLAND



Discover why so many companies consider Freeport, Grand Bahama, an excellent center for global business and unique investment opportunities, with a superb quality of life. In Freeport, there exists a world-class center complete with all municipal services, first-class infrastructure, and an extraordinary investment climate where industry, commerce, tourism, maritime and financial services all thrive.

www.gbpa.com
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ADVANTAGEOUS LOCATION

Continued from page 30

GBPA has invested over \$1 billion to put in place city services and infrastructure to support an eventual population of 250,000, including more than 20 miles of bulk headed canal systems. Within the Port Area, there are 12 high schools and 24 primary schools. Grand Bahama Power's utility rates are the lowest in the country, and the Grand Bahama Utility Company manages the largest and best drinking water system in The Bahamas.

Major Transshipment Terminal!

Grand Bahama Island is home to the Freeport Container Port (subsidiary of Hutchison Whampoa Limited), a major world container transshipment hub between the Eastern Gulf Coasts of the United States, the Gulf of Mexico, the Caribbean, South America, and trade lanes to African, European, Mediterranean, Far Eastern and Australian destinations. It offers a cost effective, flexible solution for the regional transshipment requirements of shipping lines, combining state-of-the art terminal facilities. The Freeport Container Port offers shipping lines a 24-hour facility with the most advanced port computer systems, operational expertise and professional management. The port is capable of handling the largest container vessels in the world, and aims to provide excellence in container services.

Grand Bahama International Airport (GBIA)

Grand Bahama International Airport (GBIA) is a privately owned joint venture between Hutchison Port Holdings (HPH) and The Port Group (The Grand Bahama Port Authority). This facility also includes an additional 741 acres of land adjoining the Airport and Harbour into one operating entity, known as the Sea Air Business Center (SABC).

The Airport has an 11,000-ft. runway capable of handling the largest aircraft in service and is within easy reach of all major U.S. destinations. Major upgrading and expansion to the facility were completed by March 2004, enhancing the position as a world class airport. The airport operates a 24 hours service daily.

Among the features available at the Grand Bahama International Airport are:

- ILS (Instrument Landing System)
- VOR System
- PAPI (Position Approach Path Indicator) system
- Distance Remaining Markers
- Category seven (7) Fire Fighting Facilities

- General Aviation services, including fuelling
- Special Cargo/Freight handling area
- US Pre-Clearance Facility

The Grand Bahama International Airport is a controlled security facility with Access Control System, and a Safe Passage System (SPS) trained security staff.



Grand Bahama Island offers an incomparable quality of life, whether as a business or vacation destination. Freeport is the best planned city in the Caribbean, a perfect mix of business, residential and recreational facilities in an area that offers a high standard of living for the island's population."

Industrial Park (Free Trade Zone)

The Sea Air Business Centre (SABC) is a joint venture between Hutchison Port Holdings and Port Group Limited, in an effort to create an international maritime and trade centre. The SABC is centrally located between the Freeport Harbour and Freeport Container Port, one of the largest deep water ports in the Western Hemisphere and The Grand Bahama International Airport. The 741 acre park is an industrial park earmarked for manufacturing, distribution warehousing, logistics, repackaging, light processing, and physical redistribution of internationally traded goods. The SABC provides direct access to:

- Freeport Harbour, with a depth of 52 feet, which is one of the largest and deepest in the region and offers the capacity to accommodate a broad expanse of international commercial traffic.
- Freeport Container Port which offers efficient and cost competitive movement of goods with a handling capacity of over 1.5 million TEU's per annum.
- The Grand Bahama International Airport, with 11,000 ft. of runway, which offers the alternative of air express cargo movement for high value and perishable goods. It is one of only four international airports in the region with a US Preclearance facility.

Freeport Harbour Company

Freeport Harbour Company is privately owned and operated through a joint venture between Hutchison Port Holdings (HPH) and The Port Group (The Grand Bahama Port Authority). Freeport Harbour is one of the largest man-made harbours in the world and the deepest harbour in the region. The entrance channel and turning basin are dredged to a depth of 16m (52 ft.). There is also a huge expanse of sheltered waters. Businesses at the harbour include: Cruise and Day Ferry visits, Roll-on/Roll-off facilities for containerized and LTL cargo, Car Transshipment, Wet Docking and Ship Repair Facilities. Freeport Harbour can accommodate three (3) cruise ships, five (5) roll-on/roll-off vessels, and two (2) 900-ft wet-docking berths. Vessels with a maximum draft of 30ft can be accommodated alongside. Cruise lines of up to 1000 ft. in length overall can be facilitated. Tugboat and pilot services are also available.

Lucayan Harbour Cruise Facility, situated on the waterways of Freeport Harbour, has undergone a \$10.9 million re-development programme in order to upgrade the cruise passenger terminal facilities, which process under 1,000,000 visitors annually. Facility includes:

- Sheltered staging areas for the pick-up/drop-off of passengers.
- A retail complex and a craft market featuring local straw work and other indigenous craft.
- Extensive landscaping and an efficient ground transportation layout.
- New tropical landscaping.
- Two first class renovated cruise ship terminals with the ability to be combined to handle a 3,000 passenger homeport cruise vessel. 

About The Author: Mr. Ian Rolle, President of The Grand Bahama Port Authority Group of Companies is a native of Grand Bahama Island. Ian Rolle considers himself an entrepreneur at heart, with a passion for the sustained economic advancement of Freeport. Mr. Rolle joined The Grand Bahama Port Authority as Group Financial Analyst in 2000 and also served as Group Financial Controller. Prior to his appointment as President, Mr. Rolle most recently served as Chief Financial Officer for the GBPA Group.

In 1995 while employed with Ernst & Young as a Senior/Knowledge Steward, Mr. Rolle passed the Georgia State Board of Accountancy exam and became a Certified Public Accountant. He also held the post of Finance Manager at Hutchison Lucaya Limited where he was responsible for the management of a 450 million dollar budget for the redevelopment of Lucaya Hotel property.

INSOLVENCY AND DISPUTE CONSULTING

On July 2, 2010, Krys Rahming & Associates hosted a seminar in the Bahamas titled “Insolvency and Dispute Consulting”. Attendees received CLE and CPE credit from the Bahamas Bar Association and the Bahamas Institute of Chartered Accountants, respectively.

THE HALF-DAY SEMINAR, held at the Hilton Hotel, discussed the field of forensic accounting as it relates to arbitration and other alternative dispute resolution techniques, and how The Bahamas should leverage the recently passed updates to the arbitration laws to become an international Arbitration Centre. The Honourable Judge Elizabeth S. Stong, US Bankruptcy Judge for the Eastern District of New York, was among the distinguished guest speakers at the seminar. The seminar was attended by professionals across various fields and industries, including accountants, attorneys, law enforcement officers, business executives, and law students.

Dispute Consulting

A presentation was provided on the role of the accounting expert in litigation and alternative dispute resolution (ADR). The need for the forensic accountant in litigation and ADR in The Bahamas has never been greater. Trends show that litigation and ADR are becoming more prevalent and complex and the need to involve a forensic accountant is becoming more important. A forensic accountant not only assists in conducting the sophisticated analysis required but also in providing the evidence in a simplified and easy to understand form. This not only makes it easy for the clients and courts to understand the evidence but also provides value in ensuring the client receives the appropriate decision.

Accounting and finance issues are present in commercial and employment disputes, marital dissolution, damages quantification, valuations, fraud investigations, civil litigation, insolvency matters, and construction and intellectual property disputes. Quite often this makes the forensic accountant indispensable in litigation and ADR. The forensic accountant may act as a neutral (the mediator or arbitrator in an ADR proceeding), an advisor, or as an independent expert.

These trends present an opportunity to highlight the specialty practice area of forensic accounting.

Forensic accounting is the use of investigative, financial and accounting skills to review financial information as a result of a dispute or anticipated disputes and litigation. A forensic engagement will involve the following steps: Planning, Interviews, Document Collection and Review, Quantitative Analysis, Qualitative Analysis, Reporting, and Remediation plans. Forensic accountants are expected to be analytical and detail-oriented, to simplify complex financial information, to be effective oral communicators as often they are called on to testify in a court of law, and to have a good understanding of current accounting standards.

Identified were several of the tools local forensic accountants could use in the carriage of their function. These tools include business intelligence services, computer forensics and trial graphics. Forensic accountants use business intelligence services to obtain specialized background information on the parties involved in a dispute or investigation. Business intelligence services are often used to identify and locate assets owned by debtors or parties in a civil action. Computer forensics was described briefly as the retrieval of key information from the servers and hard drives of key parties involved in a dispute or investigation. And finally, trial graphics as the creation of charts, diagrams, and media clips to describe the details in a legal proceeding to a trier of fact. Trial graphics assist parties in visualizing what took place and in determining “who did and knew what and when”.

The American Institute of Certified Public Accountants (AICPA) has issued standards and codes of professional conduct for CPAs involved in litigation engagements – forensic accountants. These standards for CPAs address competency, confidentiality, objectivity and independence. It was recommended that CPAs in The Bahamas involved in the forensic accounting field should adhere to these standards and codes. It was also recommended that CPAs in The Bahamas interested in entering the forensic accounting field review training opportunities provided by AICPA, the National Institute for Trial

Advocacy, and the Association of Certified Fraud Examiners.

Arbitration and The Bahamas as an International Arbitration Centre

The Honourable Judge Elizabeth S. Stong, US Bankruptcy Judge for the Eastern District of New York, reflected on arbitration and her views on what was required of The Bahamas to be recognized as an international Arbitration Centre. Having started her career as a commercial litigator in New York and having traversed the divide from the bar to the bench, the Honourable Judge Stong provided a unique perspective on arbitration as a means to resolving disputes. She now sees more, not fewer, reasons for counsel, clients, and parties to consider arbitration and other forms of ADR to resolve disputes.

With such a conviction, the Honourable Judge Stong helped to establish a court-annexed mediation program for New York State Supreme Court’s Commercial Division in Manhattan and trained arbitrators and judges in Algeria, Tunisia, Jordan, and the Arabian peninsula in ADR. The Honourable Judge Stong agreed that the recent passing of the Arbitration Act 2009 and Arbitration (Foreign Arbitral Awards) Bill 2009 is a necessary step towards positioning The Bahamas as a major international Arbitration Centre.

There has been an increase in ADR proceedings worldwide as a direct result of the increase in cross border investment and the desire to manage and minimize the costs and burdens of a dispute. The Bahamas should seek to increase the level of international arbitration proceedings taking place here. The Honourable Judge Stong recommended the following steps be taken to increase The Bahamas’ exposure in international arbitration proceedings:



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- Maintain the commitment to sustain the highest standards in the legal profession and justice system, as the perception of these institutions will contribute to the reputation of The Bahamas as an arbitration forum.
- Become familiar and foster relationships with the entities that administer international commercial arbitrations, and the rules that they promulgate for these proceedings.
- Take an active role in the legal and non-governmental organizations, including UNCITRAL's Arbitration and Conciliation Working Group and the American Law Institute's project on International Commercial Arbitration, that are addressing current issues in domestic and international arbitration and dispute resolution. Seek opportunities to contribute to this work through active participation and membership.
- Commit the appropriate resources, including in the organized Bar, to sustain each of these activities over time.

She concluded by stating that The Bahamas has the potential to position itself as a competitive

international Arbitration Centre due to its already existing financial services industry, its current position and reputation in the international finance arena, its proximity to the US, and its large ship registry.

Mr. Hugh Small, QC, then moderated a session with panel members Mr. Brian Simms, QC, and Mr. Vann Gaitor, joined by the Honourable Judge Stong. The panelists provided their views on how to turn The Bahamas into a major arbitration centre. Observations included:

- The passing of the new Arbitration legislation enables The Bahamas to position itself as an international Arbitration Centre and to find a niche area to focus upon.
- The perceived need to ease The Bahamas' immigration policy in order to become a more competitive international Arbitration Centre.
- The Bahamas should quickly shore up its position in the Caribbean as an international Arbitration Centre as competitors in the region are moving aggressively to implement updated Arbitration laws.
- The Bahamas should create and maintain a directory of arbitrators, including profiles and areas of expertise.

It was evident from the presentations and subsequent questions and answers that there

is strong desire in The Bahamas to progress as a major international Arbitration Centre and that it has the necessary infrastructure (laws and professionals) to do this. The Bahamas' involvement in international organizations and working groups would greatly assist in this endeavour, providing the opportunity to give input and leverage its strategic advantages and recently updated arbitration laws to provide it with a competitive edge as an international Arbitration Centre. ✨

About The Author: Mr. Ed Rahming is the Managing Director of Krys Rahming & Associates (Bahamas) Ltd. He has over 13 years of experience across a broad range of insolvency, fraud and forensic accounting investigations and litigation-related financial analyses. This experience was obtained working for the accounting firm Deloitte in the Nassau, Grand Cayman, New York City, and London offices. He has worked on and led a number of high profile insolvency and forensic accounting matters in a variety of industries, including financial services. In addition to his experience at Deloitte, he has held executive positions with the Grand Bahama Port Authority. Ed is a Certified Public Accountant, a Certified Fraud Examiner and is Certified in Financial Forensics by the American Institute of Certified Public Accountants. He holds a MBA degree from the University of Florida.

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THE MEASURES WHICH SECURE THE INDEPENDENCE OF THE JUDICIARY IN THE COMMONWEALTH OF THE BAHAMAS

THE CONSTITUTIONAL NEED in a democracy under the rule of law for the judiciary to be independent has achieved wide public recognition and acceptance. But I am not confident that it is well understood. This article will seek to outline what it means, how it comes into play, how important it is and where its limits can be found.

In every case which a judge decides, there will be at least one disappointed litigant. But judges do not exercise their powers to court popularity. A large volume of litigation involves a government department or raises an issue affecting government. Regularly, cases involve a challenge to the constitutionality of a piece of legislation which has been passed by the government. In such circumstances, many people can be very easily led to the conclusion that judges are a form of unelected opposition. And it is not just government which can form such a perception. Whilst it might be the most powerful force in society, there are other significant forces which can be affected by the outcome of proceedings; for example, the media, the Church and public opinion.

