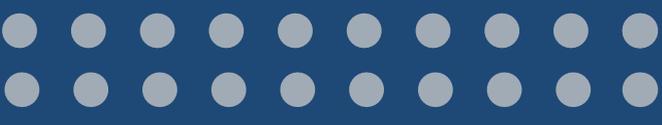


Winter 2019/2020



THE BAHAMAS FINANCIAL REVIEW

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The Forces of Change

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Centres & Global Poverty:
A Response to Oxfam**
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**Dispelling Myths About
The Bahamas**
.....

**Family Offices in
The Bahamas**
.....

**Adapting to the
Changing Landscape**

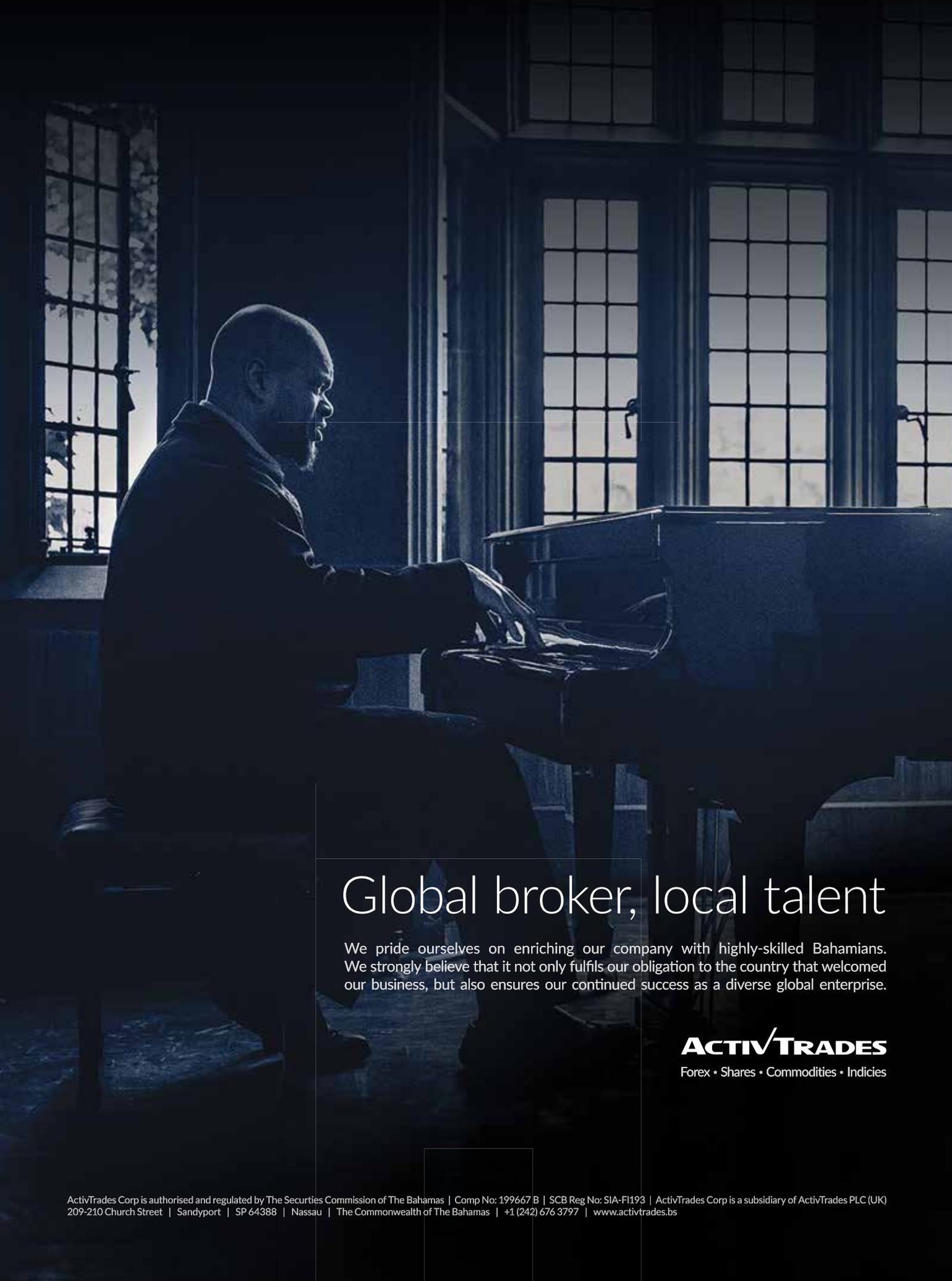


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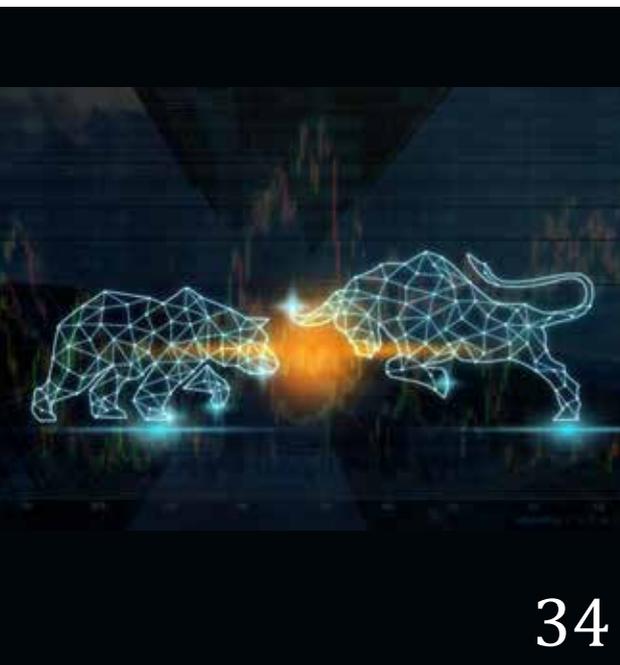
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From the Chairman & the CEO



Antoinette Russell,
*Chairman, Bahamas Financial
Services Board (BFSB)*



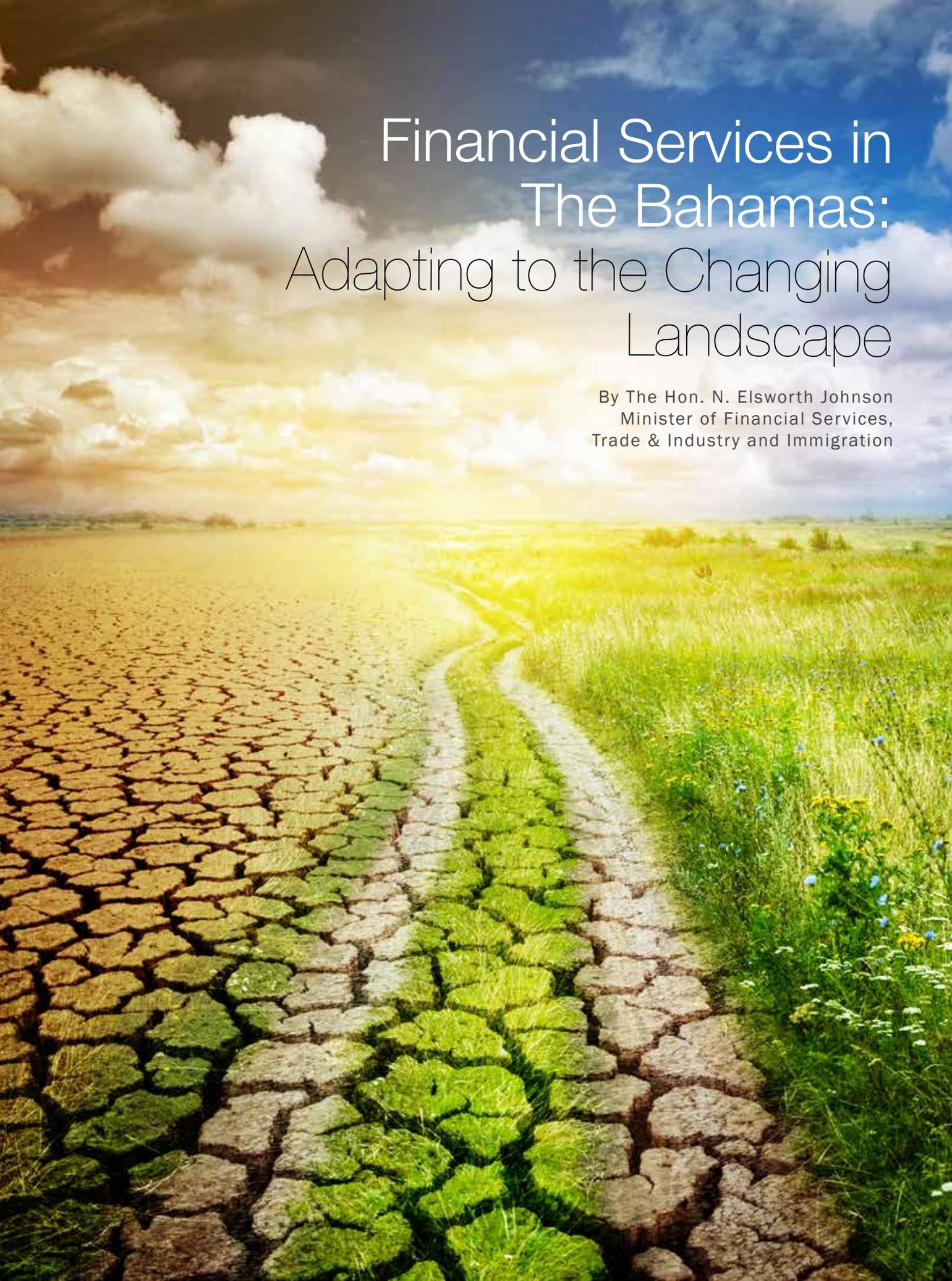
Tanya McCartney, *CEO &
Executive Director, Bahamas
Financial Services Board
(BFSB)*

As this issue of Gateway was going to press, parts of the northern Bahamas were hit by the most powerful storm ever recorded in our country. Hurricane Dorian, a category five storm devastated two of our islands, Grand Bahama and Abaco. The capital city of Nassau, New Providence, which is the centre of government operations and financial services was spared a direct hit from Hurricane Dorian. This has allowed all of us to focus on contribution to the recovery and restoration efforts.