The need for judges to be able to act and decide cases without interference from any persons or bodies who may have an interest in a case, but have no right to participate in it, may appear obvious. But judicial impartiality is not simply open to challenge by an outsider to a piece of litigation, seeking to influence the judge in the resolution of a particular dispute. That can happen and two measures have long existed to counter such interference. Most importantly, judges are required to take an oath. They swear that they will act impartially, showing neither favour nor ill will. Further, an apparent failure to act impartially can be challenged on appeal.

The judicial oath should not be underestimated as a vital safeguard of independence, but it is only the starting point for the doctrine under discussion. A second safeguard, long recognised and at times rigorously enforced, has been the law in connection with contempt of court. It is a powerful sanction but can be something of a

blunt instrument, and it cannot deal effectively with subtle interference arising from institutional or structural opportunities for interference.

A brief outline of the origins of the current position may be helpful.

In the middle of the 18th century the constitutional theorist, Montesquieu, was much taken up with the American Revolution and then the 1789 French Revolution and he had studied the constitutional make-up at Westminster. He formulated the well-known doctrine of the separation of powers, separating the executive, the legislature and the judiciary. He recognised that unless there is an effective degree of separation the foundations for a powerful dictatorship will exist. He reached a somewhat erroneous conclusion about the degree of separation which existed in England because the executive and the legislature at Westminster are inextricably entwined, as they are under the Westminster model Constitution of the Commonwealth of The Bahamas.

The Prime Minister and the Cabinet exercise executive power but, to govern, they have to control Parliament - the legislature. Governments initiate legislation and then control its passage through Parliament by "whipping" the party members. Montesquieu argued the case for a separate legislature because it would be a balancing restraint upon the will of an executive determined to secure the passage of its desired legislation. But government must be able to govern and, as a matter of practice, restraint has depended upon factors other than an actual separation of power between the executive and the legislature.

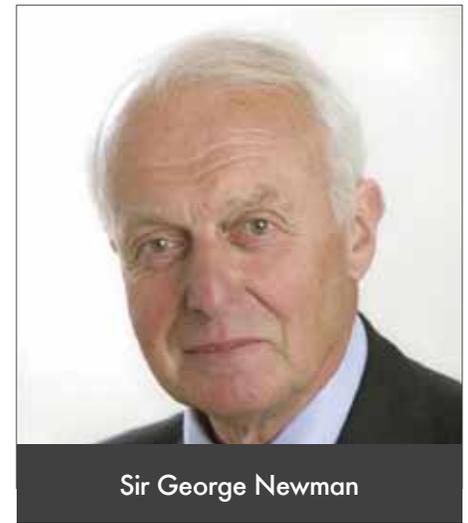
Members of Parliament are capable of being independent and, where necessary, may prevent the passage of or amend legislation of which they disapprove - despite a party system of government where the pressure upon them "to tow the line" is immense. Montesquieu's analysis appears to have taken little account of the position which prevailed until recently where the Lord Chancellor, although head of the judiciary,

was also a member of the Cabinet and who sat on the Woolsack as the Speaker in the legislative Upper House, the House of Lords. The anomaly of the Lord Chancellor's position has now been corrected but it was not suggested at any stage that the independence of the judiciary had not existed in the United Kingdom. The system worked well enough, greatly assisted by constitutional conventions, but it was not seen to be a system calculated to maintain or uphold the independence of the judiciary. The margin of difference between perception and reality has narrowed. Reform in the United Kingdom has led to the system for appointing judges being brought into line with the demands of public perception.

This analysis goes no way to remove the obligation to be independent which is, in the first place, squarely upon the shoulders of the judges. They must adhere to their oath, whilst the performance of their task in individual cases will be assisted by the law of contempt. But I have no doubt that there are two cardinal principles which must be taken as marking out the future:-

There must be public confidence in the independence of the judges and, in pursuit of that, Judges should be protected from all form of political interference.

The analysis thus shifts to making a distinction between pressure from third parties (including government), pressure groups or powerful business interests in connection with legal issues which are to be resolved in any particular case. Such pressure being improper, where it occurs, will be dealt with by the law of contempt, but it is not the same as the threat of potential interference, which can be seen to exist where there is a lack of structural separation between the executive and the judiciary. The potential for such interference has been recognised for decades. Recognition can be seen from the terms of the independence constitutions, granted in the 1960s and 1970s, including the Constitution granted to The Commonwealth of The Bahamas.



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But constitutional lawyers have seen a need to extend the limits of institutional separation and theory is developing at such a pace that it makes it difficult to be certain where the developments may end.

The Constitution of The Commonwealth of The Bahamas

The Commonwealth of The Bahamas enjoys, with other Commonwealth states, a Westminster Model Constitution. Chapter 7 contains specific provisions designed to secure the independence of the judiciary. They provide for and establish:-

1. a Judicial and Legal Services Commission constituted so as to be able to provide an impartial appointments process;
2. provisions granting security of tenure to Supreme Court judges. They hold office until they attain the age of 65 years; and
3. a provision or set of provisions restricting the removal of a judge from office save on the ground of inability or misbehaviour and then only following the safeguards of a fair and independent process in the determination of inability or misbehaviour.

These sections are of outstanding importance. They secure protection for the public, the judges and the judiciary as an institution. They go a long way to meet the requisites of the cardinal principles I have mentioned and can be seen as:-

- enabling judges to be appointed who are free of any political partiality;
- preventing removal by reason of unpopularity or political disfavour; and
- providing protection against the system for removal being abused by unsubstantiated claims of inability or misconduct.

In the United Kingdom recognition has also recently been accorded to the need to provide for the promotion of judges, for example to the Court of Appeal, to be in the hands of a Commission rather than permitting it to remain in the direct control of the executive. This has not occurred because it was thought judges had sought to increase their chances of promotion by coming to a particular decision in a case or series of cases but was driven by the desire to create a transparently independent system for judicial appointments.

The Importance of the Doctrine The Rule of Law

In 2008 the Archbishop of Canterbury gave a sermon to a gathering of judges in London. He encapsulated the principle of the rule of law and, at the same time, pointed to the burden imposed on judges by this single sentence:-

“Law exists so that power shall not be everything in human society.”

It provides the explanation for the need to preserve the independence of the judiciary. Where the rule of law is absent, citizens will be at risk from the battling and subjugation of power factions. The judiciary, by upholding the rule of law, give meaning to the restraint on “power” which is necessary in society. They can only do this if they are free from interference by those who wield power. In a very real sense judges are, as I have pointed out, a countervailing power in society. They are unelected but, critically, they have no more power than the law itself provides. As a famous American judge put it:-

“... Legislatures are more likely than Courts to repress what ought to be free.”

The exercise of this countervailing power is onerous but it, too, must be transparent. It is imperative that judges exercise their powers in public. A judge should not communicate with one party to litigation or a lawyer for one party without the presence of the other party or his lawyer. There should be no communications with anyone about a case (save another judge) in the absence of all parties to the litigation. Great damage will be done to the perception and confidence in the law if proceedings take place in private with only one party appearing or represented before a judge. It is for this reason that the holding of what lawyers call, *ex parte* hearings, must be very rare indeed and justified only by the most pressing circumstances of urgency and confidentiality. The Constitution of the Commonwealth of The Bahamas recognises this principle and declares that everybody in the determination of his rights should have the benefit of an impartial public hearing at which he has the opportunity of being present or represented.

As to the future, I have little doubt that the impacts of human rights law and societal change have increased the level of attention given to judges by the media and the public. Their status and their behaviour, both public and private, are under constant scrutiny. Further, fundamental freedoms enshrined in the Constitution of The Commonwealth of The Bahamas heighten the need for there to be transparency and clear support for the independence of the judiciary. Fundamental right cases and challenges to the constitutionality and lawfulness of the actions of public authorities place judges in high profile positions and, often, in political controversy. The doctrine is of greater importance than it has ever been. The limits are not settled. As I have mentioned, current thought is being directed to areas where the impact of the doctrine can be brought to bear to create more transparency.

In conclusion, I will attempt to foreshadow what areas could call for attention and change. Questions are being asked about how far the administration of the courts can be separated from executive control. For example, should staff within the Court Service be civil servants, subject to the control of the rules and conduct of the civil service? Should those exercising judicial powers or quasi-judicial powers at a modest level (for example, in the Civil Courts

as Deputy Registrars and so forth) be public servants or should they be judges? How can the administration of the courts be separated from government, when government holds the purse strings? The matter can be tested by an extreme observation. It may be of academic interest only if a judge can only be removed for inability or misconduct if the resources of the Court can be cut in such a manner as to make it almost impossible for judges to operate properly.

I should not be misunderstood. I am not suggesting that this would happen within the Commonwealth of the Bahamas, but there are many levels at which there can be disputes as to how resources should be deployed. There can be genuine differences about what may be important in the interests of justice. The Privy Council recently had cause to observe in a case from Dominica, in connection with a monopoly, which had been granted to Cable and Wireless that:

“The right to freedom of communication will be a fragile thing if it could be overridden by general political or economic policy.”

Everyone has a role to play in seeing that the independence of the judiciary is not undermined. The objective will be facilitated if it is recognised by the public as the bulwark against unrestrained power in society. Judges have the most important role and they should act so as to inspire public confidence. They must act so as to earn the respect of the public, not only by what they do in public life but also by the manner of private life. It is axiomatic that a judge should not act so as to bring the judiciary into disrepute.

There are important fundamental measures for securing the independence of the judiciary in the Commonwealth of The Bahamas. It will be interesting to see where the momentum for transparency leads, in particular, whether structural changes will occur in the organisation of the various departments administering justice.

This is a revised version of a lecture given by Sir George on the occasion of the 1st anniversary of the Bahamas Middle Temple Society at the Hilton Hotel, Nassau on the 20th May 2010.

About The Author: Sir George is a former High Court Judge of the United Kingdom. He practiced at the bar between 1965 and 1995, much of his time being spent in Commonwealth jurisdictions and in connection with Commonwealth constitutional affairs.

He is presently a non resident Judge of the Court of Appeal of The Bahamas as well as holding other part time positions in the United Kingdom.

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U.S. INITIATIVES IMPACTING CROSS-BORDER FINANCIAL SERVICES

The United States (“U.S.”) Government has enacted a series of laws that grant comprehensive powers to U.S. governmental authorities to prescribe special measures against any foreign financial institution irrespective of any concern for jurisdictional considerations.

U.S. INITIATIVES CONTINUE to result in a significant impact on Bahamian financial institutions as the U.S. attempts to extraterritorially enforce its tax laws in The Bahamas and other foreign jurisdictions.

I. The U.S.A – no longer a haven for the Bahamian Bank¹

Certainly, many of us are familiar with the U.S.A Patriot Act of 2001 (the “U.S.A Patriot Act”), one of the most far-reaching pieces of legislation, enacted in the year 2001. However, what many of us are not as familiar with is the landmark case of *United States v. Union Bank for Savings & Investments (Jordan)*² (“U.S. v Union Bank”) and the significant expansion of the authority of U.S. law enforcement agencies in forfeiting funds from the interbank accounts of foreign banks. The U.S.A Patriot Act consists of a series of laws that authorise civil and criminal forfeiture of assets of persons and/or property derived from or used to commit terrorist acts, foreign drug crimes, and foreign crimes used as predicates for money laundering offences.

Of relevance, Title III of the Patriot Act addresses international money laundering and the financing of terrorism and sets forth the guidelines intended to prosecute such actions. Title III is divided into three subtitles: Subtitle A, which heightens the requirements that international financial institutions must undertake in order to reverse the effects of money laundering; Subtitle B, which increases record keeping and reporting requirements of financial institutions in order to advance communication between law enforcement and financial institutions, and Subtitle C, which considers the smuggling of currency and counterfeit funds.

The U.S.A Patriot Act and its direct extraterritorial effect on Bahamian Banks

On October 24, 2001, as part of the U.S.A Patriot Act, Congress added a new provision to the federal civil forfeiture statute, found in 18 U.S.C. 981(k). This statute, as a procedural tool, formulated special rules for forfeiture from interbank accounts held by foreign banks³ at banks in the U.S.A. 18 U.S.C. 981(k) states:

“For the purpose of a forfeiture under this section [. . .] if funds are deposited into an account at a foreign financial institution, and that foreign financial institution [. . .] has an interbank account in the United States with a covered financial institution [. . .] the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant *in rem* regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution [. . .] may be restrained, seized, or arrested.”

Interbank, also called correspondent, accounts are utilised by foreign banks to facilitate transactions in jurisdictions where the banks do not have a physical presence. Many Bahamian banks have an increasing need to acquire U.S. currency; thus, the use of such interbank accounts in the U.S. has become imperative. In fact, many offshore banks conduct virtually all external transactions to the bank through their U.S. interbank accounts. Consequently, interbank accounts continue to be a favourable means for money launderers to complete transactions in the U.S., as there is no corresponding need to directly establish an account.

Before the enactment of the U.S.A Patriot Act and Section 981(k), the U.S. federal civil



Lyandra P. Bryan

forfeiture statute, the U.S. Government could not easily acquire the forfeiture of laundered funds in interbank accounts of Bahamian banks. The bank was considered to be the owner of all funds in its interbank account, and the bank was entitled to assert an innocent owner defence to an attempted forfeiture. In nearly all cases, the bank would be determined to be innocent of any criminal wrongdoing, and forfeiture of funds would fail.

With the establishment of Section 981(k), the government’s civil forfeiture power expanded in two significant ways. Firstly, the law provides that any restraining order, seizure warrant, or arrest warrant *in rem* against the funds deposited at a Bahamian bank may be served on a U.S. bank holding an interbank account for the Bahamian bank, and that the funds in the interbank account may be restrained, seized, or arrested up to the value of the funds deposited at the Bahamian bank. Importantly, the deposit of forfeitable funds at a Bahamian bank, rather than the continued existence of forfeitable funds, will trigger the forfeiture of an equivalent amount of funds from the Bahamian bank’s interbank account at a U.S. bank. In addition, there is no requirement that any funds in an interbank account be traced to forfeitable funds deposited at the Bahamian bank.

Secondly, the owner of the funds in an interbank account may contest the forfeiture of funds. However, the depositor, and not the Bahamian bank that holds the account, is considered to be the owner of the funds. Section 981(k)(4)(b) defines the owner as the person who owned the funds at the time such funds were deposited into the foreign financial institution. This section expressly excludes the foreign financial institution or any other financial institution which may have

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acted as an intermediary in the transfer of funds into the interbank account. The foreign bank is not considered to be the owner of funds unless:

- the basis for the forfeiture action is wrongdoing committed by the foreign bank; or
- it establishes, by a preponderance of the evidence, that it had discharged all or part of its obligation to the depositor of the funds before the seizure occurred.

Therefore, a Bahamian bank may not recover any funds seized from its interbank account, unless the aggregate balance in all the accounts of its depositor at the time of seizure is less than the amount of forfeitable funds originally deposited by the depositor at the Bahamian bank. Any fluctuations in the amount held by the depositor at the Bahamian bank, as a result of periodic withdrawals and additional deposits from other sources, will not affect the ability of the U.S. to seize funds from the Bahamian bank's interbank account. The U.S. Government is entitled to seize funds up to an amount equivalent to what the Bahamian bank owes to the depositor at the time of the seizure.

U.S. v Union Bank: the downfall of the foreign bank

The recent decision of the U.S. Court of Appeals for the First Circuit in *U.S. v Union Bank* reinforces the view that the old axiom, that if you want a decision favorable to the banks, try England, and not the U.S.A., is true. In the instant case, the First Circuit seems to affirm the belief that the U.S.A Patriot Act has a direct extraterritorial effect on foreign banks. The U.S. seized a total of more than \$2.8 million from an interbank account held at The Bank of New York ("BoNy") by the Union Bank for Savings and Investment ("Union Bank"), a foreign bank headquartered in Jordan. The U.S. Government asserted that the seized funds resulted from the proceeds of a Canadian telemarketing fraud scheme.

The perpetrators of the scheme coaxed more than 80 Americans to draw a total of 124 cashier's checks on U.S. banks to cover expenses for the prizes these individuals were told they had won. After changing hands several times, those checks eventually made their way into the hands of a money exchange business in East Jerusalem. The money exchange business did not have an account at Union Bank; however, the cashier's checks were deposited by two of three brothers who operated the business in their own accounts at Union Bank in Israel. Union Bank had an interbank account with the BoNy. The BoNy honoured the checks and final credit was given to the brothers' accounts. None of the seized funds were ever transferred at any time to an account in the U.S.A.

did not have an account at Union Bank, the business was a joint venture among the brothers and the cashier's checks had been acquired and deposited in the normal course of that business. Therefore, the brothers, as joint venturers, were owners of the seized funds at the time they were deposited, regardless of which account the funds were deposited into. The essence of the defence for Union Bank was whether it had discharged all or part of its obligations to the brothers at the time the seizure occurred, so as to give the bank standing as owner of all or part of the funds seized from its interbank account at BoNy. Obligations are created when a deposit has been made by the depositor rendering the bank responsible for repaying the deposited amount on demand. Such an obligation is only discharged by repaying the appropriate amount. Thus, Union Bank's obligations to the brothers were measured by the brothers' account balances. On the date of the seizures, the bank's obligations to the brothers exceeded the amount of the forfeitable cashier's checks.

Therefore, Union Bank did not discharge its obligations to the prior owners under Section 981(k)(4)(B)(ii)(II), and was not an owner of any portion of the seized funds. Union Bank also argued that the bank's obligation should be linked to its ability to obtain recourse for the seizure of funds from the depositor. Under its depository relationship with the brothers and applicable foreign law, the bank had no recourse against them to recover for the loss the bank would suffer through the seizure. The bank relied heavily on public policy reasoning, and argued that the bank's inability to collect from the foreign depositor would circumvent the expressed purpose of Congress in crafting the ownership provisions. The depositor will not have any losses and will have no incentive to appear in the forfeiture proceeding. The court rejected this argument and noted that there was no evidence in the record why foreign banks could not protect themselves from seizure by contract or other means, thus giving the foreign depositor the appropriate incentive to appear.

The bank unsuccessfully made other arguments. The bank argued that it should be able to contest the seizure because Congress intended to equalize the treatment of foreign and domestic banks, and a domestic bank would have the opportunity to assert its defences in similar case.

According to the court, the legislative history of Section 319(a) suggested that Congress intended to treat foreign and domestic deposits, not foreign and domestic banks, similarly. The foreign bank's lack of wrongdoing was not a reason to allow a foreign depositor to escape seizure. The court also rejected the lower court's analysis, which held that the only relevant obligations were those "that arose from the bank's receipt of forfeitable funds".

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Union Bank filed a claim in the U.S. District Court in New Hampshire to the amount of the seized funds, arguing that it was an innocent owner of the funds in its interbank account at BoNy. The government argued successfully that the bank was not the owner of the funds, and that as a result, the bank lacked standing to bring the case to recover any of the funds. Both parties appealed.

In the instant case, the court found that the money changing business was the owner of the checks at the time they were deposited into the Union Bank accounts. Even though the money changing business

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The lower court reasoned that the checks had to be traced in some manner to a specific account before any part of that account could be included as part of the bank's obligation to the money exchange business. According to the court, the language and structure of Section 981(k) indicated that Congress intended to reach through the bank to particular depositors. The obligation at issue was the bank's obligation to the prior owners of funds, not the obligation arising under a specific account or the obligation arising from the deposit of forfeitable funds. Therefore, it was extraneous for forfeitable funds to be deposited in a particular account in order to make the equivalent value of that account subject to seizure from the interbank account.

Did Congress, in drafting Title III of the U.S.A Patriot Act, intend such a direct extraterritorial effect on Bahamian and other offshore banks?

II. The Foreign Tax Account Compliance Act ("FTACA") & The HIRE-U.S. Act⁴

Summary of the HIRE-U.S. Act

On Thursday, 18th March, 2010, U.S. President Barack Obama signed into law the Hiring Incentives to Restore Employment Act (the "Act"). The Act's principal purpose is to provide American employers the necessary incentives to hire and retain new employees. Therefore, the Act exempts qualified employers from paying the employers' share of Social Security employment taxes for all wages and salaries paid in the year 2010 for all new employees hired between the period of 3rd February, 2010 and 1st January, 2011, so long as the new employee (1) did not replace another employee of the employer, unless the first employee resigned or was terminated, and (2) was previously unemployed for at least 60 days prior to hire or worked fewer than 40 hours for another employer during the previous 60 days. The Act also provides an allowance for small business to write off a maximum total of US\$250,000 of specified capital expenditures, so long as their total expenditures do not exceed US\$800,000. With exemptions and tax credits offered by the Act, the U.S. Government has chosen to offset its costs by incorporating the provisions of the Foreign Tax Account Compliance Act of 2009 ("FATCA").

FATCA: The U.S. taxes Bahamian Banks!

Disclosure by U.S. Persons

The Act implements measures, which undermine the concept of offshore financial privacy, such as increased reporting requirements and taxation of independently sovereign foreign institutions.

By the Act, the Internal Revenue Service ("IRS") may impose additional reporting requirements for U.S. citizens and residents who hold offshore financial accounts or enjoy offshore financial services. These reporting requirements are in addition to the current foreign banking reporting requirements and require disclosure of a broader class of foreign assets. Under the provisions of the Act, all U.S. residents who hold an interest in any foreign financial assets must disclose the extent of such assets by attaching a disclosure statement to his or her annual income tax return, so long as the aggregate value of all foreign financial assets exceed \$50,000.

Foreign assets include foreign financial accounts, foreign stocks and securities, interests in foreign entities. Moreover, all American entities "former or availed of for purposes of holding, directly or indirectly, specified foreign financial assets," will be subject to the same reporting requirement.

The new disclosure requirements are effective for tax years beginning after the date of enactment of the Act; therefore, for the majority of Americans, the new reporting requirements will apply for the tax year 2011.

Reporting Requirements for Bahamian Financial Institutions

Beginning in 2013, the Act will mandate that all foreign financial institutions enter into an agreement with the U.S. Treasury Department to report information about its U.S. account holders each year. A "foreign financial institution" is defined broadly to include any foreign entity that (i) accepts deposits in the ordinary course of a banking or similar business, (ii) holds financial assets for the account of others as a substantial portion of its business, or (iii) is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting or trading in financial assets (including securities, partnership interests, commodities, or any interest in such securities, partnership interests or commodities). Therefore, this broad definition encompasses foreign investment banks, foreign commercial banks, foreign insurance companies, foreign hedge funds and private equity funds, and foreign securitisation vehicles.

Foreign financial institutions will be required to determine which of its equity and debt holders (and certain other of its counterparties and other "account holders") are U.S. account holders, and to report this information to the IRS or otherwise be subject to a 30% withholding tax on the foreign financial institution's U.S.-source income and/or the proceeds of certain sales and other dispositions.

All foreign financial institutions must agree to report to the IRS the name, address, and taxpayer identification number coupled with documentation evidencing withdrawals and account balances for all U.S. persons and any

substantial owner of a U.S.-owned foreign entity that directly or indirectly holds an account or privately-traded debt or equity in the foreign financial institution. If the foreign financial institution is unable to obtain information from a specified account holder, it may either (i) withhold the 30% from the payments it makes to the recalcitrant account holder, or (ii) elect to receive its U.S.-source payments, subject to 30% withholding on the portion that is allocable to the recalcitrant account holder. As an alternative to the reporting requirements, a foreign financial institution may elect to provide full IRS Form 1099 reporting, which is currently the case for U.S. financial institutions. Under this election, the foreign financial institution reports on each U.S. account holder, subjecting both U.S. and foreign-source income to reporting regardless of whether the amounts are paid inside or outside the U.S.

Further, if an account holder fails to provide the requisite information, a 30% withholding tax will be imposed on all withholdable payments made to foreign financial institutions. For such purposes, withholdable payments are defined as (1) any gross proceeds from the sale or other disposition of any property of the type which can produce interest or dividends from sources within the U.S., and (2) any U.S. source payment of interest (including original issue discount and portfolio interest), dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits and income, if such payment is from sources within the U.S.

III. FBAR Regulations

On June 30th, 2010, all U.S. persons were required to file the "Report of Foreign Bank and Financial Accounts" (known as "FBAR") with respect to Bahamian bank and financial accounts. The term "U.S. persons" are defined to include (1) a citizen or resident of the U.S.; (2) a domestic partnership; (3) a domestic corporation, or (4) a domestic estate or trust.

Financial Interest in Bahamian Accounts

All U.S. persons having a financial interest in a bank, securities, or other financial account in The Bahamas, are required to report the account to the U.S. Department of Treasury if the aggregate value of the said bank, securities, or other financial account had an aggregate value exceeding \$10,000 at any time during the past calendar year; even if the Bahamian account held \$10,000 for 1 day! All U.S. persons with signature authority over, but no financial interest in, a Bahamian bank or other financial account for which an FBAR would otherwise have been due June 30, 2010, will now have until June 30, 2011, to report such accounts.

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RECENT DEVELOPMENTS IN BANKING SUPERVISION

So far, the year 2010 continues to be a particularly demanding time for banking regulators. We face ongoing challenges of maintaining the stability and strengthening the resilience of the financial system during a period of persistent economic stress - both in the domestic economy and internationally - as well as ensuring that the regulatory framework in The Bahamas is appropriately aligned with international developments.

WHILE MANY OF THESE regulatory initiatives continue to be “work in progress”, the Central Bank of The Bahamas (the Bank) has already identified and adjusted some key areas to ensure that The Bahamas remains a stable and reputable financial centre, and continues to comply fully with applicable international standards and best practices.

Risk-Based Supervision

An important area for the Bank has been the development and implementation of a risk-based supervision framework (RBF), that allows appropriate focus on the most material concerns - i.e. as related to the risks posed by firms operating within and from within The Bahamas - and which seeks to integrate the off-site supervision process, based on financial analysis of the prudential position of firms, with the conclusions of on-site examinations, which focus predominantly on control issues. The Bank is well advanced in its preparation of the RBF, which includes an assessment of the likelihood of the full range of risks crystallising in firms, and an analysis of the relative materiality of these risks, if they occur in different firms. In line with best practices, the RBF takes account of the full spectrum of potential sources of risks, both in the context of the business model of the firm, as well as the implementation of controls and governance. It also takes account of the capital and liquidity positions of a firm, and the strength of earnings. By combining these perspectives, the framework will provide supervisors with a flexible paradigm for integrating the results of the current on-site examinations, off-site analysis, and information obtained from ongoing supervisory interactions to achieve a composite assessment of the risks posed by a firm. This framework will also be useful in considering the allocation of supervisory resources and the approach to the supervision of individual firms. Clearly, there are large numbers of firms in The Bahamas with significant differences in their scale of operation, which should be reflected more systematically

in the supervisory approach. Therefore, as a part of the new risk framework, an initial impact assessment for the banking and trust companies has been constructed by developing composite impact metrics for each firm, based on the aggregation of a number of proxy indicators - such as level of expenditures in The Bahamas, Bahamian dollar deposits, fiduciary assets held, numbers of staff, and total assets. This impact assessment will be used to inform the differentiated supervisory approach inherent in the new risk-based supervisory framework.

The first half of 2010 saw the development and initial piloting of the RBF, which included an initial desktop assessment of all the domestic commercial banks in The Bahamas - the most systemically important institutions. This initial assessment took account of the results of off-site supervision of prudential norms, the latest on-site examination reports, the outputs of quarterly supervisory meetings with the firms, and a range of materials received from the firms, including risk reports, external auditors management letters etc. The Bank is now considering how best to communicate these assessments to the firms, and to use the results of these assessments in the design of supervisory programmes for the firms, as well as to guide further on-site investigative work by supervisory staff.

Going forward, a preliminary risk assessment of all firms will be undertaken by the end of the year - starting with the most material international firms - including a more simplified approach for lower impact firms. Like other risk-based regulation, the risk assessment framework will assist in the implementation of a focused examination programme for the banking and trusts sector as a whole, and as the central basis for regulatory discussions with firms. To support the rollout of this important development across the industry, the Bank will be organising a number of seminars, which will provide more details of the framework and its implications for our supervisory interactions with firms.