The outpouring of support from international agencies, countries and individuals throughout the world has been overwhelming. We in the financial services sector and all Bahamians are so very grateful for the charity and prayers we have received from long-time friends of our country and strangers who have never touched our shores.

The Forces of Change, much like the winds of a hurricane require international financial services to brace themselves and take those measures required to mitigate against adverse impact and ensure resilience in the face of change. We in The Bahamian financial services sector, have been working arduously to adapt to the landscape. We continue to articulate the role of international financial centres in the global economy whilst focusing on promoting our own individual strengths. The Bahamas has become an attractive destination for family offices, we continue to set our sights on the opportunities that the LATAM market present and we are looking to new opportunities that are emerging. These opportunities include leveraging linkages with the aviation sector, investment funds, global brokerage and offering a jurisdiction where real substance can be created.

We trust that you will enjoy this edition of GATEWAY and will have a clearer picture of The Bahamas value proposition and the substance of things to come. ❖❖



Financial Services in The Bahamas: Adapting to the Changing Landscape

By The Hon. N. Elsworth Johnson
Minister of Financial Services,
Trade & Industry and Immigration



During the 2019/2020 budget exercise, the Minister of Financial Services, Trade and Industry and Immigration outlined the policy priorities for the sector. The following are excerpts from this communication which highlights the progress made by The Bahamas in response to various international initiatives and an outline of the focus for the sector moving forward.

For over 80 years, The Bahamas has maintained a successful track record of competing for Foreign Direct Investment and offering wealth management services. One of the key reasons for this success is The Bahamas' position as an internationally recognized centre for the provision of financial services.

The growth of our economy necessarily requires change, and change is never a comfortable endeavor. Some of the changes will inevitably call for reform and structural transformation, sometimes involving cultural shifts, technological upgrades, training and retooling as we strive to modernize our economy and position ourselves to take advantage of the abundance of opportunities fueled by the global changes happening around us.

The strategy, therefore, has a clear vision for The Bahamas as a recognized location of choice for specialist international financial services, which builds on our strengths in local human resource talent, technological advancement, product and service innovation, established infrastructure, excellent client service, friendly investment policies and incentives, and flexible adaptability to change management in a well-regulated environment.

The long anticipated Oxford Economics Study commissioned by The Bahamas Chamber of Commerce and Employers' Confederation was released on 7th May, 2019. The company was contracted by The Bahamas Chamber of Commerce and Employers' Confederation to analyze the likely impact of WTO membership on the Bahamian economy.

The Oxford Economics Report (the "Report") addresses the financial services sector, which remains the second most important industry for the country after tourism. Successive governments have recognized the importance of the sector to our country's continued economic and social development as the sector provides high-level jobs and contributes about 15 per cent to the gross domestic product of our country. This was confirmed by the Oxford Economics Report, which noted that the offshore financial sector ranks amongst the largest in the world.

The Report notes however, that traditional industries within the Bahamian economy have underperformed recently. The offshore banking sector has contracted sharply. Securities firms have also come under pressure.

In years past, the word "offshore" conjured up negative imagery about financial centres. Unfortunately, the word still sometimes casts a shadow on the continuing success and tremendous growth of legitimate business in private banking and wealth management particularly in well-regulated jurisdictions like The Bahamas. However, this jurisdiction has been and remains unwelcoming to those who attempt to engage in questionable, nefarious activities and financial crimes.

It is the Government's belief that, given the importance of the sector to our economy, it is imperative that we articulate our legitimacy as a responsible, well resourced, compliant international financial centre focused on real international business, a centre committed to the highest possible standards of service delivery, transparency and cooperation. This Administration is committed to maintaining the integrity of the financial services sector and remains committed to ensuring full transparency with our international obligations while balancing the need for safety and confidentiality to our clients. This is the message we seek to articulate to our customers and international partners.

The Government believes that continued alliance between government and the private sector as well as collaboration with regulators, both domestically and internationally, is critical if we are to grow the industry while preserving jobs for the many Bahamians who work in the sector.

International Regulatory Initiatives

The financial services industry has undergone many changes in recent years and the global regulatory environment in which we operate continues to expand. The sector has experienced pressures to change and adapt to what is taking place internationally.

In response, we strive to develop new products for our clients, revise policies, and create and amend legislation, all in an effort to remain current within the ever-changing global environment.

The Bahamas has been proactive in complying with international regulatory initiatives in the global fight to increase tax transparency for the avoidance or evasion of taxes, combatting money-laundering, the facilitation of terrorist financing and the illicit use of our financial system.

We will not allow our financial services sector to be compromised. We remain committed to ensuring that The Bahamas continues to be a transparent, clean and compliant jurisdiction. We have demonstrated our commitment to respond to these international regulatory initiatives developed by the Organization for Economic Cooperation and Development, the European Union and the Financial Action Task Force. We allocated human and monetary resources to ensure the enactment of the necessary legislation, the implementation of the policies and processes and the enforcement of these actions.

These initiatives have included a compendium of domestic legislation passed by Parliament to align our laws with new and evolving international standards:

THE MULTINATIONAL ENTITIES FINANCIAL REPORTING ACT, which contains rules for country-by-country reporting in-line with the OECD's Inclusive Framework for the Multilateral Base Erosion and Profit Shifting (BEPS) initiative. The Bahamas joined over 100 other countries and jurisdictions collaborating to implement the BEPS Convention.

THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT, 2016 was implemented in accordance with the OECD's Common Reporting Standard (CRS). In September 2018, the first 35 exchanges took place without any issues. The signing of the Multilateral Competent Authority Agreement (MCAA), which is a multilateral framework agreement that provides a standardized and efficient mechanism to facilitate the automatic exchange of information in accordance with CRS, took place in December 2017.

THE COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018 addresses the concerns of the EU Code of Conduct Group for business taxation, with respect to economic substance. Entities having relevant activities which include banking, insurance, fund management, financing and leasing, shipping, distribution, or service center operations, headquarter operations and holding companies with relevant activities will have to demonstrate to the authorities that they have substantial economic presence in The Bahamas and that they are engaged in real economic activity.

THE BENEFICIAL OWNERSHIP REGISTER ACT, 2018 provides for the establishment of a secure search system by the Attorney General that can scan database systems managed by registered agents which hold beneficial ownership information of entities incorporated, registered, continued or otherwise established in accordance with The Bahamas Companies Act or the International Business Companies Act.

THE REMOVAL OF PREFERENTIAL EXEMPTIONS

ACT, 2018 addresses the harmful tax practice known as ‘ring-fencing’. This is the process where a taxing jurisdiction runs a preferential tax regime that is unavailable to certain groups of tax payers. In essence, it removes tax exemptions that are offered to non-residents but not offered to residents.

By creating these laws, this Administration has sought to preserve The Bahamas’ position as a significant global financial services center while ensuring that The Bahamas retains its reputation as a premier jurisdiction of choice, for the conduct of quality financial services, in compliance with international regulatory standards.

The Road Ahead

The vision is “to strategically position The Bahamas as a distinctive niche service provider in global financial services” for long-term sustainability.

We know that current trends dictate a more technology driven sector that is becoming more increasingly knowledge driven. We must ready ourselves to adapt and cater to these changes through our products and services offering, while also leveraging our existing strengths as we seize other opportunities being created through new and emerging developments.

This calls for greater expertise and specialized professional skills and knowledge, proper research and study, and the development of the proper infrastructural base with the requisite policies and processes that will allow the ease of transition and an atmosphere of entrepreneurial growth.

While there has been some effort in the advancement of these goals. There is a serious need for a more deliberate and strategic undertaking to achieve them.

The Ministry of Financial Services will undertake a study to analyze the current state of job roles in the financial services sector and how they can be augmented as technologies are leveraged to enhance or improve the performance of these

roles. The intent of the study will be to identify emerging job roles that would grow in demand with the adoption of fintech, data analytics and automation in the financial services sector.

The purpose of this study will be to provide a compass for financial institutions and individuals to prepare themselves for the future of work as the use of data analytics and automation become pervasive in the financial services sector.

Business transformation alone is not enough. We also need workforce transformation. This study will help us uplift our workforce, harness the power of data analytics and automation, and make The Bahamas financial services sector more efficient and more competitive.

As we continue our work on the Centre for Excellence in Financial Services Education, we have begun to devise a plan to establish clear mandate for this initiative. This will entail accountability for its progress with tangible goals and targets for the Centre’s educational initiatives.

An essential part of the success of the Centre, will be private sector participation in ensuring individuals working in the sector have access to greater education and skills development being offered.

New Business Friendly Immigration Policy

The Ministry of Financial Services, recognizing the importance of a modern, progressive “national development-focused” immigration framework for the growth of the financial services sector has developed a three-year, tax residency programme which could serve as a gateway to more permanent residence options for HNW investors.

There is no renewal for this programme. It will entitle the successful applicant to the right to reside in The Bahamas for a period of up to three years and to be issued a certificate of tax residence in The Bahamas (certificate is issued for only three years for transparency purposes, and must prove criteria for eligibility still exists).

Under the framework, The Bahamas must be the main residence or home of the applicant. He or she must show stability and residence in the Bahamas for at least 90 days in one year, and not reside more than 183 days in any other single country during that year.

The Tax Residency Certificate will be issued with a unique tax identification number. In order to be eligible for a tax residency certificate, the resident must pay the relevant fees and make an annual payment towards National Insurance at the rate and maximum wage ceiling for that particular year or be subject to another applicable tax. Economic permanent residency remains at \$750,000.

The Ministry has also recognized that the issue of residency is an important matter given global developments on tax

transparency. The OECD released its Standard for Automatic Exchange of Financial Account Information which has, as the basis of information sharing, a self-certification process for establishing residency for tax purposes. In this regard, the concept of “residency” and specifically “tax residency” in The Bahamas had to be carefully defined, especially if The Bahamas is to remain progressive and ahead of the changing global dynamics in international financial services.

Together, we will be able to respond to the challenges and maintain the soundness and stability of our financial services industry. There is still much work to be done. We will continue to strengthen this position to ensure that our financial services sector remains a key pillar of future economic growth. ❖



The Hon. N. Elsworth Johnson

Minister of Financial Services,
Trade & Industry and Immigration

The Hon. Elsworth N. Johnson is a proud descendant of Douds, New Bight, Cat Island, in The Bahamas. He was elected to the House of

Assembly on 10th May, 2017 and appointed by the Prime Minister to serve in the Cabinet of The Bahamas as Minister of State for Legal Affairs in the Office of the Attorney General from May 2017 a post he held until 30th June, 2019. On 1st July, 2019, he assumed the post of Minister of Financial Services, Trade and Industry and Immigration.

Minister Johnson is a 1995 graduate of the College of The Bahamas, where he attained an Associates of Arts Degree in Law and Criminal Justice. In 1997, he enrolled in the University of the West Indies, and successfully completed his Bachelor of Laws Degree with Honors.

In 2003 Minister Johnson obtained his Legal Education Certificate from the Eugene Dupuch Law School and was called to The Bahamas Bar. In 2010 he attained a Master’s Degree in Corporate and Commercial Law from the University of The West Indies.

Minister Johnson is very involved in nation building. He is a past President of The Bahamas Bar Association and former Principal Partner in the law firm of Johnson & Associates. He is also a member of the International Bar Association; Amnesty International and the Rotary Club of Nassau Sun Rise.

Mr. Johnson is a member of St. Ambrose Anglican Church.

Mr. Johnson is married to Mrs. Cathy-Ann Cromarty-Johnson. He is the father of three daughters - Kristen, Meghan and Arianna.

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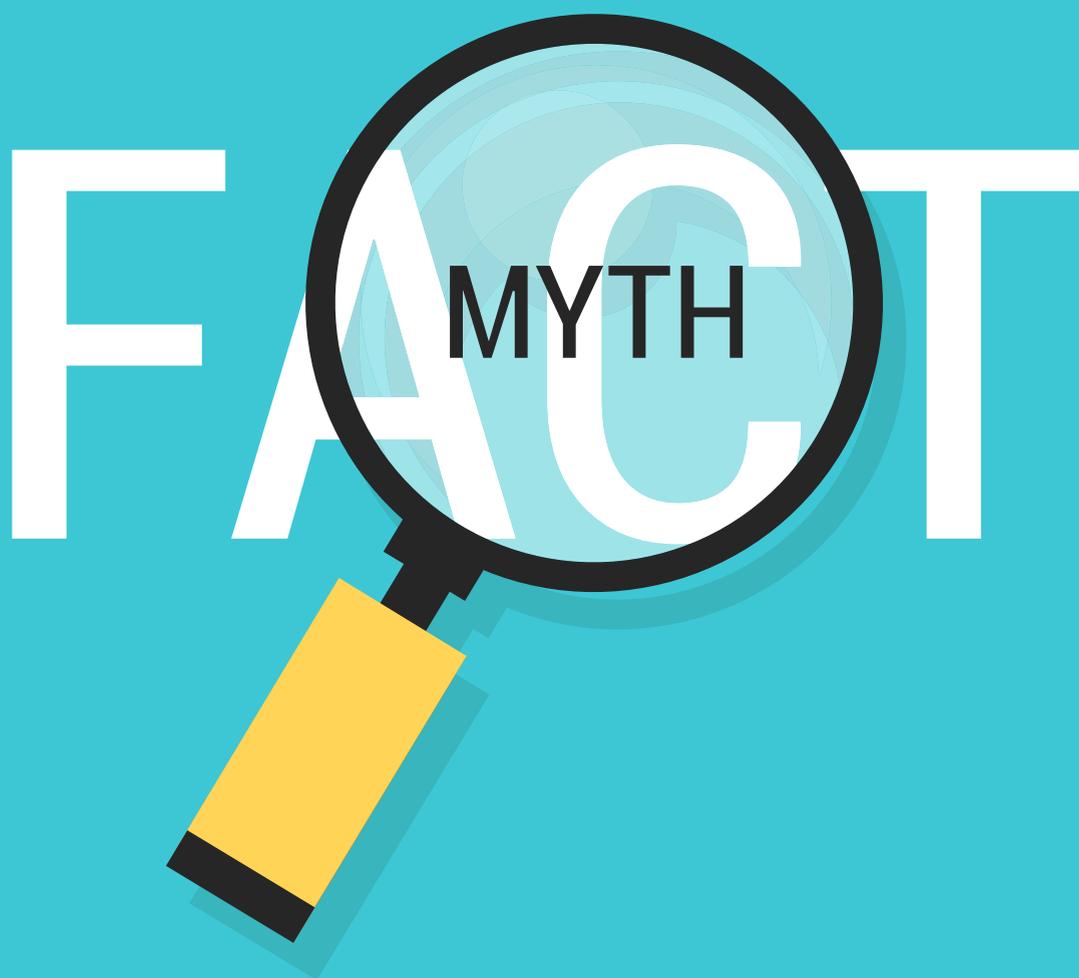
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Dispelling myths about The Bahamas

8 days in The Bahamas that left a
Brazilian lawyer impressed

By Marcus Vinicius Gomes de Oliveira
& Brian Jones



A stable democracy with accessibility to all major markets, airports, investors and global entrepreneurs, The Bahamas has been the choice of many Brazilians for decades.

When I planned my recent trip to The Bahamas, my aim was to understand some of the myths surrounding the country, and I wanted to establish contacts and local partnerships with a focus on the actual businesses operating in all areas of financial services, from banking and legal services to accounting. I also wanted to visit the University of The Bahamas as well as the main hotels and restaurants. My intention was to gain a true and practical understanding of what it's like to do business in The Bahamas on a first-hand basis.

One of the biggest problems I realized that we found in Brazil is when we say we have investments and companies or accounts in The Bahamas, automatically many people simply assume that the country works as "tax haven", wrongly judging such normal actions as something illegal or illegitimate.

What many Brazilians are not aware of, is that the country has been modifying its legal and financial system for a long time. While The Bahamas does in fact have tax exemption for capital gains, dividends and personal income, the country enforces its anti-money laundering laws and regulations. The Government of the Bahamas has an international agreement against money laundering, adapting global standards to leave the "Black List". The Bahamas reports annually to all countries the values, investments, and all other information of clients with accounts in the country, so that there is no room for error. Now, the country is on the White List.

With this new concept in mind, many Brazilians are finding excellent investment opportunities using The Bahamas as a platform for conducting international financial transactions and to gain asset protection. Proof of this are in the figures presented by the Central Bank of Brazil, where they show

that the investment values made by Brazilians in countries like The Bahamas recently jumped from 42.5% to 63.9% (from US \$10.17 billion to US \$13.05 billion).

When I attended a meeting with Brian Jones, Managing Directors of the Leno Corporate Services Limited, he said: "The Bahamas has a tax system that facilitates participation in the real economy and the flow of global investment capital. This notion of facilitating international investments highlights the value purpose of The Bahamas as a neutral platform that is required when you have investors from a variety of different countries pooling assets in a single transaction or in a cross-border investment structure." Brian introduced us to a number of reputable professionals in Nassau.

When we went to meet the banks, we first went to Credit Suisse (formerly Banco Garantia), where we had a brief meeting with a Brazilian who works there. We tried to understand the profile of the customers and over the years the bank began to have a line of more exclusive investors. The profile is more for high net worth investors and not retail, whereby customers must invest above \$5 million dollars, and they do not focus on opening current accounts. Then we met the Equity Bank & Trust, which is a complete financial services institution with global access to all major financial markets. They were receptive to me, and I talked with several experienced people, including the Chairman of the group, and by virtue of relationships, are now business partners. They have opened exceptions for investor cases that have smaller account sizes, but want to have a global investment channel. During these visits, I began to develop within these partnerships some products, to be able to make people increase the legal security of their companies in Brazil as multinationals, mainly benefiting from the rates and services available in The Bahamas.

In addition, during this business trip, I realized that Nassau is prepared to receive new investments guaranteeing the safety of Brazilians who have an interest in the country.

Another favourable point is the partnership that the University of Bahamas has with Brazil, receiving private donations from Brazilians to assist in scholarship and research centres. "In this semester we have two Brazilian students at our university, but we are prepared to receive others," said Dr. Rodney D. Smith, President of the University of The Bahamas, at our meeting at the university.

The legal system of the country is very sound. As a former colony under British rule, the foundation of Bahamian law and the legal system of The Bahamas is the common law of England. When the Bahamas gained independence as a sovereign nation in 1973, it continued with the Judicial Committee of Her Majesty's Privy Council as the highest court for The Bahamas, which sits in England to hear appeals from the Bahamas Court of Appeal.

Many countries are finding in The Bahamas the chance to be able to have a safe investment in the real economy as well. When I was getting to know the city of Nassau, the country's capital, I encountered three buildings that were being developed with investment capital from China. The country has invested about US\$ 4 billion in recreational structures, such as hotels, residential and entertainment facilities in The Bahamas. In addition to China, other countries like the United States also have large business operations in The Bahamas.