Wendy Craigg

Organisational Restructuring

Another key area of focus has been in reorganising and restructuring the Bank Supervision Department to align its structure more effectively with the needs of risk-based supervision, and to improve, over the medium-term, our operational efficiencies. These changes have included the following:

Commercial Banking Unit (CBU)

The CBU was created in July 2009 to focus on the supervision of systemically important firms. The work plan for the Unit includes an expanding programme of stress testing for individual firms and the system, and quarterly meetings with firms on credit and other prudential risk issues. The CBU team has also been active in improving the coverage of regulatory reporting to the Bank, particularly in the area of asset quality—including loan restructuring—and beginning the process of re-aligning supervisory guidelines in the context of lessons learned from the global financial crisis, such as the increased focus on a more forward looking provisioning policy. Over the course of 2010, efforts will focus on the deployment of the risk assessment program, which is an integral part of the RBF.

Authorization Unit

A dedicated Authorisation Unit, inclusive of the existing Administration Unit, was established in December 2009, to achieve greater operational efficiency and consistency in the processing of requests for both firms and individuals, to oversee the supervision of non-bank Money Transmission Businesses, Private Trust Companies (PTCs) and Registered Representatives of PTCs, and to carry out the non-supervisory functions of the department. The authorisation process was reviewed and separated from the mainstream

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Democracy

Stability

Integrity



The Bahamas

**...has a secure financial environment for investors
that is internationally recognized.**

**Continued modernization further ensures
that investments thrive in our serene environment
where it is smart, safe and simple to do business.**

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BANKING SUPERVISION

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supervision process, and the Unit is expected to be fully functional by end-Dec 2010.

Examination Unit

To better align the examination function with the RBF and to integrate fully the on-site and off-site supervision processes, a review and redesign exercise culminated with the creation of an Examination Unit. A more transparent review of examination findings is now in place to ensure a consistent approach to identifying and mitigating material risks in licensees. Resources have been enhanced through the recruitment of several highly qualified and experienced industry specialists, and a new operating model was developed - one which envisages a much closer integration of the on-site examination process and the examiners within the supervisory process - with the scope of reviews determined by the risk assessment process, in which both on-site staff and supervisory relationship managers participate. By design, on-site examiners will play a more active role in the broader aspects of the risk assessment and risk mitigation surveillance of licensees, as well as in the training and development of supervisors in their areas of specialist skills.

Regulatory Agenda

On the international front, the regulatory

community is continuing the urgent work of addressing the serious weaknesses in the prudential supervisory framework, as revealed in the major jurisdictions during the financial and economic crisis. These weaknesses have resulted in detailed proposals, but not yet agreement, in the areas of capital and liquidity regulation. The Bank closely follows these developments, but believes that measures taken so far - which, include raising the minimum trigger and target capital ratios for commercial banks, to 14% and 17%, respectively, strengthening our monitoring of the quality of assets, and requiring greater care in firms' dividend payments considerations - provide a sufficient level of prudence at this stage, given the risk profile and complexity of our firms. The Central Bank has also undertaken a new survey of the market risk exposures of licensees - which it expects to confirm, continue to be limited - and do not, on a first examination, require major additions to regulatory capital. Later in the year, we will be looking more systematically at the proposals for strengthening the capital regime, including the potential re-introduction of leverage ratios, which are already in place for some of the significant firms at the group level.

Finally, liquidity risk management continues to be an area of focus, as recent global events confirm that these activities at many financial institutions require improvement. Deficiencies observed include insufficient holdings of liquid assets, funding risky or illiquid asset portfolios with potentially volatile short-term liabilities, and a lack of meaningful cash flow projections and liquidity contingency plans. So far, these

weaknesses have not extended to firms in The Bahamas. Nevertheless, we have examined the new Basel Committee's Principles of Sound Liquidity Risk Management issued in 2008, and are considering revisions to our own Liquidity Guidelines to ensure that they fully capture best practices in this key area. Two areas that certainly will be strengthened in the revised guidelines which will be put forward for consultation later this year, are those of contingency planning and the role of senior management and the Board of Directors, in ensuring that robust controls are in place for liquidity management. Other more controversial aspects of the Basel proposals, such as a considerable narrowing of the definition of liquidity, are still in the consultation phase. As such, we are not intending, at this stage, to implement these - although we are closely monitoring the ongoing debate. An ambitious agenda lies ahead and the Bank, as is the practice, will work closely with the industry to ensure that any new initiatives, while giving effect to international best practices and standards, are measured, consistent and appropriate to the operating circumstances of firms in The Bahamas. ✦

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

U.S. INITIATIVES

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Certain Foreign Commingled Funds

U.S. persons with a financial interest in, or signature authority over, a foreign commingled fund that is a mutual fund were also required to file an FBAR unless another filing exception, as provided in the FBAR instructions or other relevant guidance, applied. The IRS does not interpret the term "commingled fund" as applying to funds other than mutual funds with respect to FBARs for calendar year 2009 and prior years. Thus, the filing requirement does not apply to U.S. persons with a financial interest in, or signature authority over, any other foreign, commingled fund with respect to that account for calendar year 2009 and earlier calendar years.

Foreign Trust Implications

All foreign trusts established by U.S. persons, whereby a U.S. person retains an ownership interest in the trust, such as a living or grantor trust, imposes an obligation on the U.S. person to file for any foreign accounts owned by the trust. Moreover, if a U.S. person has a beneficial interest in more than half, i.e. fifty percent of the

assets of the trust or is entitled to receive more than 50% of the trust income of a domestic trust, then the U.S. person has a similar FBAR reporting obligation. U.S. beneficiaries of a trust who would have a reporting obligation are exempted from reporting if the trustee of the trust is a U.S. person and files an FBAR for the trust. In addition, if a trust is established and provides for a protector that is subject to the settlor's direct or indirect supervision or control and the settlor is a U.S. person, the settlor has an FBAR reporting obligation. ✦

1 - *This section may reproduce a previous article or portions thereof written by the author. See Iyandra Smith, "The USA - no longer a haven for the foreign bank." Journal of Money Laundering Control. Vol. 11 No. 3, 2008, pp. 199-209. (Citations therein are applicable to the portions reproduced in the article herein.)*

2 - 487 F.3d 8 (1st Cir. 2007).

3 - *The term "foreign bank" refers to banks incorporated and/or operating in jurisdictions outside the United States.*

4 - *This section may reproduce a previous article or portions thereof written by the author. See Iyandra Smith, "U.S. Law: An Inside Look at the "Hiring Incentives to Restore Employment Act" - Part One." Higgs & Johnson FOCUS. Vol. 54, No.1, 2010. (Citations therein are applicable to the portions reproduced in the article herein.)*

About The Author: Mrs. Iyandra P. Bryan is a tax attorney, focusing her practice on international tax law, tax treaties, international financial crimes, and corporate restructuring. Her practice also includes international commercial arbitration. She is employed at one of the leading Bahamian law firms, Higgs & Johnson. Prior to beginning legal practice, Mrs. Bryan was a law clerk in the Miami, Florida office of an international law firm. She also previously worked in the insolvency practice area of the Cayman Islands office of the world's largest offshore firm.

Mrs. Bryan received her Juris Doctorate from University of Florida's Levin College of Law, where she was a member of Jessup Moot Court and a Research Fellow at the Center of International Financial Crime Studies. She received her B.A. in Economics with a concentration in monetary policy and macroeconomics from the University of Tampa in 2006. She is currently a second-year PhD Candidate at the Institute of Advanced Legal Studies, University of London. Mrs. Bryan is admitted to practice in Florida and The Bahamas. Her U.S. Federal Court admissions include the Northern District Court of Florida, and the Eleventh Circuit Court of Appeals.

INSURANCE SECTOR REGULATORY UPDATE



Lennox McCartney

THE INSURANCE COMMISSION

recently extended the time that licensees have to comply with certain sections of the new Insurance (domestic) and External Insurance Acts and regulations to 30 September 2011 from 30 September 2010. This extension has provided a full additional year for companies to comply with all aspects of the new legislation. While firms have until the 30 September 2011 to comply with the new legislation, the Commission is encouraging companies to re-register as soon as possible before the deadline date.

The extension does not apply to licensees that were licensed under the new Acts or have already re-registered under the new Acts. Although the extension relates to specific provisions of the Acts and Regulations many of the aspects of the Acts are in force and effect.

What are some of the practical implications of this extension on licensees?

Re-registration

Re-registration must now take place before 30 September 2011. A firm's annual renewal of licences must extend to at least three months after the date that the application for re-registration takes place. Firms must be in compliance with the requirements under the new legislation on the date of re-registration. If companies believe that they may not be able to meet any of the new requirements under the Acts or Regulations they should discuss these matters with the Commission before the re-registration deadline.

The deadline date is the same under both Acts. This would allow for companies that may have to change their status from the domestic Act to the External insurance Act or vice versa. For example, a number of companies that carried on external insurance business were licensed under the old domestic Insurance Act (1969) before the

old External Insurance Act (1983) was passed. These companies would now have to re-register under the new External Insurance Act. On the other hand, some companies were registered under the old External Insurance Act and carried on domestic insurance business. These companies would now have to review their operations and determine whether or not to re-register under the new External Insurance Act or the Insurance Act.

Provision of audited Financial Statements

Under the previous Acts audited financial statements were required to be filed with the Commission no later than six months after the fiscal year-end. Whereas, under the new legislation audited financial statements are required to be filed no later than four months after the fiscal year-end. Therefore, if your company's year-end is on or before 30 September 2011 you will continue to have six months after the fiscal year-end to file your annual audited financial statements.

The new Acts now require, for the first time, some companies to file audited financial statements. These companies must select a fiscal year-end no later than twelve months after 30 September 2011 and provide audited financial statements within four months of that year-end date.

Fees

The new legislation has a number of new fees and a number of new categories of fees. Generally, the new fees only apply to transactions or licence renewal years that begin after 30 September 2011. Therefore, for most external licensees that have calendar renewal periods, the new fees would only apply for renewal years January 2012 to December 2012. As another example, under the new External Insurance Act, companies would now be classified as "restricted" or "unrestricted".

These different classifications have different fees. The different classifications and related fees would only apply for renewal periods after 30 September 2011. It should also be noted that fees payable by external insurers under the old and new Acts are reduced by the amounts of any fees paid under the Companies Act. Therefore, only the net fee is paid to the Commission. ✨

More information could be obtained from the Commission's website www.icb.gov.bs

About The Author: Mr. McCartney was appointed to the post of Registrar of Insurance Companies in February 2008. He was later appointed as Superintendent of Insurance under the new Insurance Act in July 2009. Prior to this appointment he served as The Director of the National Insurance Board a post he held since 1995 and previously between 1987 and 1988. His professional career started with Price Waterhouse here in Nassau and Toronto, Canada where he served as staff accountant and senior consultant and where he passed his CPA examinations.

Mr. McCartney also served as the financial controller of the Bahamas Development Bank, a information technology consultant with the National Insurance Board, a manager in the consulting division of Pannell Kerr Forster, Toronto Canada, and his own information technology consulting firm in Toronto, Canada. He is currently a member of the board of the Securities Commission of the Bahamas and previously severed as a director of the Central Bank of the Bahamas and the Bank of the Bahamas Limited. Mr. McCartney is a graduate of the University of Windsor, Ontario, Canada, where he obtained a Bachelor of Commerce degree in Business Administration, a Bachelor of Science degree in Computer Science and a MBA.

ANNUAL REPORT AGM 2010

For years, BFSB's Annual General Meeting has been the forum where we make the case for investing in a national strategy for our industry.

STRATEGY DEVELOPMENT

We have made very important steps:

- We pushed and made some progress through the comprehensive survey by PwC in 2006. As we sought a national response to the strengths, weaknesses, opportunities and threats laid out in this report, an IDB-industry grant was sought. Many of you will recall the 18 months invested in seeking funding from the IDB; unfortunately, to an unsatisfactory conclusion.
- Then came the financial crisis. The board was uncomfortable with raising financial support for a national strategy with the uncertainties prevailing in the 2008 environment. 2009 brought in watershed changes in the landscape and dictated the need for clarity.
- From our perspective, the work done by a small group – BFSB current and former Executives –Anthony Ferguson, Michael Paton, Bruno Roberts and Ian Fair – along with the team from Deloitte comprised of Vince Colvin and Ray Winder proved invaluable. On a non-paid basis, Vince Colvin, then head of Deloitte International Financial Services Jurisdictions, provided the framework and the discipline of 17 years of consulting in the financial services industry to cause this small group, with the benefit of public policy perspectives from Min. Laing, to produce a sufficient vision for the industry.
- Over the ensuing two months, Min. Laing having portfolio responsibility for financial services at the time, and great familiarity with the work undertaken by BFSB, presented a vision and action plan to cabinet. With cabinet approval, the results were shared with industry in July 2009. (See Strategy Statement on pages 52 - 53)

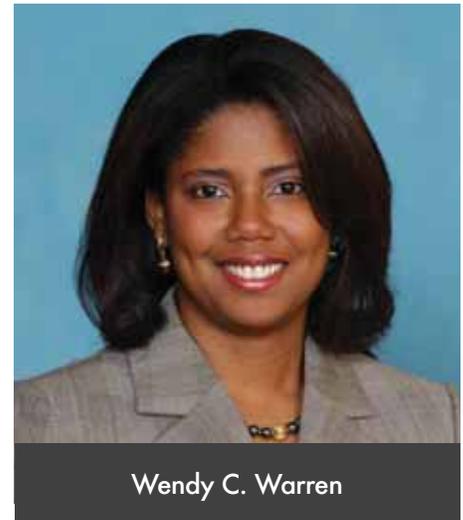
The importance of this presentation by government may have gone largely unnoticed due to the great attention placed on meeting the OECD standard for transparency and cooperation in tax matters, but certainly for BFSB – it was a turning point.