In terms of leisure, I was fortunate to have several unique first-time experiences. I played golf at the famous Ocean Club on Paradise Island with Brian and Philip Galanis, who owns one of the largest consulting and audit firms in The Bahamas, HLB Galanis & Co.; I met with Aliya Allen from the law office, Graham Thompson, at Starbucks to talk lawyer to lawyer; and I discovered an authentic cigar factory inside Nassau's oldest 5-star restaurant, Graycliff, amongst other impressive outings.

In almost every meeting I attended, I told the Bahamians about the views of many Brazilians in relation to the country, that we had the habit of reading only things that referred to money laundering or tax haven labels. All of their reactions were total surprise, because they know that The Bahamas is not so. One of them even told me to say that

The Bahamas is all about money laundering and beaches, is equal to saying that Brazil is all about carnival and football. Both countries have enormous potential, but they are often misinterpreted.

Another point I sought comment on in the meetings is how lawyers work in international transactions, and what was the method used and the process. Brian told me that "It is very important to have a lawyer to guide international transactions from two perspectives: 1-The Brazilian lawyer has to set out the transaction according to the regulations and requirements of Brazil and ensure that the investment is reported to the tax authorities and regulatory bodies correctly; and, 2-an international lawyer has to advise on the transaction according to the regulations from two additional angles:

- From the point of view of IFC, to evaluate and help the client to choose the right structure according to the rules of the jurisdiction and of the particular investment vehicle; and
- Analyse and determine the correct the requirements of the final investment that may be either in The Bahamas or in any jurisdiction, speaking with lawyers and third-party providers, organizing the flow of capital, information and consistency of transparency in entire structure.

Therefore, The Bahamas has become one of the best places to do international transactions and financial investments, offering a highly skilled workforce, with experienced lawyers and private bankers prepared to assist with all aspects of financial services, in addition to providing a great reception with international partners.

Taking a caveat in this matter, during my stay in The Bahamas, I was surprised by Hurricane Dorian, who did not hit us in full in Nassau, but came around doing some damage. The support and assistance I received from the Bahamians were essential to make this moment less tense and stressful. All the infrastructure and help I've been offered for sure have been kept in my memory, further strengthening my certainty that The Bahamas is totally different from what we read in internet propaganda. And as far as I am concerned, that "bad" image no longer exists, and I am excited about doing business in The Bahamas. ❖



Marcus Vinicius Gomes de Oliveira

CEO Partner of Limborço e Gomes Law Firm

Marcus is a Brazilian Lawyer with a Bachelor of Laws from the Varginha Law School (FADIVA) and Postgraduate in General Proceedings with emphasis in Business Law from the Judicial School Judge Edésio Fernandes of the Minas Gerais Court of Justice in agreement with FADIVA; Postgraduate degree in Business Law from Anhanguera-Underp / MS University; Specialization in Psychology and Psychoanalysis applied to Business by MBM - Master Business Management / SJC; He is currently Visiting Professor at Varginha Law School in University Extension Courses; He is Chairman / Founder of the Corporate Law Commission, as well as Member of the Committees: OAB Young, Customs Law, Administrative Law and Tax Matters before the Brazilian Bar Association - 20th Section Subsection MG; He is a Partner / Legal Consultant at Limborço & Gomes Assessoria Empresarial. Has experience and works in the area of Business Law, Tax and Public and Private, with emphasis on Business Law, Business Management, Property Shield and Business Recovery. He is also a consultant for several companies, associations and other third-party legal entities in various private segments (wholesale, retail, industrial, service providers and freelancers).



Brian Jones

Managing Director,
LENO Corporate Services Ltd.

Brian has over fifteen years of experience in investment funds, corporate governance and financial services. Previously he served as President and Managing Director of Deltec Fund Services Limited. He has also held other senior level positions throughout his career in financial services, including Director and Manager at internationally reputable banks, trust companies and professional industry organizations. During which time he developed the SMART Fund Model 007, and made significant contributions to the development of the ICON (Investment Condominium) fund investment vehicle.

Brian holds a Bachelor's Degree in Economics (HONS), from St. John's University in Minnesota. With a strong belief in continuous professional development, amongst his many accolades, Brian is also a Chartered Alternative Investment Analyst (CAIA). Brian is a Director and Treasurer of the Bahamas Financial Services Board and has been acting in this capacity since 2012. Brian is also a member of the Board of Trustees of the University of The Bahamas where he chairs the Investment and Finance Committee and sits on the Audit and Advancement Committees. Brian has received numerous awards and recognitions for his continuous contribution and commitment to the investment funds sector and overall financial services industry of the Bahamas. Having lived and worked in Central America and Brazil, Brian has developed an affinity for the LATAM countries, and he speaks Spanish and is fluent in Brazilian Portuguese.



International Financial Centres and Global Poverty A Response to Oxfam

By Jamie Whyte

1. Introduction

Oxfam is a British charity devoted to the reduction of global poverty. In early March, it published a report, *Off the Hook: How the EU is about to Whitewash the Worst Tax Havens*.

This report claims that international finance centres (IFCs) such as the Bahamas, which characteristically impose no tax on corporate profits, thereby harm the world's poor. It therefore laments the expected removal of several IFCs – Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Hong Kong, Isle of Man, Jersey, and Panama – from the EU's "greylist" of "non-cooperative

tax jurisdictions" (none being on the blacklist) in its first annual review, which was published shortly after the Oxfam report. According to Oxfam, the EU should move in the opposite direction, changing the criteria for blacklisting to capture more IFCs and increasing the sanctions associated with being blacklisted.

The idea that IFCs have harmed the world's poor should startle anyone who knows even a little recent economic history. In 1980, more than 40 per cent of the world's population lived in absolute poverty, defined as an income of less than US\$2 a day (in today's money). Today, that figure is 9 per cent. This historically unprecedented rate of

poverty reduction has occurred at precisely the same time that IFCs have assumed their significant role in the global economy.

It could be a mere coincidence, of course. But it isn't. The zero corporate tax policies of IFCs facilitate the efficient allocation of capital around the world. IFCs are an important part of the story of poverty reduction over the last 40 years.

The Oxfam report does not address this argument. Indeed, it does not even acknowledge that poverty has declined dramatically over the last 40 years. It simply assumes that if zero-corporate tax rates were eliminated, the extra tax revenues raised would be directed towards the poor, and that they would suffer no losses from the obstruction to global capital flows. As a result, the central claim of the report – that IFCs harm the world's poor – remains unjustified.

On top of this cavalier approach to economic analysis, the report displays a casual contempt for the sovereignty of IFCs. It claims that the tax policies of IFCs are a “political choice”, meaning not that they are a choice for the IFCs themselves, but a choice for politicians in the EU. Most citizens of small island nations had believed such colonialist attitudes to be consigned to history. It is disturbing to see a British charity openly espousing them in 2019.

2. IFCs help to reduce global poverty

From the 1970s, governments around the world began to loosen controls that had restricted the flow of capital across borders. At the same time, tariff barriers to international trade continued to be reduced through the operations of the General Agreement on Trade and Tariffs (GATT) and then its successor, the World Trade Organisation (WTO). These two developments gave rise to the new era of “globalisation” that, despite a recent increase in trade tariffs, continues to this day.

The economic benefits of free trade have been familiar since the work of Adam Smith and David Ricardo. Put simply, by increasing the scope of trade it encourages

greater specialisation and allows producers to take better advantage of their comparative advantages, arising from factors such as climate and human capital. Land, capital and labour become more productive.

The free movement of capital across borders has the same effect. By increasing the scope of investment, it increases the chance that savings will flow to the best investment opportunities, wherever they may happen to be in the world.

What makes an investment “best” varies with the preferences and circumstances of the saver. A Chinese businessman who has saved \$100,000 may seek a secure investment that he can be confident he will be able to pass to his children. This may encourage him to invest his savings outside of China, in foreign assets facing less political and economic risk than offered by the investment opportunities within China. At the same time, a US business with a higher risk appetite may be keen to invest in China, keen to profit from the rapid economic growth occurring there.

Such variation in the preferences of savers and the investment opportunities available around the world explains why capital flows both into and out of the same country at the same time. For example, although the US is still the world's largest recipient of foreign direct investment, American individuals and firms invest heavily outside of the US.

This globalisation has helped to lift hundreds of millions of people out of poverty, most notably in Asia. Real GDP per capital has tripled in India since 1980 and increased eightfold in China. Over the same period, the percentage of the population living in poverty has declined from 88% to 7% in China and from around 50% to 24% in India.

International Finance Centres (IFCs) play a pivotal role in this globalised economy, acting as staging posts for global capital. Most savers lack the information or skill to make investment decisions for themselves, and their savings are often too small to buy the assets in which they might like to invest. Fund managers solve these problems by aggregating

the funds of many savers and making investment decisions on their behalf. And the aggregation of these funds often takes place in IFCs – or, in other words, many funds management companies are registered in IFCs.

Three characteristic features of IFCs explain why they play this role. The first is legal certainty. Investors must feel confident that contracts will be enforced and that their savings will not be subject to arbitrary or confiscatory governmental interventions into the funds management industry. This explains why IFCs are typically stable democracies with a strong commitment to the rule of law (with most being common law jurisdictions).

The second characteristic feature of IFCs is a well-developed network of supporting businesses – law firms, trust companies, fund administrators, etc. The Bahamas hosts many of the world’s leading firms in these fields and has a highly educated domestic workforce.

The third important feature, and the one to which Oxfam objects, is not taxing corporate profits. Consider savings originating in Country A, being aggregated in Country B, and then being invested in Country C. The destination enterprise will probably be subject to taxation in Country C and the investor will be taxed on his returns from the fund in Country A (as income or capital gains). If the returns to the fund were also taxed in Country B, the investor would be subject to triple taxation. This would reduce the post-tax return to investors, in many cases below the minimum rate of return at which the saver is willing to make the investment.

From an investors’ point of view, taxation is simply another cost. The lower the cost, the more likely they are to make the investment. By imposing no tax on the returns of funds domiciled in them, IFCs reduce the cost of international investment and improve the efficiency of global capital allocation. They thereby play an important role in the economic globalisation that has so dramatically lifted living standards in many poor countries.

3. Oxfam’s response to the globalisation argument

You might expect Oxfam to celebrate globalization, and the role in it played by IFCs, given the great reduction in poverty that it has caused. In fact, however, Oxfam is consistently hostile to IFCs and even to globalisation itself. According to its 2019 report, “... globalization and the greater mobility of capital ... are harming citizens worldwide.” (p6)

Globalisation may well have caused the incomes of low-skilled workers in advanced economies to stagnate over the last 20 years. But the tens of millions of workers who may have lost from globalization in this way are relatively rich by global standards. The welfare gains to hundreds of millions of much poorer workers in developing economies surely swamp this effect. The idea that globalization has harmed poor people is extraordinary. What evidence or argument does the Oxfam report offer to support this contention?

The short answer is none. It is asserted without supporting evidence or even references to other publications where the thesis has been defended. The report does no more than reference estimates of how much tax revenue is forgone because IFCs do not levy corporation tax, assuming that these sums are the net loss to the poor. That is to say, the report assumes (again, without evidence) that these tax revenues would end up in the hands of the poor and that they can be raised at no cost to the poor, that taxes have no deadweight costs.

The first assumption is implausible, because government spending tends to be concentrated on electorally important groups (which the poor rarely are). The already well-off in poor countries capture the largest share of government spending on healthcare and education.

And the falsity of the second assumption is the very foundation of the “globalization argument” of the previous section. It is precisely because IFCs do not tax corporate profits that IFCs help the world’s poor. This policy holds

down the cost of international investing and thereby spurs the rapid economic growth that has lifted hundreds of millions of people from poverty. Oxfam may disagree with this argument, but they must explain where it goes wrong. Instead, the report proceeds as if they had never encountered it.

The report is generally devoid of economic analysis. The economic concepts relevant to the topic – return on investment, efficient capital allocation, the deadweight costs of taxation and so on – are nowhere to be found in the report. Even more astonishingly, the report nowhere acknowledges that the increased role of IFCs has coincided with the most dramatic reduction in poverty in history. Coincidence is not causation, of course. But anyone claiming that the causation goes in the opposite direction, that IFCs cause poverty, must explain away the dramatic coincidence. They must explain why poverty has decreased so much while IFCs have become more prominent in the global economy. The Oxfam report doesn't even try to.

Rather than engaging in serious economic analysis, the report indulges in baseless accusations of immorality. According to Oxfam, IFCs with zero corporate tax rates “rob” other countries of the “resources needed for development” (p8). This exemplifies a muddle that occurs consistently through the report: namely, confounding governments with countries. When money is kept in private hands rather than being transferred to the government through taxation, the country has not been deprived of any resources. The private citizens of a country are as much part of that country as its government is. And those privately held resources may well be used in ways that promote development. This is precisely what happened in China. It was only when the control of many productive assets was shifted from the government to private profit-seekers that economic growth took off and incomes began to rise.

Nor is “rob” an accurate description of the way IFCs acquire company registrations. As noted above, many companies register in IFCs because doing so reduces their legal risks and their costs of doing business, including their tax costs. The jurisdictions who impose higher costs on companies,

and therefore attract fewer registrations, have not been robbed – neither by the IFC nor by the company. You might as well argue that a supermarket that charges low prices and therefore attracts many customers has robbed competitors who charge higher prices. When those who choose to register companies in IFCs are well-informed and acting voluntarily, it is scurrilous to accuse IFCs of robbing anyone.

The report also accuses the beneficiaries of firms registered in IFCs of acting unjustly by failing to “pay their fair share of taxes” (p.6). This accusation is baseless, for at least two reasons.

The first is that it relies on confusing the “legal incidence” of a tax (that is, the name on the account from which the taxes are paid) and the “economic incidence” of a tax (the person who bears the cost of the tax). These are sometimes the same, but they need not be. And they clearly are not in the case of corporation tax, because corporations are legal fictions which cannot bear economic costs; only real flesh and blood people can bear costs or enjoy benefits. The real, economic cost of corporation tax falls on its owners (through lower returns), its workers (through lower wages) and its customers (through higher prices), in varying proportions, depending on factors that need not detain us here.

Since it is only people who bear the cost of taxation, it is only people who can sensibly be accused of not bearing their fair share of the tax burden. But Oxfam does not know what share of a country's tax burden is borne by those who benefit from a company's registration in an IFC.

Consider just a shareholder of a company registered in an IFC (or someone whose money is invested by a fund registered in one). The untaxed returns will be taxed as income when they are repatriated to his country of domicile. And he will also pay income tax on his other income, if he has any. His spending in his home country is likely to be taxed by a VAT or GST and by excise duties and tariffs on some imported goods. He is also likely to pay local taxes. In short, the fact that his investments are not taxed in the IFC provides no information about what share of his country's tax burden he

is bearing. But if Oxfam does not know what share of taxes someone pays, it cannot know whether it is a fair or unfair share.

Nor would it help much if Oxfam did know the share of their country's total tax burden was being paid by each beneficiary of IFC registration. For Oxfam does not know what "fair" means in this context. This is not surprising, because no one knows what it means. Imagine a society of six people. Five each earn 10% of the total income and the sixth earns the remaining 50%. What is the fair tax contribution of each? The only obvious answer is that they should pay in proportion to their incomes. But this is to recommend a flat rate of income tax – a policy that Oxfam would surely reject. But if strict proportionality is rejected, how will the fair share be determined? Any answer is sure to be arbitrary. And, certainly, Oxfam offers no answer, either in this report or any previous report.

Oxfam does not know what share of total taxes are paid by the beneficiaries of companies registered in IFCs and, even if it did, it would not know if those shares were fair. In other words, the accusation of wrong doing by these beneficiaries and those who act for them is a mere fabrication.

4. A New Colonialism

Having made the implausible claim that globalisation and IFCs harm the world's poor, and the baseless claim that IFCs and those who use them behave unjustly, Oxfam suggests the EU do more to discourage IFCs from maintaining zero-corporate tax policies. More specifically, they recommend (among other things) that low or zero corporate tax rates be

an independent criterion for inclusion on the EU's blacklist and that the sanctions applied to blacklisted countries be made tougher (though the report is not very clear about what these sanctions should be).

Insofar as the report's claims about the harm done by IFCs are unfounded, so are its calls for this tougher regime. But Oxfam's call for action against IFCs has another serious defect. They recommend that the European Union, with its population of 500 million and GDP of over \$18 trillion, penalise small peaceful countries unless they adopt the tax policies favoured by Oxfam.

In a revealing passage, the report claims that "tax havens are not inevitable – they are a political choice" (p.7). Most IFCs, such as the Bahamas, Jersey and Singapore, are stable and well-established democracies. But, when Oxfam says that the tax policies of IFCs are a political choice, it does not mean that they are a choice for their own democratically elected politicians. It means that they are a choice for European politicians.

The idea that the populations of small, island nations should do what their supposed betters in Europe tell them to do was once popular. Over the last century, however, the idea has fallen from favour. The people of all peaceful countries are now viewed as having a right to democratic self-rule. It is surprising to see Oxfam, a charity usually keen to brandish its progressive credentials, rejecting this modern idea in favour of the old colonialist attitude. ❖



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The “Substance” of Things To Come

By Stephen Coakley-Wells

Background

For most of us in the financial services industry, the past two years have been dominated by discussions on two themes: “Substance” and “Ring-fencing”. The government’s team of financial services technical advisors (which consists of officials within the Ministry of Finance, Financial Services and the Attorney General’s Office) have indeed had a busy year since the European Union published its first List of Non-Cooperative Jurisdictions for Tax Purposes in March of 2018.

Since then, there have been numerous meetings between the technical advisors and representatives of both the EU and the OECD, with regard to compliance with the EU’s criteria on tax governance and the OECD’s on-going monitoring and assessment of The Bahamas’ efforts to curb harmful tax practices. Our work has, for the most part, been focused on formulating an appropriate legislative and regulatory response to the EU and OECD concerns on the presumed lack of economic substance of certain categories of commercial entities operating in The Bahamas and the elimination of ring-fencing measures within the jurisdiction. This includes, but is not limited to, drafting the three principal pieces of legislation that we believe fully address the concerns on economic substance, beneficial ownership and eliminating ring-fencing,

with the collaboration of representatives of the BFSB, AIBT and the private sector .

These pieces of legislation are the Commercial Entities (Substance Requirements) Act, 2018, the Removal of Preferential Exemptions Act, 2018 and the Register of Beneficial Ownership Act, 2018. These laws have undergone extensive review and consultation with industry representatives, and have been the subject of contentious discussions with representatives of both the EU and the OECD.

In early November 2018, the Deputy Prime Minister led a delegation to Brussels and Paris for a series of bilateral meetings with representatives of the EU and the OECD. The primary objective of those meetings was to show the government’s commitment at the highest political level to preventing harmful tax practices and the abuse of the Bahamas’ financial system by persons seeking to evade or even avoid the payment of taxes in EU/OECD member states. A secondary objective of the meetings was to give an overview of the legislation so that if there were still concerns that the legislation did not sufficiently address the elements of the relevant criteria, such variances from the criteria could be corrected well in advance of the December 31st deadline.

Underpinning these meetings also, was the need to have a frank discussion with the EU and the OECD at the political level about the impact of these initiatives on economic development.

The Bahamas had another bilateral meeting with the EU in the margins of the 11th Plenary of the OECD's Global Forum on Tax Transparency and Exchange of Information in Punta del Este, Uruguay at the end of November, 2018. During this meeting, the three remaining concerns of EU member states were discussed. These were: substance requirements for passive holding companies, double counting of substance for outsourced activities and collective investment vehicles. Provisions relating to substance requirements for passive holding companies and prohibiting double counting of substance for outsourced activity have been incorporated into the substance requirements. The EU's concern on CIV's, which at that time related to foreign regulated funds operating within the jurisdiction, was already addressed by the draft Investment Funds Bill, 2018 which removes the exemption from licensing for these funds.