The presentation was quite extensive but it acknowledged our external challenges and the challenge of change. The message from government was used to galvanize all of our efforts. Yes, high levels of engagement were around the TIEA discussions, but the strategy statement gave the direction and propulsion to adopt a proactive, business development focus at a time described as the death of the offshore industry. As can be seen by comments made by the government in speaking to this sector, notwithstanding challenges and the difficulties associated with change, “Change for this industry is not an option”.

Importantly, we pursued active consultation with local industry groups, and presentations at the International Business & Finance Summit 2010 provided a structured opportunity to hear from the international community. Essentially the strategy statement, as with many vision statements adopted by the private sector, states the obvious. It speaks to The Bahamas pursuing a strategy that will make it globally competitive in targeted areas within the international business and finance arena.

Specific reference is made to the Americas – in so doing, there is a recognition that competition and positioning must take place in a regional context. It is not possible for The Bahamas to position itself in a direct way vis-à-vis European or Asian centres. Our proposition has to be different.

We have defined our comparative advantage, or Why Bahamas. And again it is defined from a regional perspective. It takes into consideration all of the strengths and unique propositions of The Bahamas. And, when these strengths are taken together, it produces a result that is impossible for any other regional competitor to copy with any degree of credibility. More will be said about steps to crystallise the opportunities our comparative advantage facilitates. This strategy statement paved the way for a new BFSB Bahamas Brochure. This brochure, and complementary marketing material, will continue to evolve as more clarity is secured around business opportunities.



Wendy C. Warren

SECTOR REPORTS

In addition to the Strategy Statement, two major reports were received in the first quarter of 2009. One was a Government-BFSB sponsored analysis of the international insurance business – a sector under less scrutiny by G20. (see Business Development below)

TAX AND PRIVACY

The second was “The Changing Global Landscape. How should tax and privacy influence development in the Bahamas? This report was sponsored by Member firms and a few industry partners:

- Bank of Butterfield
- Bank of The Bahamas
- BTC
- Colina Insurance
- The Private Trust Corporation
- Credit Suisse
- Deloitte & Touche
- First Trust Bank
- Graham Thompson & Co.
- Higgs & Johnson
- Kerzner
- Lennox Paton
- Scotiabank Bahamas Ltd.
- The Central Bank of The Bahamas
- Confidential donor

From my perspective the formal engagement with our Member firms through interviews in Nassau and the presentation of highlights of a 200-page report at the Bahamas Financial Services Retreat 2009, were worth their weight in gold. The Bahamas came through a period of transition where (i) the fundamental objective of major economies was to nail the doors shut on our businesses and to ensure clients are pushed onshore; (ii) The vagaries of the 3 year financial and economic crisis in our traditional markets have played havoc on the bottom line of most institutions, and (iii) during a time when the titan of the industry, Switzerland, is in major transformation; change not seen in 500 years.

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We emerged with serious challenges about proving our value proposition when onshore is painted in bright shining colors.

However, we are still here. I am a firm believer that the transition is based on the strength and quality of staff and service provided by our institutions but also the cooperation that we as an industry have shown during the most difficult times. As an industry we were well informed of the issues: there were numerous fora where discussion around these topics occurred in the last 5 years. And at the most pressing time, we did not retire to our offices but we continued to engage – even if it was to agree to disagree. We had a number of opportunities to meet with the Government as industry groups. Many firms took the opportunity to meet directly with government, regulators and BFSB.

While it was not always crystal clear, we know for certain now that:

- It was right for The Bahamas to begin to commit to negotiate arrangements to meet the OECD standard in March 2009.
- The government's decision to actively engage major economies rather than small International Financial Centres was right
- And of course, it is not a numbers game. It is not about 12 agreements. It is about negotiating in good faith with countries that are deemed trading partners, i.e. at a minimum G20 countries.

We all see any number of facts to support the above premise:

- The stance being taken by not only G20 regulators; the Swiss regulator has made interesting pronouncements following Switzerland's adoption of the OECD Standard.
- The prohibition imposed on French banks
- The Peer Review process which takes on the nature of an FATF country review – both in terms of in-depth analysis and the reputational impact of a negative report. The OECD Global Forum has stated that their test for compliance is not 12 agreements!

During the Deloitte retreat presentation key points were highlighted including a Current State Assessment, External and Internal Change Drivers and Opportunities. The conclusion: There are strategic opportunities to be pursued (more on this later) but focused action is critical. In particular, the recommendation was made to adopt a medium term criteria-based introduction of Corporate Tax and negotiation of Double Tax Agreements.

Now in many ways, the interviews conducted and the Retreat presentation on the Changing Global Landscape successfully engendered a debate that BFSB sought to ignite for many years – should the Bahamas reform its tax position to secure Double Tax Agreements.

On the other hand, our success in bringing this topic to the fore collided within days with the G20 mandate to secure a minimum of 12 arrangements that meet the OECD standard. BFSB strongly encouraged the government to consider the use of double tax agreements to secure the G20 standard. The Government has informed us that in each negotiation, they sought DTAs but the counterparties, having developed their own pact as OECD members, determined that DTAs would not be concluded with regimes such as ours.

With national and industry interest in alignment, government announced the countries with which negotiations had been opened on July 29th. We are now at 22 TIEAs.

We must use the experience of the past 18 months to our advantage. We have proven that a strong relationship between industry, regulators and government has benefited our bottom lines, minimized negative public relations to The Bahamas and our industry, and has saved us reputational damage. In fact, many, having heard our story of holding to the principle of the level playing field, have been impressed with the consistency of public policy notwithstanding time span and two general elections. There remains much uncertainty around the process. Cooperation in tax matters is relatively new and many institutions and clients are unsettled by this.

What do we know?

That the TIEA provides no more room for fishing expeditions or information exchange than the Double Tax agreements. We certainly know that statements made by the OECD must be continually monitored. The next meeting of the Global Forum will take place in Singapore in a matter of days. At this time the reports on the countries subject to reviews of the launch of the peer review process will be delivered. All of these countries were subject only to Phase 1 in the initial process: Australia, Barbados, Bermuda, Botswana, Canada, Cayman Islands, Denmark, Germany, India, Ireland, Jamaica, Jersey, Mauritius, Monaco, Norway, Panama, Qatar, Trinidad & Tobago. Other countries such as the United States chose to be subject to Phase 1 Legal & Regulatory Framework and Phase II Monitoring & Review of the Actual Implementation of the Standards. Phase 2 includes an on-site visit.

Fortunately, The Bahamas has remained very connected to this process since 2002 and is a member of the Global Forum Peer Review Group. I expect that The Bahamas will be well prepared as we undergo our Phase I review this fall.

In wrapping up discussion on Tax matters, the big question of corporate tax and DTAs still looms as large as it did 6 years ago when BFSB held its first seminar on this issue. The challenge here is how we as an industry determine whether there is a win-win case for the introduction of corporate tax in order to secure the benefits of

Double Tax Agreements. The work completed on business models and revenue generating opportunities for our industry will aid greatly in setting the trajectory on which corporate tax & DTA benefits should be analyzed. This review is a matter that will certainly be set before our new slate of Directors. Connected are the issues of blacklists and CFC regimes. BFSB has made representation to the government of the urgency to be removed from Mexico's blacklist in particular, but all blacklists in general. If we are to be integrated into the global net, then we should be recognized accordingly.

Finally, BFSB has produced TIEA fact sheets, published on our dedicated Tax Cooperation section of the web site and also reproduced on pages 14 - 17 of this BFSR.

Earlier, I mentioned that the strategy statement served to give direction to the work of the Board. With a strategy clearly building on an increasing integration between the financial services industry and international business, AND to ensure that we support the hunt for clients, The Bahamas Financial Services Retreat was transitioned to an International Business & Finance Summit.

INTERNATIONAL BUSINESS & FINANCE SUMMIT

BFSB has sought to bring international conferences to The Bahamas to facilitate business development efforts of member firms. However, the cost to BFSB for sponsorship along with the conference registration fees saw far fewer members take advantage of these opportunities. In its place, we decided to use the platform of the Retreat - where participants from our industry attend on a disbursement basis/for out of pocket costs - for BFSB to invest its sponsorship dollars into bringing key international contacts to The Bahamas. IBFS 2010 was an experiment that worked. The feedback on the event was extremely positive and encouraging. So the plan for IBFS 2011 is set. We aim to sponsor 40 international guests for IBFS 2011. This after 25 in our first year.

So what are the objectives for IBFS.

Jurisdiction Development

Consistent with the forerunner event, the annual Bahamas Financial Services Retreat, IBFS seeks to spur discussion and debate about the industry with a focus on trends and the future. Armed with this knowledge, The Bahamas is better positioned to be nimble and "responsive to client and market requirements".

Business Development

IBFS has added a new dynamic to the Retreat through its business development focus.

- First, To encourage and empower a business development focus in the Bahamian financial services industry.

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- Second, To profile The Bahamas to international advisors and clients and, through their presence in the country, provide an opportunity for them to “kick the tires” and meet a variety of Bahamian service providers.

It is important to note that:

- IBFS is not about fixing the internal workings of the jurisdiction
- It enables The Bahamas to truly come to grips with international business & finance and setting a path to success.
- Having determined the way forward at IBFS, industry stakeholders are positioned to create the environment required to be a Jurisdiction responsive to client and market requirements. With clarity of objectives, the jurisdiction has a better opportunity to succeed.

IBFS is now the most important event on the calendar of BFSB as it addresses the two primary roles of BFSB: to develop and promote the jurisdiction.

During the period of significant dislocation in the core markets, the government and BFSB funded a major study to determine whether opportunities exist in international insurance. The answer was yes. Unlike many reports, it was actively used by the Insurance Commission of The Bahamas as they set their eyes on regulating the international component of insurance. For our part, we have also invested in attending 3 captive conferences in 2010 and organized with sponsors a practical training programme to empower professionals to incorporate the use of captives into their businesses.

When business opportunities such as captives, life insurance, hedge funds were raised with industry stakeholders, they often queried our ability to support more than one product line – private banking and estate planning. It is for this reason that we are undergoing the development of a business plan for the industry. What should our priorities be – should they be defined by geographic opportunities and the services/products they require or should our focus be product oriented? What channels can be used to tap clients by geographic or product demand? What does this mean for government policy, regulatory expertise and priorities, BFSB and other industry bodies and, of equal importance, Business in The Bahamas?

The upcoming Strategy Workshops will provide the opportunity for you to see the work completed to define (i) the opportunities, (ii) what the opportunities demand in terms of services and products, (iii) who are the private sector beneficiaries, (iv) Why the Bahamas and, finally, what must The Bahamas do to capitalize on its advantages.

Equally important, is a quantification of the potential revenue and the jobs that could be created. This 2nd part is new for us. We have often sought to say why and what is required – we have never incorporated a business planning element. Join in the debate. Based on discussions with government and regulators, they are very open to the approach and encouraged by a tool that can facilitate engagement. We also trust that this will assist institutions as focus is given to sustainable business models and the knowledge required to deliver value added services.

Canada Outreach

The first country targeted for a TIEA was Canada. Canada, taking into account the view that information exchange should be supported with benefits to participating countries, adopted what has become known as the Carrot and Stick approach as set out in an opinion secured from a leading accounting firm in Canada to BFSB.

The opinion given on April 27th, 2009 states:

The primary tax implication of The Bahamas entering into a TIEA with Canada would be that active business income earned by a foreign affiliate of a Canadian corporation that is resident in The Bahamas and carrying on business in The Bahamas would be considered exempt surplus, and consequently, eligible for tax-free repatriation to Canada. The same treatment would apply to a foreign affiliate that is resident in another country with which Canada has a tax treaty or TIEA if it is carrying on an active business through a permanent establishment in The Bahamas.

Should The Bahamas decide not to enter into a TIEA with Canada, such active business income earned in The Bahamas would be treated as foreign accrual property income, which would be taxed on a current basis in Canada to a controlling shareholder, although not until approximately 5 years after the TIEA negotiations commenced.

Now we know that we have drawbacks due to the absence of a DTA network. However, there are TIEA Advantages:-

“The exempt surplus characterization of active business income would be similar to the treatment of active business income earned in a country with which Canada has a tax treaty, or DTA. However, there are more stringent requirements to qualify for such treatment if the jurisdiction has entered into a DTA rather than a TIEA. In the former case, in order to be considered a resident of a country which has a DTA with Canada a corporation has to be a resident of that country under common law principles (i.e. meet mind and management tests), and, with some exceptions, resident there for purposes of the DTA (i.e. subject to tax in that country). Certain corporations cannot meet the latter requirement since they are not subject to income taxation. A corporation that is resident in a TIEA country need not be subject to tax in order to qualify for exempt surplus treatment.”

It is on this basis that BFSB took advantage of building The Bahamas brand in Canada. We exhibited at the STEP Canada Conference in Toronto and the Canadian Captive & Corporate Strategies Conference; both events were held concurrently in June 2010.

Business Impediments

Those of us who operate in The Bahamas recognise that there are some impediments to business and that these can impact a wide range of institutions. BFSB has for the last 10 years given particular attention to working to secure quantifiable improvement in the areas that generate first impressions for institutions and clients. These include enhancements to services provided by the Registrar General’s Department, Immigration Department, and the International Airport.

Other areas that impact the willingness for people to conduct business in The Bahamas – some outside of the hands of government - have been documented and discussed. These include augmenting legal and judiciary expertise and capacity, attracting international brands, and communications.

Legislative Update

Trusts: The Trustee Act Review Committee continued its efforts, having agreed the amendments it would wish to see introduced and secured the services of David Brownbill to draft the changes in the law. Securing the services of someone like Mr. Brownbill was not inexpensive but the committee agreed that preserving a well-crafted Trustee Act was fundamental to our value proposition. We are grateful for the contributions received from the Central Bank and the Association of International Banks & Trust Companies towards this project’s costs.

Two of the key provisions have been submitted to the Office of the Attorney General in recent weeks. The first to improve the competitive positioning of Bahamian trust companies vis-à-vis their Delaware counterparts and the elimination of the perpetuity period. We hope that early legislative action is possible.