So where are we now?

The "Substance Act" (or "CESRA"), the "Beneficial Ownership Act" and the "Preferential Exemptions Act" as they are colloquially called, were passed by Parliament in December, 2018 and became effective on December 31st, 2018. Entities incorporated after December 31st 2018 are immediately subject to the substance requirements of CESRA. Entities incorporated before December 31st, 2018 have a 6-month transition period to adopt the substance measures. Within 9 month of its fiscal year end, an entity must be able to demonstrate that it meets the substance requirement or that it is not subject to legislation.

2019 promises to be just as active as 2018. The Ministry of Finance, through the working group, has drafted and distributed the Guidelines to CESRA. The guidelines are intended to elaborate on the requirements of CESRA and help guide the industry to the wider application of CESRA's provisions. Of particular importance are the provisions related to outsourcing and reduced substance requirements for holding companies, which received a lot of attention from the industry when the Act was published.

The implementation of the reform measures will require a number of amendments to key legislation, including:

1. The Bank and Trust Companies Regulation Act;
2. The IBC and Companies Acts,
3. The Business License Act; and
4. The VAT Act.

In Q2 2019, the Ministry as Competent Authority will issue regulations on the Removal of Preferential Exemptions Act, 2018 which are intended to prescribe the treatment of taxes and levies (stamp tax, duties) with respect to commercial entities.

Additional legislative reform is intended to address the changes to the business license regime for financial institutions and commercial entities.

To ensure monitoring and enforcement of the substance requirements, entities will submit the relevant CESRA form(s) to the DIR and the information will be inputted into the entities file in the DIR database. In this regard, it has been determined that it is necessary to register all entities with a Tax Identification Number from the Department of Inland Revenue.

A unit within the Ministry of Finance has been established with responsibility for reviewing this information and ensuring compliance of the entities reporting obligations. In cases of non-compliance, this unit is responsible for the auditing and monitoring of remedial measures as well as spontaneous exchange of information on non-compliant entities with the relevant EU or OECD member state.

To facilitate the Ministry's obligation to maintain statistical information on the nature of the IBC business undertaken in the country (which is required by both the EU and the OECD and is a feature of their assessment programs), registered agents of entities will be asked to complete a questionnaire intended to determine the nature of the entities activity and the jurisdictions that the entity operates in and/or has tax residency in.

A critical element of the ongoing assessment of The Bahamas will be how much statistical data is available to support the position that the jurisdiction has effective oversight of the activity of entities. In this regard, the collection of this data is essential to ensure that the jurisdiction can garner a favorable assessment.

The reform measures have to be addressed on a sector-by-sector basis. For substance, the technical team is analyzing the requirements of each sector engaged in the “Relevant Activities”. This is an examination of the ways in which entities operating in the various sectors might be impacted by the requirement to demonstrate substance. This is important to ensure that we safeguard sectors with significant international exposure such as banking, insurance, fund management, financing and leasing business, shipping and holding companies, for example. It also will enable us to determine ways in which to promote growth in those areas and develop in other niche areas, such as headquartering and distribution and service centre businesses, in the industry.

Addressing EU Requirements

While The Bahamas avoided being blacklisted in March of this year, discussions with the EU continue on the complete delisting from Annex II (the so-called grey list). The EU is requiring substance requirements on Collective Investment Vehicles (“CIVs”) to be codified in legislation by the end of 2019. The EU will continue to monitor The Bahamas’ implementation of reform measures to ensure compliance with the EU’s criteria. Particular attention will be given to the capacity and resources of the Competent Authority to ensure proper implementation of the legislation, an effective monitoring and enforcement regime and the exchange of information process.

Jurisdictions that were evaluated on Criterion 2.2, which includes The Bahamas, will also be expected to implement Mandatory Disclosures of Tax Schemes rules and the new Criterion 1.4 on Beneficial Ownership Transparency, by the end of 2019.

Concurrent with addressing the EU requirements to integrate economic substance and remove ring fencing elements within our legal and regulatory regime, we have also continued to carry out our work on enhancing tax transparency.

The upcoming Japanese Presidency of the G20 has promised to keep the global tax transparency initiatives at the forefront of its agenda, particularly the Exchange of Information on Request (“EOIR”) and the Common Reporting Standard (“CRS”) for the Automatic Exchange of Information (“AEOI”).

In September, 2018, The Bahamas successfully completed its first AEOI Country-by-Country reporting exchange with 36 jurisdictions. Further, our work to implement the four mandatory Actions of the OECD’s Anti-Base Erosion and Profit Shifting (“BEPS”) initiative continues to demand a large amount of our resources in terms of time, capital and human resources.

The OECD’s next frontier is addressing the tax challenges of the digital economy (which is BEPS Action 1) and there are already a number of proposals that are expected to be concluded in 2019/2020.

Engagement with the Forum on Harmful Tax Practices (“FHTP”) has also increased given the FHTP’s Peer Review of The Bahamas’ implementation of the Action 5 Transparency Framework and the review of substantial activities requirements in June, 2019. The peer review of The Bahamas’ substance measures will focus on the effectiveness of The Bahamas’ substance and beneficial ownership register legislation. The FHTP will assess whether The Bahamas is compliant with the standard, looking at whether the country’s monitoring and enforcement mechanism is adequate from the point of view of:

1. Preparedness and Capability
2. Resources;
3. Processes for evaluating compliance;
4. Ability to respond to risk issues.

The Ministry recently invited the FHTP to conduct a workshop on the review process and invited government and industry representatives to attend.

With respect to the BEPS initiative, since becoming a member of the OECD BEPS Inclusive Framework, The Bahamas has also become a signatory to the Multilateral

Competent Authority Agreement and the Convention on Mutual Administrative Assistance in Tax Matters. We have signed Tax Information Exchange Agreements with 35 countries and continue to actively negotiate with a number of jurisdictions.

The Bahamas recently signed the Multilateral Competent Authority Agreement with respect to Country-by-Country (CbC) reporting under Action 13. Technical advisors attend regular meetings of the Global Forum on Transparency and Exchange of Information for Tax Purposes and are amplifying the profile of The Bahamas at these meetings.

The Digital Economy

The Bahamas has joined the OECD Task Force on the Digital Economy which is spearheading the OECD's work on taxation of digital activity. The Bahamas was recently invited to join the joint G20/OECD Working Group 10 Focus Panel which sets the policy for the OECD's work streams on Exchange of Information and Tax Compliance. Technical advisors recently represented The Bahamas at both meetings. The second tranche of automatic exchanges of information will occur in September, 2019, and there are ongoing negotiations of tax information exchange agreements with jurisdictions.

It is no small feat keeping up with the ever evolving standards that govern the international financial community. There is no doubt that the goalpost will continue to move and there will be new demands and additional pressures on no or nominal tax jurisdictions for further reform. I hope that the enormous amount of work that is being undertaken to create policy and legislation with the right balance of business, economic sustainability, and compliance with the international standard is aptly demonstrated by the actions that the Government continues to do in both the domestic and international arena.

We remain engaged at a high level with the EU and the OECD to demonstrate The Bahamas' proactive approach to meeting its commitments. It is also intended that The Bahamas be more visible at meetings and other for a on the international initiatives to ensure that we remain apprised of new developments and trends and that we have a platform to express our views on the process. Our presence and our voice at these meetings is vital and gives us an opportunity to demonstrate our full engagement with the processes. It also enables us to develop and nurture relationships with key policy makers within these institutions. ::



Stephen Coakley-Wells

Consultant on financial sector policy

Stephen is a financial sector expert with broad international legal and financial services expertise that includes: Financial Sector Regulatory Compliance, Private Wealth Management, Capital Markets and Securities, Trusts & Estate Planning, Cryptocurrencies/ Fintech, Risk and Crisis Management and AML/CFT/ABC

As a consultant to the Ministry of Finance of The Bahamas, he is an adviser to the Minister of Finance and the Financial Secretary on regulatory and international affairs and is the Director of Regulatory and International Affairs at the Ministry of Finance. In this capacity, he is responsible for formulating and executing the financial sector's strategic priorities and overseeing negotiations with multilateral organizations and governments.

Stephen is a former Deputy Executive Director of The Securities Commission of The Bahamas and has held executive positions at blue chip financial institutions in the United States, Europe, Latin America and the Caribbean. In addition, he is a recognized thought leader on financial sector integrity, tax policy and regulatory compliance and has been a consultant on financial sector policy for governments, NGOs and institutions in Brazil, The Bahamas, Argentina, Uruguay, Bermuda and Cayman Islands.

Family Offices: Substance and Robust Governance in The Bahamas

By Linda D'Aguilar





Family offices are generally recognized as integral to the cohesive and coherent management of a family's diverse business interests in tandem with its domestic and personal affairs, and this article examines here the opportunities afforded by the establishment of such offices, the substance and governance requirements applicable to them and the advantages of establishing such offices in The Bahamas.

What is a Family Office?

A family office is a vehicle that can provide a broad range of services to the family or families it represents, from domestic administrative matters (e.g. travel arrangements, staffing and household upkeep) to sophisticated support of long-range business, tax and estate planning including the supervision of trusts and oversight of investments that may be outside the family's core operating businesses.

Reasons to Establish a Family Office

The formation of a single, comprehensive structure allows sophisticated and structured oversight of a family's overarching objectives and opportunities. Creation of centralized control and responsibility for integral functions around the family's various interests and obligations provides long term stability; equally, it affords the opportunity to undertake comprehensive succession and generational planning in a single environment.