The amendments to the 1998 Trustee Act and the Perpetuities Act now join the Bahamas Executive Entity. BEE was resubmitted to the OAG in February of this year. The OAG has recently completed its review of the bill. BEE will complement the well-recognised environment for trust services in The Bahamas.

Securities Advisor Policy Position: In mid 2009, the SCB agreed a long sought position to provide for managing representatives of external asset managers. After many years of insisting that this policy should be adopted, BFSB was happy to see that the opportunity associated with this regulatory approach had not been missed; some asset management companies already have taken advantage of this modified policy position.

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Securities Industry Act: Mr. Philip Stubbs, Chairman of the Securities Commission, on accepting the post of CEO, updated professional industry associations on a range of matters noting that the Securities Industry Act is in its final stages for completion. The final draft is to be submitted to the OAG in short order.

Arbitration: The BFSB Arbitration Committee worked closely with the Office of the Attorney General and the Bahamas Maritime Authority to develop a comprehensive and modern Arbitration Act 2009 and Arbitration (Foreign Arbitration Awards) Act 2009. This legislation was enacted in 2010.

Other Legislative Developments: BFSB Committees worked on the External Insurance Act (now passed) and a suggestion for a new SMART Fund – a concept arising from our 2008 Bahamas Briefing – was approved shortly thereafter in the early weeks of January 2009.

Initial proposals for amendments to the Segregated Accounts Companies (SAC) Act require additional work with an assessment made that the SIA should be concluded first. Also, proposals were submitted to the Central Bank for tweaking of the Private Trust Company regime.

Research and Communication

With the dramatic change in the environment, greater emphasis was placed on research and communication. Directors and those willing to follow the ongoing chain of information in 2009, would see that BFSB made a significant investment in remaining abreast of the rapid evolution in our industry. The board also secured technical assessments of the tax policy of the Canada and China and the potential response by centres such as The Bahamas.

External Communications, Marketing and other Public Relations Activities

In 2009 the board agreed to limit external promotion. The focus of BFSB was turned very much to the dialogue with government and industry on TIEA related matters. As such, only marketing commitments agreed in 2008 for 2009 were undertaken. Opportunistic speaking opportunities were taken up. Around speaking opportunities in New York and Shanghai, meetings were organized with industry stakeholders.

PUBLIC RELATIONS & MARKETING

2009 Articles & Newsletters

- Article: Oxford Business: Wendy Warren interview (January)
- News release: BFSB Supports Government’s OECD position (March)
- News release: BFSB Supports in Principle Bahamas OECD Position (July)
- Article: Investors Find a Home in The Bahamas (April)
- Article: The Bahamas Meeting International Standards – EU Banker
- News Release: The Bahamas Regulatory Structure
- Article: Financial Services Advisor
- Article: Q&A with India Business Law Journal
- Article: The Bahamas: An Established, Progressive and Welcoming Home for International Financial Services
- News release: The Bahamas: Meeting International Standards (Updated)
- News release: The Bahamas: Looking Forward



PUBLIC RELATIONS & MARKETING

Calendar of Events 2009

External Communication Programme Schedule	Location	Organizer	Date
BFSB Financial Services Retreat	Grand Bahama	BFSB	January 23 – 26
Inter-American Bar Conference	Nassau, Bahamas	IABA	February 22 – 24
Private Banking World	Paradise Island, Bahamas	Terrapinn	February 23 – 25
7th Annual OffshoreAlert Financial Due Diligence Conference	Miami, FL		April 26 – 28
Brasil Investment Summit (BIS)	Sao Paulo, Brasil	Terrapinn	May 4 – 7
2nd Annual U.S. – Latin American Tax Planning Strategies Conference	Miami, FL	American Bar Association	June 17 – 19
ILDD’s Annual Financial & Insurance Forum	New York, New York	International Law Disclosure & Discovery Group	June 24
Wealth Management & Private Banking Asia 2009	Shanghai	Global Leaders Institute	November 12 – 14

Commitments made in 2008 for 2009

Terrapinn Private Banking Conference brought a very high level of drivers of the private banking industry to The Bahamas. The response from the event was very positive with BFSB hosting a dinner for key guests with Min. Laing joining us for the event. The only area of disappointment was that our International Guests outnumbered representatives of the Bahamian industry. Terrapinn Alternative Investment Summit saw a continued presence from The Bahamas.

As a gold sponsor, BFSB was able to deliver an industry presentation during a prime conference time slot.

BFSB was also given a unique opportunity to deliver the 2nd key note address of the Offshore Alert conference. The opportunity was used to address the challenges facing the industry from a regional perspective. The Bahamas played host to the Inter-American Bar Association.

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BFSB provided support to the organizing committee while I participated on a panel. Our public relations activities were similarly contained – both due to the market environment and our view that payment for press inclusion, except on an opportunistic basis, can only be accommodated when BFSB secures a greater expansion in its operating budget.

www-bfsb-bahamas.com

Our web site continues to be an important communication tool. As reported we overhauled the Backend Systems and User Interface and introduced a number of new features including Mini Sites, RSS Feeds, Automated News

Briefings, and perhaps most important a section focused on International Cooperation. In this section all agreements were posted within 24 hours of the execution of the agreement.

Between October 2009 and September 2010 (to 21st): There were 85,550 visits, on average 7,215 per month; 253,112 page views, on average 21,093 page views per month (this represented 2842 individual page visited each month). Visitors are sourced from 158 countries, with a monthly average of 148.

The breakdown on “loyalty” showed that on average new site visitors each month represented 65% of traffic, with 35% repeat visitors. The break down (traffic source) on visitors was, on average, 10% direct, 9% referral sites and 81% from search engines. Consistent with reports from previous years, service providers, news and legislation were the key pages accessed, with the

International Cooperation feature also figuring very high in the statistics.

Areas that remain under Development include a section for Technical Briefings and a Doing International Business Portal.

Financial Centre Focus

The annual Financial Centre Focus programme gives us much to celebrate. Given the recessionary times, we took a different approach to the Awards event in 2009 moving to a presentation and reception, but reverted to a Gala Dinner in 2010. (see profiles of winners on pages 56-59). BFSB continued as a lead sponsor for the National Career Awareness Month in 2009 and 2010, and also hosted the annual Essay and Speech Competitions for secondary high school students each year.



Bringing the World to The Bahamas

Financial services is not just a global business, it's a personal one. Whether it is a lawyer in Toronto, a family in Tel Aviv, or an asset manager in Sao Paolo, a key element of winning their business is the development of a trusted relationship built through personal contact.

Participation in sector specific conferences has proven to be a highly effective way for the Bahamas Financial Services Board (BFSB) to have direct interaction with decision makers as well as presenting the overall depth of the Bahamas financial services industry.

In the first half of 2010 BFSB and individuals from its member firms have participated in eight international conferences. In addition, during the first quarter, BFSB provided information on The Bahamas through exhibits at four conferences.

Immediately following the International Business & Finance Summit in Bimini, CFAL President Anthony Ferguson and Genesis Fund

Services, Managing Director, Antoine Bastian, joined Wendy Warren and Venetia Gibson of BFSB at the **Managed Funds Association Network 2010** conference in Key Biscayne, Florida.

In February, BFSB participated in the 180 attendee-strong **Bahamas Maritime Conference** in Freeport and the **DC Finance's Israeli Family Office & Wealth Management Conference** in Tel Aviv; the latter conference attracted more than 1,000 delegates.

In March, more than 500 captive insurance and risk managers were exposed to the Bahamas insurance environment at the **Captive Insurance Companies Association (CICA) 2010** conference held in Orlando, Florida. BFSB was represented by Craig Tony Gomez (Chairman) and Venetia Gibson. In addition, representatives from the Insurance Commission of The Bahamas, Lennox McCartney, Superintendent; Mark Moxey, Analyst; and Patrice McDonald, Insurance Assessor were in attendance. CICA provided an excellent opportunity to interact with the captive community and discuss the recent developments within The Bahamas' insurance industry.

In April, BFSB was an exhibitor and gold sponsor at the **Brasil Investment Summit (BIS)** held in Sao Paolo and attended by more than 500 investors. BFSB secured a panel presentation. The panel included Green Cay Asset Management Chairman & CEO, Jane Siebles; SG Private Banking (Bahamas) Head of Private Banking & Investment Management, Renaud Veilfaure; and Antoine Bastian who were joined by Wendy Warren who moderated the session. In addition to the all-Bahamas panel, twelve Bahamian professionals attended the conference, making it one of the largest Bahamian contingents to attend an International Fund or Alternative Investment conference. The group included representatives from the Securities Commission (Hillary Deveaux); Premier Fund Services Ltd. (Terah Rahming, Rawiya Hanna, Barry Hermanns and Henry Bridgewater); Graham Thompson & Co. (Linda D'Aguiar and Aliya Allen); Ernst & Young (Michele Thompson and Tiffany Norris); Winterbotham Fund Services (Brian Jones); Credit Agricole Suisse (Bahamas) Limited (Daniel Nicolier); and BFSB (Venetia Gibson). With its 16 delegates, The Bahamas had the third largest representation at the event.

In May, Ms. Warren spoke at the **2010 STEP Caribbean Conference** in Barbados which was attended by more than 200 trust and estate practitioners, eighteen from The Bahamas. STEP Bahamas participants included, Bank of the Bahamas (Dianne Bingham); Bank of Nova Scotia Trust Company (Bahamas) Ltd. (Don Stubbs); Graham Thompson & Co. (Tanya Hanna); BSI Trust Corporation (Bahamas) Ltd. (Dena Andrew); Higgs & Johnson (Dr. Earl Cash and Nadia Taylor); BIE Bank & Trust Bahamas Ltd. (Brendalee Russell); Windermere Corporate Management Ltd. (John Lawrence); ATC Trustees (Bahamas) Ltd. (Paul Winder and Anita Bain); The Winterbotham Trust Company Ltd. (Ivan Hooper); Credit Agricole Suisse (Bahamas) Ltd. (Nicole Pratt-Rolle); Lennox Patton (Arthur Seligman); First Caribbean Wealth Management (Paul Major); Lombard Odier Darier Hentsch Private Bank & Trust Ltd. (Joanne Pyfrom); Butterfield Bank (Bahamas) Ltd. (Dennis Govan); and International Private Banking Systems (Tammy Russell).

Also in May, the Head of UBS (Bahamas) Ltd. Compliance Cherise Cox Nottage spoke at the **8th Annual Offshore Alert Financial Due Diligence Conference** held in Miami Beach. Ms. Warren also attended.

In June, Toronto was the destination for BFSB where it exhibited at the **STEP Canada Conference** and the **6th Annual Canadian Captives & Corporate Insurance Strategies Summit**. More than 400 trust and estate practitioners attended the STEP event, Ms. Warren and Ms. Gibson represented BFSB. More than 75 delegates were in attendance for the Captive conference where, due to BFSB sponsorship, the Insurance Commission's Mark Moxey was a speaker. BFSB was also represented.

BFSB was a proud co-sponsor of The Bahamas booth at the **Posidonia Conference**, held in Athens, Greece, June 7th - 11th. Rounding off the first six months, BFSB exhibited at the **Transcontinental Trust 2010 Conference**, the premier event for European trust and estate practitioners. Transcontinental Trust 2010 was held in Geneva, Switzerland, June 30th - July 1st.



Brasil Investment Summit Panel - Left to right: Wendy Warren, Bahamas Financial Services Board; Antoine Bastian, Genesis Fund Services; Jane Siebles, Green Cay Asset Management; Renaud Veilfaure, SG Private Banking (Bahamas)



Brasil Investment Summit Group - Left to right are: Venetia Gibson, Bahamas Financial Services Board; Barry Hermanns, Premier Fund Services; Wendy Warren, Bahamas Financial Services Board; Linda D'Aguiar, Graham Thompson & Co.; Michele Thompson, Ernst & Young; Tiffany Norris, Ernst & Young; Aliya Allen, Graham Thompson Corporation; Antoine Bastian, Genesis Fund Services



BFSB Booth at STEP Canada - Left to right: Venetia Gibson, Bahamas Financial Services Board; Wendy Warren, Bahamas Financial Services Board

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CALENDAR OF EVENTS 2010				
External Communication Programme Schedule	Industry	Level of Participation	Location	Date
Bahamas International Finance Summit 2010		BFSB	Bimini	January 29 – 31
MFA: Network 2010	Funds	Exhibitor	Miami	February 1 – 2
BIMCATS 2010	Maritime	Sponsor/ Exhibitor	Freeport	February 10 – 12
Family Office & Wealth Management Conference	PWM	Sponsor	Israel	February 22-24
CICA Conference	Insurance	Exhibitor	Orlando, Florida	March 7 – 9
NYBA/ CLE 4th Annual International Estate Planning Institute		Exhibitor	New York, New York	March 18-19
Brasil Investment Summit Conference	Funds	Presenter/ Exhibitor	Sao Paulo	April 27-29
Offshore Alert Conference		Participant	Miami, Florida	May 2 – 4
STEP Caribbean Conference	Trust	Speaker	Hilton, Barbados	May 24 - 26
STEP Canada Conference	Trust	Exhibitor	Toronto, Canada	June 7-8
6th Annual Canadian Captives & Corporate Insurance Strategies	Insurance	Exhibitor	Toronto, Canada	June 8-9
STEP Miami		Participant	Miami, Florida	June 11
Transcontinental Trust Conference		Exhibitor	Geneva, Switzerland	June 30 – July 1
Latin America Captive Insurance Summit	Insurance	Speaker/ Exhibitor	Mexico City, Mexico	July 21 - 22
9th European Private Banking Summit Zurich		Speaker	Zurich, Switzerland	September 1-3
STEP Singapore Branch Presentation		Speaker	Singapore	October 28
STEP Asia Conference	Trust	Exhibitor	Hong Kong, China	November 9-10
Private Banking Latin America	PWM	Exhibitor	Miami, Florida	November 15-17
FT/ Banker Conference		Sponsor	Nassau	November 16
Bahamas Landfall: Destination Brasil 2010		Sponsor	Rio de Janeiro & Sao Paulo	November 22-26
Bahamas International Finance Summit 2011		BFSB	Freeport	January 21 – 23

BFSB Member Programme Schedule	Sponsor(s)	Location	Date
BFSB Lecture Series: A Focus on Leadership & Entrepreneurship	BFSB / CFAL / Bank of the Bahamas	Nassau	March 18
SIA Industry Briefing	BFSB	Nassau	March 29
Trust Immersion Seminar	BFSB / STEP	Nassau	April 20
Strategy and Business Case Workshop	BFSB	Nassau	July 7
Global Forum Industry Briefing	BFSB	Nassau	July 19
Tax Breakfast Briefing (IOM)	BFSB	Nassau	July 23
Captive Insurance Seminar	BFSB / KPMG / BICA / IIB	Nassau	September 20
Bahamas Financial Services Board AGM	BFSB	Nassau	September 22
Strategy and Business Case Workshop	BFSB	Nassau	September 27& 28
Registry Services Industry Briefing	BFSB	Nassau	October 6
Annual Industry Excellence Awards Ceremony	BFSB	Nassau	October 21
Careers Fest	BFSB / Ministry of Education	Nassau	October 26 – 28
Essay & Speech Competitions Awards	BFSB / Ministry of Education	Nassau	November 23

BFSB BOARD OF DIRECTORS



Photo Caption: Front Row – Timothy Ingraham, Paula Adderley, Wendy Warren, Kesna Pinder, Tanya Hanna, Linda D’Aguilar, Peter Maynard, Larry Roberts. Back Row – Gilbert Schur, Toby Smith, Vikas Chandra, Arthur Seligman, Danya Wallace, Antoine Candiotti, Christina Rolle, Tiffany Norris-Pilcher, and Bruno Roberts. Not pictured are: Curtis Merz, Ivylyn Cassar, Julian Martel, Kelly Kerr, Paul Winder, Pedro Delaney, Sonia Beneby, Steve Mackay

The Bahamas Financial Services Board (BFSB) held its Annual General Meeting on September 22, at which time members elected a new Board of Directors. Subsequently, at the first Board Meeting held in October, Officers were appointed from the current slate of Directors.

BFSB Directors 2010-2012:

Antoine Candiotti, Crédit Agricole Suisse (Bahamas) Ltd.; Arthur Seligman, Lennox Paton; Christina Rolle, Société Générale Private Banking (Bahamas) Ltd. (Secretary); Curtis Merz, UBS Trustees (Bahamas) Ltd.; Gilbert Schur, BSI Trust Corporation (Bahamas); Julian Martel, Butterfield Bank (Bahamas) Ltd. (Deputy Chairman); Kelly Kerr, RBC Trust Company (Bahamas) Ltd.;

Linda Beidler-D’Aguilar, Graham, Thompson & Co.; Paul Winder, ATC Trustees Ltd. (Chairman); Peter Maynard (Dr.), Peter D. Maynard & Co. (Deputy Chairman); Steve Mackay, EFG Bank & Trust Ltd.; Tiffany Norris-Pilcher, Ernst & Young (Treasurer); Toby Smith, Butterfield Bank (Bahamas) Ltd.; and Vikas Chandra, State Bank of India.

BFSB is committed to drawing on all stockholders and gatekeepers in the development of strategies and long-term plans for the financial services industry.

As such, it continues to welcome participation of the professional industry associations at Board level. During the AGM, Members also agreed for the following industry associations to nominate representatives to serve as

Directors: Association of International Banks & Trust Companies in The Bahamas - Bruno A. Roberts; Bahamas Association of Compliance Officers - Kesna Pinder; Bahamas Association of Securities Dealers - Ivylyn Cassar, CPA TEP; Bahamas Bar Association - Paula A.L. Adderley; Bahamas Institute of Chartered Accountants - Pedro Delaney; Bahamas Insurance Association – Timothy Ingraham; Bahamas Real Estate Association – W. Larry Roberts; CFA Society of The Bahamas - Sonia Beneby; and Society of Trust & Estate Practitioners - Tanya Hanna.

Wendy C. Warren serves on the Board as CEO & Executive Director, as does Danya Wallace of the Office of the Attorney General, as the Bahamas Government’s representative.

PUBLIC/PRIVATE PARTNERSHIP DRIVES VISION FOR SECTOR

The Bahamas Government and the financial services industry have a long history as profitable and engaged partners.

- The Government of The Bahamas and the Bahamas Financial Services Board (BFSB) have a strong history of partnership in facilitating the development of the industry.
- The Bahamas has been good for Financial Services, providing clients with a safe, stable, profitable jurisdiction to build, manage and sustain wealth.
- Financial Services has been good for The Bahamas, providing high quality business and employment opportunities as well as a modern platform for integrating into the global financial system.
- This public-private sector partnership provided the foundation for the development of the Strategy Statement -- from its development through to many presentations and meetings with industry sectors.
- Throughout the industry consultation process, the approach proposed in the Strategy Statement has received strong support.

As we move forward, however, we are cognizant of the evident challenges ahead, including evolving international standards and an extremely competitive environment. We recognize nonetheless that change is a reality, not an option. The Vision we have embraced for financial services in The Bahamas takes into account these challenges.

VISION: *The Bahamas is a globally competitive international business jurisdiction for private wealth management, international investment into the Americas and emerging markets and residency for High Net Worth Individuals (HNWIs), creating high value jobs and business opportunities on a sustainable basis.*

To ensure this vision is fully understood, attention has been paid to key components of the vision:

Globally Competitive:

- Serving the needs of private and corporate entities by providing a superior legal, fiscal, and regulatory foundation - minimizing risk, effort, time and cost to our clients, be they Private Wealth Managers or regional capital investors (Foreign Direct Investment business or FDI).
- Being perceived as one of the "Top 3" jurisdictions in the Western Hemisphere for anyone considering a location for undertaking PWM business, regional FDI or re-domiciliation.

Wealth Management:

- Serving wealthy clients in every aspect of the asset management & protection business.

International Investment into the Americas and Emerging Markets:

- Providing a favourable jurisdiction for locating and servicing of operational subsidiaries and assets of corporate entities wishing to undertake business or make private capital investment in the Americas and emerging markets.

Facilitating Residency for Clients:

- Accentuating and marketing the quality lifestyle offering of The Bahamas.
- Continuing to streamline immigration procedures; and
- Defining and targeting benefits for high net worth individuals through their presence in The Bahamas.

SPECIFIC AREAS OF OPPORTUNITY

There are ten identified areas of opportunity that can be supported through our Vision and whose potential should be viewed from an integrated perspective.

1. Private Wealth Management
2. International Insurance
3. Fund Management and Administration
4. Private Equity
5. Corporate Headquarters (International Companies with a physical presence)
6. E-commerce/Data Services
7. Arbitration Centre
8. International Maritime Services (Yacht Registry)
9. International Aviation Services (Aircraft Registry)
10. Fulfillment Centre (Freeport Air/Sea Port)

OUR STRENGTHS

Our history, physical resources and location are strengths we will leverage to secure the opportunities we have identified.

History:

- A 'store' of skills and experience that is trusted by the international financial community.
- A "brand position" as a committed partner to international business.

- A sovereign territory with a sound constitution, an efficient basis of common law and an outstanding record of political stability, progress and stewardship.
- A commitment by Government to reinforce the long held view that The Bahamas is an excellent jurisdiction for conducting financial services business.
- English speaking which aids integration into the global financial services industry.

Physical resources:

- The availability of land, office space, support facilities, fit-for-purpose infrastructure and communications.
- The quality of life in The Bahamas is outstanding and perhaps incomparable to any place else.

Location:

- The proximity of The Bahamas to the United States, Central and South America makes it an enviable position from which to facilitate and support regional capital investment.
- The ease of access, air linkages and the existence of Freeport adds strongly to the advantage of a location that is matched by very few competing jurisdictions.

STRATEGIC PRIORITIES

Our strategic priorities recognize our existing client-business partners, enhanced infrastructure requirements and the need to communicate more aggressively in the marketplace.

Attention to Enduring Clients:

- Focusing early on the client base that continues doing business with us, fundamentally focusing on improving the service to these individuals and corporate entities.

Encouraging Existing Clients to Broaden their Business Activities in The Bahamas:

- Convince “owners of capital” with some business already in The Bahamas to locate their business/ investment operations and management in The Bahamas.

Upgrading Regulatory and Business Platform:

- Consolidating the Financial Services regime and improving its services to the public.
- Ensuring the strength and efficiency of the new consolidated regulator.

- Continuing to improve the Registrar General’s Department’s Offering.
- Improving Government-wide Technology Platform for better public services.
- Establishment of a Commercial Court.
- Facilitating an ideal environment for arbitration.
- Creating standards and measurements for improved service delivery; and
- Amending and enacting laws where required.

Upgrading Telecommunications Services:

- Supporting privatization of Bahamas Telecommunications Corporation.
- Promoting liberalization and competition in the sector.

Promoting The Bahamas’ New Thrust:

- Strategic print and electronic media presence.
- Joint attendance at critical conferences and meetings.
- Proactive Public Relations in response to developing trends.
- Continued monitoring of and engagement on international business issues with a view to timely legislative and policy responses; and
- Proactive BFSB leadership in promoting The Bahamas’ New Thrust by all stakeholders.

BENEFITS TO THE BAHAMAS

The country and the industry both stand to benefit from the realization of our Vision.

- Sustains and grows existing financial services contribution to the economy.
- Promotes overall economic growth within the country.
- Creates high quality jobs for Bahamians.
- Expands opportunities for skills development among Bahamians.
- Broadens opportunities for Bahamians to become entrepreneurs in the financial services and international services sectors.
- Further integrates The Bahamas into the global economy while encouraging its expanded modernization.
- Increases opportunities for charitable and development contributions to further our advancement; and
- Increases potential revenue for the Government.

FINANCIAL CENTRE FOCUS

Designed to facilitate the growth and development of the financial services industry by raising the profile of key components considered essential for continued success.

What is “Financial Centre Focus?”

The Bahamas Financial Services Board (BFSB), in collaboration with the Professional Industry Associations, launched the “Financial Centre Focus” (FCF) programme in 2001. FCF is designed to facilitate the growth and development of the financial services industry by raising the profile of key components considered essential for the continued success of The Bahamas as an international financial services centre. The focus of ongoing public education and awareness programmes includes:

- Developments in the industry – Telling the Story
- The importance of high service standards
- Enhancing relationships between the community and the financial services industry
- Profiling Role Models

Through these initiatives, BFSB and the Industry Associations hope to attract focused and qualified young Bahamians to the sector; promote continued training of industry professionals; and encourage all industry participants to keep abreast of changes in the sector. The primary goal of this ongoing programme is to ensure that The Bahamas remains a competitive financial centre.

FCF Initiatives

Financial Services Industry Excellence Awards

The Financial Services Industry Excellence Awards are designed to recognise role models in the industry for their outstanding performance and contribution to the growth and development of the financial services industry in The Bahamas. The Awards recognise the importance of quality human resources for the success of the industry in the categories of:-

- Executive of the Year – CEO level

- Professional of the Year – Any level of Management or Supervision
- Achiever of the Year – Junior and Support levels

An additional award category was launched in 2004:

Financial Services Development & Promotion: This award pays tribute to a firm or individual for entrepreneurial undertaking(s) promoting the viability and strength of the sector; including, for example, new business expansion, the creation of niche markets, or the development of new marketing efficiencies. Also included in this category are financial services “ambassadors” who regularly promote the industry through seminar/conference participation, international editorial placements, and travel generally.

Nominations are open to the entire financial services industry including industry regulatory and supervisory agencies and government institutions involved with financial services activities. Human Resources Managers or individuals acting in a similar capacity are asked to coordinate the nomination process within their organisations; a Blue Ribbon Panel of Judges selects the award recipients.

Professional Education Prize – Achiever of the Year:

The Association of International Banks & Trust Companies in The Bahamas (AIBT) has joined forces with the Bahamas Financial Services Board (BFSB) to enhance the profile of the annual Financial Services Industry Excellence Award for the “Achiever of the Year”. The 2010 Recipient received the AIBT Professional Education Prize. AIBT Chairman David Arner says the Association is pleased to work with BFSB in augmenting the annual award for junior and support staff. The AIBT Professional Education Prize effectively is tuition for one of four (4) Certified programmes offered by the Bahamas

Institute of Financial Services: Certified Financial Planner, Certified Credit Professional, Certified Wealth Manager, and Certified International Risk Manager.

FSI Mentorship Award: On the occasion of the 10th Anniversary of the FSI Excellence Awards programme, BFSB was pleased to introduce a new category - the FSI Mentorship Award. This award recognises persons who have contributed to the development of individuals within the financial services industry.

Financial Services Student Award: This recognition programme was introduced in 2002 in an effort to profile outstanding COB graduates. Nominees are selected based on a minimum GPA, College & Community Involvement, and other criteria. Included in the judging process is an interview with all finalists and, since 2003, an essay on a financial services-relevant topic has been an additional requirement. To date, the programme has been restricted to the School of Business, College of the Bahamas, including disciplines such as - economics, banking & finance, law, accountancy, computer information systems; also considered as candidates are outstanding students from the Law School. The award is presented at the annual Industry Excellence Awards Ceremony.

Other FCF Programmes include:

- Careers Fair & Essay/Speech Competitions
- Domestic Outreach (e.g. Media Relations, Business Seminars, Industry Orientation Seminars, Industry Training Forums)
- Professional Industry Association Working Group (PIAWG) Coordination



2009 FINANCIAL SERVICES INDUSTRY EXCELLENCE AWARD WINNERS



Achiever of the Year: Left to Right - Wendy C. Warren, BFSB CEO & Executive Director, Minister Branville McCartney, Rupina Barrett (Recipient), Craig (Tony) Gomez, BFSB Chairman.



Professional of the Year: Left to Right - Wendy C. Warren, BFSB CEO & Executive Director, Minister Branville McCartney, Michael Munnings (Recipient), Craig (Tony) Gomez, BFSB Chairman.



Executive of the Year: Left to Right - Wendy C. Warren, BFSB CEO & Executive Director, Minister Branville McCartney, Ivan Sands (Recipient), Craig (Tony) Gomez, BFSB Chairman.