Consolidation of oversight enhances the ability to provide specific direction as to services sought from external providers and to monitor the services received. Substantive efficiencies can be gained through strategic deployment of assets and advisors, leading to more efficient and cost-effective management. And, immediate access to integrated information from both systems and persons using consistent standards within an integrated setting facilitates the compilation of information required for internal evaluation and external reporting requirements. It also supports the active oversight and management of fiscal, residency and immigration requirements.

In sum, a family office permits the holistic overview and oversight of a family's wealth, rather viewing disparate elements in isolation from one another.

Family Offices aren't a 'one size fits all' proposition

One of the most intriguing elements about the establishment of a family office is the freedom to utilize the structural components best suited to achieve immediate and long term goals, because there aren't prescriptive requirements regarding the components of which a family office is comprised. From a simple company to a sophisticated private trust company, the planning opportunities are vast, allowing for entities which have active and passive holdings, with wide-ranging roles encompassing administrative, advisory, supervisory, fiduciary and office-holding obligations.

In fact, while the term "family office" may commonly bring to mind a structure created to assist a single family, it is equally feasible (and common) to create multi-family offices which manage the business and affairs of family groups (for example, those of several siblings) or closely knit friends, business partners and colleagues. Economies of scale have made it more attractive to consider an office which handles several families' affairs, allowing them to leverage their aggregate interests in a manner which affords access to sophisticated and professional planning on a level which mightn't have been achieved individually.

Enhancing Substance: Operations and Governance

Family offices must take into account permanent establishment, BEPs and CFC rules necessitating that physical presence and transparency requirements be respected.

To that end, The Bahamas' Commercial Entities (Substance Requirements) Act, 2018 (as amended) ("CESRA") provides a roadmap for family offices to follow in this regard. Not only does CESRA provide direction as to the level of staffing, office premises and the like which are required in order for a family office to serve as a 'headquarters' and conduct core income generating activities in the Bahamas, it also provides direction on the specific governance requirements which must be met by the family office.

Operations in The Bahamas

In order to assert that ‘core income generating activities’ are carried on in The Bahamas, CESRA requires that adequate amounts of annual operating expenditure be undertaken locally, that adequate full time employees are brought on board and local physical premises be maintained.

Families may also elect to seek regulatory oversight for purposes of enhancing transparency within the family itself as well as an additional, elective means of demonstrating substance within The Bahamas. There are a variety of licensing options available for consideration. For instance, it’s possible to assuage inter-family concerns about the administration and management of investments by the establishment of a Bahamian investment fund. Such an investment funds must be licensed and thereafter meet designated financial reporting requirements including, in certain instances, the production of semi-annual performance reports whereas in other circumstances annual audited financial statements are required. It may utilize with in-house administration or a independent third party administrator, depending on the internal availability of the requisite skills and knowledge.

Similarly, advisory roles – for the office itself or for a fund - may be fulfilled internally, but it is equally possible for consideration to be given to the establishment and licensing of an financial and corporate service provider or an independent asset management entity in The Bahamas. Parameters for capitalization and professional indemnification are set by law; physical facilities within the jurisdiction are required and, where necessary, can be satisfied through appointment of an approved representative. Reporting requirements (financial and otherwise) are also designated along with on- and off-site supervisory requirements.

Robust Governance of Family Offices and Associated Structures

While there is considerable debate and discussion around optimal forms of governance for family offices and their associated structures, it must be acknowledged that in light of recent legislative enactments such as CESRA the current atmosphere strongly favors substance over form. Moreover, the statutory and regulatory regime in The Bahamas – as well as its case law and common law antecedents - encourages the establishment and maintenance of effective governance systems within and around PTCs, foundations, funds, investment condominiums, executive entities, companies and partnerships.

If a family office elects to be treated as a headquarters within The Bahamas, in addition to the core income generating activities it must also demonstrate that there is substance as to its direction and management within The Bahamas as well. To that end, CESRA mandates that board meetings for the purpose of taking strategic decisions, among other things, be held in The Bahamas, with a quorum of directors physically present for such meetings; books and records for the family office must be maintained locally as well. CESRA also directs that the board members have the ‘necessary knowledge and expertise’ to discharge their duties.

Therefore, while family members themselves often wish to play a significant role in their family office structure, it is now immensely important that the family – and their advisors – critically assess prospective appointees to determine if they possess (or can obtain) appropriate skill sets and expertise to serve in these capacities. After all, responsible and effective oversight and regular reviews of the various activities undertaken through the family office and its structures will be a critical feature of a successful operation.

A thoughtful approach to governance – and to the substance requirements - also recognizes that it is not solely the purview of the directors, notwithstanding that such persons may have the ultimate obligation to oversee it; there are substantive functions taking place at other levels of corporate operations. The proper management of books and records through the family office is of the utmost importance, and to that end consider, inter alia, the now critical nature of adequate accounting records and comprehensive compilation of information (internal and external) required to meet multitudinous reporting requirements. Hiring qualified staff members to provide the necessary support as well as the use of third party consultants to review compliance and risk management procedures, as well

as to hone reporting skills, is on the rise in order to ensure the satisfactory achievement of the sophisticated obligations in an increasingly complex regulatory environment.

The ready availability of financial institutions, qualified professionals and skilled staff on the ground, as well as the opportunity for family members, their trusted advisors and executives to establish residence and obtain the right to work within The Bahamas, all provide a framework around which compliant, practical and effective management systems for family offices may be erected. There is certainly sufficient local resources and infrastructure to accommodate the creation of substance in The Bahamas. ❖



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Bahamas Economic Substance In A Nutshell

Introduction

The Commercial Entities (Substance Requirements) Act, 2018 (the “Act”) came into force in The Bahamas on 31 December 2018. Substance requirements are imposed upon “included entities” and “holding companies”. All entities incorporated, registered or continued under Bahamian companies or partnerships legislation are required to report annually to the Competent Authority in the applicable prescribed form within nine months of their fiscal year end.

Under the Act, an “included entity” is an entity incorporated, registered or continued under the Companies Act, the International Business Companies Act, the Partnership Act, the Partnership Limited Liability Act or the Exempted Limited Partnership Act that carries on “relevant activities”, but does not include an entity which is (i) resident and conducts its core income generating activities (CIGA) within The Bahamas; or (ii) is centrally managed and controlled outside of The Bahamas and is tax resident in a jurisdiction other than The Bahamas.

Economic Substance Requirements

To demonstrate substance in The Bahamas, an included entity must show that core income generating activities are conducted in The Bahamas and that it is managed and controlled in The Bahamas. Direction and management are required to demonstrate substance.

However, Pure equity holding companies and non - included entities that are passive holding entities are subject to reduced substance requirements.

Key Dates

Commercial entities existing prior to December 31st, 2018

No reporting in 2019 is required of commercial entities that were:

- In existence prior to December 31, 2018, and
- the entity has a financial year 2018 ending prior to December 31st, 2018 OR between January 1 - June 2019

2018 financial year end between January 1 - June 30, 2019

- No information on their substance is needed on relevant form for FY18.

- Compliance with the substance requirements not yet expected;

2018 financial year ends after June 30, 2019 (e.g. FY runs

August 1, 2018 – July 31, 2019)

- Entity would report on its substance in The Bahamas for the part of its financial year that covers the period following this date (i.e. July 1, 2019 onward)
- Report in respect of the period post July 1st, 2019 in its 2019 fiscal year report
- This would be due 9 months after 2019 fiscal year end.

Contact info@bfsb-bahamas.com for more information



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Less is
More:

Dealing with the Repeal of the CFC 30 Day Rule

By Hal J. Webb and Paul J. D'Alessandro, Jr.

The Tax Cuts and Jobs Act ("TCJA") enacted sweeping changes to U.S. international tax laws, most of which affect traditional planning techniques for multinational companies and U.S. taxpayers with foreign investments. Some of the changes, however, also affect common estate planning structures involving foreign trusts with U.S. investments owned through foreign holding companies that will be inherited by one or more U.S. persons. One such change was the repeal of the "30 Day Rule" for controlled foreign corporations. This article provides an overview of the U.S. tax issues facing trustees, corporate service providers and international private clients due to the repeal of the 30 Day Rule, and summarizes planning techniques that can be utilized to combat these issues.

Planning under Prior Law

Consider a common scenario for a cross-border family. Non-U.S. parent ("Foreign Grantor") with U.S. citizen children ("U.S. Beneficiaries") wants to leave a portfolio of publicly-traded securities to the U.S. Beneficiaries. The portfolio is held in an account in Miami and consists of various assets, including shares of publicly-traded companies incorporated in Delaware. Foreign Grantor creates a revocable Bahamas trust classified as a foreign grantor trust during Foreign Grantor's lifetime so that Foreign Grantor is deemed to own the trust's assets for U.S. federal income tax purposes. The aforementioned trust structure generally produces favorable U.S. federal income tax results during Foreign



Grantor's lifetime. Foreign Grantor is subject to U.S. federal income tax only on certain income from U.S. sources (for example, dividends received from a U.S. corporation), and U.S. Beneficiaries could receive trust distributions during Foreign Grantor's lifetime without any U.S. federal income tax consequence (other than reporting obligations).

If Foreign Grantor died while the trust owned the investment portfolio directly, U.S. federal estate tax would be imposed on U.S. situs assets in the investment portfolio (e.g., shares of U.S. companies). To protect against this exposure, the trust would typically form a foreign entity treated as a corporation for U.S. federal tax purposes ("Blocker"), such as a Bahamas IBC, to own the investment portfolio. If Foreign Grantor died while Blocker was in place, Foreign Grantor would be treated as owning the shares of Blocker (a foreign corporation) rather than the underlying investment portfolio. This way, the investment portfolio would not be subject to U.S. federal estate tax provided Blocker was properly administered so that it was respected as a separate entity.

Upon Foreign Grantor's death, the trust would become a nongrantor trust in its entirety, leaving the U.S. Beneficiaries as the indirect owners of Blocker, which would then be a controlled foreign corporation, or "CFC." A CFC is a foreign corporation which is more than 50% owned by "U.S. shareholders." A "U.S. shareholder" means any U.S. person who owns at least 10% of the foreign corporation by vote or value. In determining CFC and U.S. shareholder status, certain attribution rules apply.