Student of the Year: Left to Right - Wendy C. Warren, BFSB CEO & Executive Director, Renee Barrow, HR Manager, SG Private Banking (Bahamas) Ltd. (Award Sponsor), Jamere McIntosh (Recipient), Minister Branville McCartney, Craig (Tony) Gomez, BFSB Chairman.



FSI Policy & Regulation Award
Rowena G. Bethel, Legal Advisor, Ministry of Finance

2010 FINANCIAL SERVICES INDUSTRY EXCELLENCE AWARD WINNERS

EXECUTIVE OF THE YEAR: John M. Lawrence

John has been extremely active in the Bahamian financial services sector for the past 25 years and has made a major contribution to the growth and development of this vitally important industry. He has held senior executive positions in a number of well recognised and highly regarded institutions in The Bahamas, and has contributed to the success of each of them. He is Chairman of Windermere Corporate Management Limited, a Bahamas-based Financial & Corporate Service Provider and Investment Advisor. Windermere provides a broad range of wealth management and family office services. Windermere Yacht Services, recently created, specialises in catering to mega yacht requirements. John also is Chief Executive Officer for Metropolitan Bank (Bahamas) Limited, an Asian based banking institution that has been in The Bahamas since 1982. The Bahamas Office specialises in providing banking services to its private clients and has been expanding in recent years into broker dealer and other areas. As CEO, John focuses on developing new markets and new products for this global banking group.

Previously, he has served as Managing Director of MeesPierson (Bahamas) Limited, with responsibility for all aspects of staff, operations, and strategic planning for the MeesPierson International Wealth Management Office in Nassau. At MeesPierson he also held the positions of Deputy Managing Director and Director of Marketing and Business Development, starting with the firm in 1994 after an 8-year stint with Coutts & Co. (Bahamas) Limited. Despite his many pressing professional obligations, John consistently has found time over the years to be a leader in various representative bodies and support groups dedicated to the advancement of the financial services sector. The organisations that have benefited from John's dedication include the Society of Trust & Estate Practitioners (STEP), the Bahamas Financial Services Board (BFSB), and the SWIFT network. John is also frequently involved in smaller "think-tanks" and strategic development groupings aimed at introducing much needed innovations in the product offerings of The Bahamas.

John has been extremely active in promoting The Bahamas in his various capacities with STEP. Currently he is the STEP Chairman for the Caribbean & Latin American Region, a post he

has held since 2003. John also is on the STEP Caribbean Conference Steering Committee. STEP Caribbean is a "thought leader" in terms of conferences for the financial services sector in the region. With John's various STEP roles he spends an average of 30 days each year on the road waving the STEP flag and The Bahamas flag. He is also a Worldwide Council Member, an elite post within the STEP realm.

John is a Certified Public Accountant and a member of the Bahamas Institute of Chartered Accountants. He holds a Bachelor of Science in Business (Hons) from Florida State University.

PROFESSIONAL OF THE YEAR: Veronica E. Moncur-Sherman

Shortly after graduating from University in 1981 with a Bachelors degree in Economics, Veronica Moncur-Sherman joined the staff of what was then, Bahamas International Trust Company (now Ansbacher Bahamas Limited), one of the first established trust companies in The Bahamas, where she remained for 16 years, rising through the ranks to head up the Corporate Department with responsibility for companies, trusts and offshore banks. She was employed with the Jersey Private Bank and Trust Company as Senior Trust Officer with responsibility for the bank's portfolio of trusts and prior to the liquidation of the bank following the crash in the Latin American Markets.

Veronica joined UBS Trustees (Bahamas) Ltd. in November 1999 where she began on the Audit Team and eventually transferred to the combined Swiss Desk as Associate Director and Team Head. Since then she has been promoted to Director and served in several roles including heading the Review Team and the Risk Management



Executive of the Year: Left to Right - BFSB Chairman Paul Winder, John M. Lawrence, Deputy Prime Minister the Hon. T. Brent Symonette.



Professional of the Year: Left to Right – Deputy Prime Minister T. Brent Symonette, and Monalisa Stubbs of UBS Trustees Bahamas Ltd. accepting the award on behalf of Veronica Moncur-Sherman.

Processes and Training Team. In these positions, Veronica was responsible for identifying risk issues and providing solutions to mitigate such risks. In addition she was responsible for ensuring that regular reviews of the trust structures were performed and that the structures adhered to internal policies and procedures as well as legislation.

Presently, she is Team Head of the Asia Desk, supervising a team of 5 members who are responsible for administering structures for the APAC countries. She also acts as Deputy Head

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2010 FSI AWARD WINNERS

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of Trust Administration. Since being assigned to the Asia Desk Veronica was instrumental in changing the perception of the team in the eyes of colleagues. Her style of leadership and management skills are an asset to the team and the company and colleagues in Asia have indicated on several occasions that they appreciate the service they receive from the Asia Team. Her colleagues attest that she always has been professional when dealing with people and is a very concerned and caring individual. She unofficially acts as a mentor to junior trust officers.

Veronica has spent nearly three decades in the Offshore Financial Industry and has earned a wealth of knowledge and experience. She continues to apply this knowledge not only within UBS Trustees (Bahamas) Ltd. but outside, offering up some of her time and talents lecturing at Sojourner Douglas College. Veronica enjoys working with people and is grateful for the diverse opportunities for development made available to her in the offshore industry. She is a Member of the Society of Trust and Estate Practitioners (STEP).

ACHIEVER OF THE YEAR: Dominique L. Ginton

Dominique Lavern Ginton joined Ginton Sweeting O'Brien (GSO) on November 22, 2005, just three weeks after the firm's formation. At that time, GSO comprised only three attorneys and an Accounts Supervisor; today, some five years later, the firm has grown to seven attorneys and eleven members of staff. During her first three years, Dominique planned and executed virtually all of the firm's day to day administration. She functioned as Legal Administrator, Office Manager, Property Manager for the office premises and served as an important liaison between the Firm and various Government agencies such as the Registrar General' Department, the Central Bank, the Investments Board, the Business License and Valuation Department, and the Immigration Department. As the firm expanded from 5 to 18 persons, Dominique has helped to provide continuity. She has been instrumental in identifying the firm's needs and finding the very best personnel to fill the positions required for legal and office administration.

Dominique cheerfully accepted an ever increasing role in the firm from the very first day, demonstrating her ability to assume responsibilities necessary to carry out the mandates of the Partners and the advancement of their collective vision, while also addressing the concerns of the staff. She is a high achiever, helping to manage the heavy case load of the firm's litigation department, while serving as a Legal Assistant to two litigation attorneys. She also serves as the Administrative Assistant to the Director of Finance & Operations (DFO).

In this role, she supports the DFO with all of his nonfinancial management duties, including Human Resource matters, IT matters, property management matters, reviewing service contracts and all event planning for the firm. Under Customer Service & Reception duties she provides support in various areas such as answering telephones, assisting visitors and resolving a range of administrative problems and inquiries.

Her colleagues describe her as an energetic employee who pursues excellence in all she does and, in particular, praise as "exemplary" her initiative, professionalism, attention to detail and commitment to whatever task she undertakes. Prior to joining GSO, Dominique served as an Administrative Assistant at Lennox Paton and at McKinney, Bancroft & Hughes.

Dominique currently is pursuing an Associate's Degree in Human Resource Management from Atlantic College, and is due to complete her studies by the end of year 2011.

DEVELOPMENT & PROMOTION AWARD RECIPIENT: Pamela L. Klonaris, LLB, LLM, TEP

The Bahamas Financial Services Board (BFSB) has selected Pamela L. Klonaris for its 2010 Development & Promotion Award in recognition of her development of the SMART© Fund 006 Model.

The SMART Fund programme was designed to provide industry with a new Private Wealth Management tool with the flexibility to find application within areas not traditionally associated with investment fund administration. The primary facility offered by the SMART Fund concept is an open architecture which allows practitioners to design innovative structures, akin at times to special purpose vehicles, without reference to inflexible regulatory criteria predefined in legislation.

This open architecture always envisaged that increasing understanding and acceptance of the SMART fund idea would result in an increasing number of SMART fund models (defined by means of Templates) and this has been the case with six quite distinct templates currently on offer.



Achiever of The Year: Left to Right – BFSB Chairman Paul Winder, Deputy Prime Minister the Hon. T. Brent Symonette, Dominique L. Ginton, AIBT Chairman David Thain.



Development & Promotion Award: Left to Right – BFSB Chairman Paul Winder, Pamela L. Klonaris, Deputy Prime Minister the Hon. T. Brent Symonette.

The most recent addition, SFM006, the 'Side Pocket' SMART was designed by Pamela Klonaris of Klonaris & Co. and had its genesis in the immediate aftermath of the recent financial crisis. As the Hedge fund industry faced a crippling level of investor redemptions coupled with relative illiquidity of some portfolio assets, restrictions on redemptions became commonplace. It was within this climate that the Bahamas SMART fund provided a facility to offer a tailored, customer focused alternative.

The Side Pocket SMART is designed to provide fund operators with a simple, inexpensive mechanism to remove illiquid investments from a fund portfolio whilst respecting fully the rights of current investors and creditors. With 75% approval of the existing shareholders and creditors the Side Pocket SMART allows the operators of an existing fund (the Parent fund) to transfer up to 30% of the portfolio into a new Side Pocket SMART, to be held without active management or administration for an unlimited period.

Klonaris & Co. is a boutique Firm established in 2001 with an extensive Securities, Private

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Client, Real Estate, Trust, Banking, Corporate and Immigration practice, whose clients include internationally recognized banks, brokerage firms, advisors, real estate investors and fund administrators as well as other international and domestic institutional clients and individuals. In particular, its expertise includes the representation of international and domestic clients in providing fund formation. Specialised advice is available for residential and commercial transactions and acquisitions, including island acquisitions, condominium and time-share development. Klonaris & Co. also represents numerous Private Clients to whom it provides trust and estate planning and family office services. Mrs. Klonaris attended The University of The West Indies, (Jamaica & Barbados) and City University and the London School of Economics, University of London, both in London, England. A member of the Bahamas Bar and Bar of England and Wales (Gray's Inn) since 1989, Mrs. Klonaris began her career with Ansbacher (Bahamas) Limited in October 1989 where she became Manager, Corporate Services and In-house Counsel. In 1994, she moved into private practice with Callenders & Co., and currently as a partner at Klonaris & Co. practices principally in the areas of corporate and commercial law, banking and securities. She served as Chairperson of the Society of Trust and Estate Practitioners (STEP) from 1999 to 2001 and Director of the Bahamas Financial Services Board from 2000 to 2004.

MENTORSHIP AWARD

On the 10th Anniversary of its Industry Excellence Awards Programme, BFSB introduced a new award to recognise persons who have contributed specifically to the development of individuals within the financial services industry – through a mentoring role.

2010 Mentorship Award Recipient:

Eve M. Burrows-Poitier, CFA Retired, Head Of Economics, Banking & Finance Department, College Of The Bahamas

Over the years this remarkable woman has mentored many, both in the classroom and outside of the classroom. She is indeed a woman of substance, with a love for humankind, and over the years has contributed significantly to the development of her people, the country and the financial services industry. Eve Poitier is a trailblazer in many ways and has given tirelessly of herself to the development of her country – particularly in the area of human resource development, and with a primary focus on the financial services sector. In 1981 she became the first Bahamian and first Bahamian female to become a chartered financial analyst and encouraged many more to obtain this qualification. Students whom she has taught

have obtained some of the highest grades on this exam. Prior to joining the faculty of the College of The Bahamas full time on August 27, 1979 she worked in the financial services industry as a Consulting Economist to the Marketing House Group, Trust Corporation of Bahamas Limited as an Investment Analyst and Portfolio Manager, British American Insurance Company Limited as a Security Analyst, and Nassau Bank and Trust Company as an Economic Analyst.

Some highlights of her many accomplishments:

- Framed the COB's associate and bachelor degrees in economics, banking, banking and finance and banking and finance with a foreign language.
- Assisted in the development of all of the associate and bachelor degrees in the School of Business.
- Has served the Bahamas Institute of Financial Services for 30+ years in her capacity as coordinator of the banking and finance programme in the School of Business, COB. Even as a retired associate professor, she continues to give her support to the institute by coordinating the G-12 programme for senior high school students.
- Compiled the Investment Guide to The Bahamas; and edited, compiled and produced the Business Challenge magazine at the College of The Bahamas.
- She was one of the publishers who produced the first comic book on Banking in The Bahamas for primary school students – in collaboration with the Central Bank of The Bahamas
- Introduced the Investor Education programme for high school students from C.C. Sweeting and Government High Schools; this programme has been expanded to students in both public and private schools.

Eve Poitier has a Bachelor of Arts in Economics (1970) and a Master of Business Administration in Business Economics (1971) from Pace University, New York. She is married to Mr. Maxwell Poitier and is the proud parent of two daughters, one son and two grandsons.



Mentorship Award 2010: BFSB Chairman Paul Winder, Eve Poitier, Deputy Prime Minister the Hon. T. Brent Symonette.



Student of the Year: Left to Right – BFSB Chairman Paul Winder, Societe Generale Private Banking's Renee Barrow, Deputy Prime Minister the Hon. T. Brent Symonette, Edmund T. Bain, and CFAL's Sophia Thurston and Pamela Musgrove.

STUDENT OF THE YEAR: Edmund T. Bain

EDMUND TERRAN BAIN | BBA, Accounting
Edmund entered the College of the Bahamas (COB) in 2004, after completing his secondary high school education at Preston H. Albury High in Rock Sound, Eleuthera as Head Boy, Class President and Valedictorian. He received the highest BJC Results (Social Studies), the Ministry of Education's Highest GPA (Eleuthera) award, and the Academic Excellence Award from the South Eleuthera Township. He was a member of GGYA and the Key Club. He graduated from COB in 2010 with a BBA Degree, Accounting, with Distinction. While at COB, he began his career in banking at FirstCaribbean International Bank (2005), where he remains employed today as a Customer Care Officer. He has been actively involved in the Bank's community outreach initiatives.

Edmund's immediate goals are to complete the CPA exam and to begin practice in a public accounting firm. ✨



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