The CFC rules eliminate income tax deferral by subjecting U.S. shareholders to U.S. federal income tax on their pro rata share of the CFC's "Subpart F income" each year. Subpart F income generally includes passive income and gain. Due to these anti-deferral rules, Blocker is an inefficient holding structure for U.S. Beneficiaries after Foreign Grantor's death.

Enter the 30 Day Rule

Enter the 30 Day Rule. Prior to the TCJA, a foreign corporation had to be a CFC for at least 30 consecutive

days before triggering a Subpart F income inclusion. Under the prior law, Blocker could have made a check-the-box ("CTB") election to be treated as a disregarded entity for U.S. federal tax purposes, thereby avoiding the CFC rules; however, the timing of the CTB election needed to be planned carefully. If such election were made prior to Foreign Grantor's death, it would cause the U.S. situs assets in the investment portfolio to be subject to U.S. federal estate tax as if Blocker never existed. If, instead, the CTB election were made with an effective date that was somewhere between the 2nd and 30th day after Foreign Grantor's death, Blocker would protect against U.S. federal estate tax while simultaneously avoiding taxation for U.S. Beneficiaries under the CFC rules.

If Blocker made a CTB election to change its classification to a disregarded entity, such election would cause Blocker to be treated as liquidating at the end of the day before the effective date of the election. The effects of such election would be: (1) Blocker would be treated as selling its assets for fair market value at the end of the day before the effective date of the election; and (2) Blocker's shareholders would be deemed to have received Blocker's assets in exchange for their shares of Blocker (i.e., as if they sold their shares of Blocker for Blocker's assets).

The CTB election would not trigger U.S. federal income tax consequences for Blocker. Importantly, however, the election would "step up" the historical cost basis of the assets in the investment portfolio. Additionally, provided the trust was properly drafted, the trust's basis in Blocker's shares would have also been stepped up to fair market value at the time of Foreign Grantor's death. Accordingly, there would have been little or no gain realized on the deemed sale of Blocker's shares, as only the appreciation that occurred between Foreign Grantor's death and the time of the liquidation would get caught by the U.S. federal tax net.

Planning after the Repeal of the 30 Day Rule

Due to the repeal of the 30 Day Rule, the foregoing planning no longer produces the same results. U.S. shareholders of CFCs are now subject to U.S. federal income tax on their pro rata share of any Subpart F income, even if the foreign

corporation has been a CFC for only one day. To compute the amount of the Subpart F income inclusion, a CFC's Subpart F income for the year must be prorated for the number of days that the foreign corporation was a CFC during its taxable year. This calculation takes into account the income and gain of the company for the entire time it was a foreign corporation during the taxable year, including income and gain that was realized during such year before the foreign corporation became a CFC. To illustrate, assume that Foreign Grantor dies on June 30th, survived by two U.S. Beneficiaries who are deemed to indirectly own 100% of Blocker in equal parts upon Foreign Grantor's death. Also assume that Blocker makes a CTB election effective as of July 2nd and realizes \$1 million of gain as a result of such election. Blocker is deemed to liquidate on July 1st. Accordingly, Blocker's taxable year consists of 182 days (January 1 to July 1), and Blocker is classified as a CFC for 1 day during its taxable year. The fraction of Subpart F income taxable to U.S. Beneficiaries is therefore 1/182, resulting in only approximately \$2,747 of Subpart F income for each of the U.S. Beneficiaries. Even at the top marginal U.S. federal income tax rate of 37%, this results in U.S. federal income tax liability of only \$1,016 for each of the U.S. Beneficiaries on the \$1 million gain.

As a general observation, a death that occurs later in the year will produce a smaller percentage of inclusion of Subpart F income, while a death that occurs earlier in the year will produce a larger percentage of inclusion of Subpart F income. Likewise, the amount of unrealized gain would need to be significantly higher than \$1 million to have a meaningful tax impact unless Foreign Grantor died shortly after the beginning of the taxable year. For instance, if the death occurred on January 15 and the CTB election were made effective as of January 17, the fraction of Subpart F income taxable to U.S. Beneficiaries would be 1/16, resulting in \$31,250 of Subpart F income for each of the U.S. Beneficiaries (or \$11,562 in actual U.S. federal income tax owed by each of them).

As a result, the U.S. federal income tax consequences of the single foreign holding company structure are dependent upon: (1) the amount of the CFC's unrealized gain; (2) the timing of the death of Foreign Grantor; (3) the timing of the liquidation of Blocker; and (4) the

percentage of Blocker owned by U.S. Beneficiaries. Multi-Tier Corporate Structure. In response to the foregoing dilemma, there has been renewed interest in a multi-tier corporate holding structure. In this structure, a foreign corporation ("FC1") owns U.S. situs publicly-traded securities. FC1 is, in turn, equally owned by two foreign corporations, FC2 and FC3, which are each wholly-owned by a foreign revocable trust. Via successive CTB elections, as outlined below, the intended U.S. tax outcomes are as follows.

1. FC1 makes a CTB election to be classified as a partnership, effective prior to Foreign Grantor's death. This election triggers a deemed liquidation of FC1 and produces a step up in basis for FC1's assets. Because the election is effective before Foreign Grantor dies, FC1 never becomes a CFC (because it will not be a foreign corporation after the death of Foreign Grantor). FC2 and FC3 realize gain on the deemed exchange of FC1 shares for FC1's assets; however, such gain is not taxable to FC2 or FC3 (although, as explained below, a portion of this gain may be taxable to the U.S. shareholders of FC2 and FC3).
2. FC2 and FC3 make CTB elections to be classified as disregarded entities effective after Foreign Grantor's death, triggering deemed liquidations of FC2 and FC3. FC2 and FC3 remain viable estate tax blockers, but are classified as CFCs after Foreign Grantor's death.
3. There should be minimal gain as a result of the deemed liquidations of FC2 and FC3, assuming the CTB elections are made effective shortly after Foreign Grantor's death, because: (i) the assets of FC1 received a basis step up as a result of the CTB election made by FC1; and (ii) the shares of FC2 and FC3 received a basis step up upon Foreign Grantor's death, assuming the trust included the appropriate language.

While this structure may provide more tax savings and flexibility when compared to other alternatives (discussed below), it adds complexity and may not be necessary. For example, it may cause unnecessary administrative hassles and could be costly and time consuming to implement and maintain. The structure also may not provide any benefit versus having just one foreign holding company. Specifically, gain realized by FC2 and FC3 upon the

receipt of assets in the liquidation of FC1 is itself Subpart F income that must be included in the prorated calculation, unless the CTB election made by FC1 causes FC1 to liquidate in the year prior to the year in which Foreign Grantor died. Therefore, even in a multi-tier holding structure, there is likely to be some tax leakage. Accordingly, it is typically worthwhile to consider alternative planning approaches, as outlined below. These techniques are not necessarily "new" and were also available and used sometimes prior to the changes brought on by the TCJA.

Do Not Make Changes

For some clients, having one foreign holding company to own the investment portfolio may be sufficient for various reasons. For example, the investments may never generate a large amount of unrealized gain.

Avoid U.S. Situs Assets

A simple strategy is to avoid investing in U.S. situs assets during Foreign Grantor's lifetime. A foreign holding company would not be necessary in this case, as the non-U.S. situs assets would not be subject to U.S. federal estate tax upon the death of Foreign Grantor. A foreign holding company may still be desirable for non-tax reasons, however. If so, a CTB election to treat the company as a disregarded entity could be made effective prior to Foreign Grantor's death. The foregoing strategy could result in a basis step up for the underlying assets and avoid CFC issues. Careful planning would be required to ensure that the company never owns U.S. situs assets.

Separating U.S. and Non-U.S. Assets

For those clients with U.S. and non-U.S. situs assets, segregating assets in separate foreign holding companies could be useful. This technique would allow for different timing for the CTB elections in order to maximize efficient U.S. federal income tax outcomes. For the company that owns non-U.S. situs assets, a CTB election could be made effective prior to the date of Foreign Grantor's death, producing a basis step up and avoiding CFC issues. For the company holding U.S. situs assets, the CTB election could be made effective as early as two days after Foreign Grantor's death, with

the amount of Subpart F income depending in part on the four factors set forth above at the end of the section entitled Planning after the Repeal of the 30 Day Rule. Importantly, however, this structure limits Subpart F income exposure to the appreciation in the U.S. situs assets only. This strategy may be combined with others (such as "churning") to reduce the unrealized gain in the investment portfolio.

"Churning" Assets

To reduce the unrealized gain in the investment portfolio at the time of Foreign Grantor's death, consideration could be given to periodically selling the assets in the investment portfolio and then rebuying them or other assets on the open market. Commonly referred to as "churning" or "cleansing," this technique manually steps up the basis of the portfolio assets. Provided the investment portfolio was properly monitored (i.e., periodic sales and repurchases), the resulting basis increase should result in minimal Subpart F income exposure upon Foreign Grantor's death. This potential tax benefit is typically weighed against market-timing risks and the transaction costs involved.

Alternative Structures

While this article focuses on using a foreign corporation to "block" U.S. federal estate tax, other structures may accomplish the same result. For example, a foreign partnership could be used to own U.S. situs assets. The risk, however, is that the classification of a foreign partnership for U.S. federal estate tax purposes has long remained unsettled under U.S. federal tax principles. Accordingly, a foreign corporation may still be preferable. Certain life insurance products may be useful as well.

Additionally, Foreign Grantor could create an irrevocable trust to own U.S. situs assets. Provided Foreign Grantor did not retain any impermissible powers over the trust, such trust could serve the same U.S. federal estate tax benefits as a foreign corporation. The downside, however, is that the portfolio assets will not receive a basis step up at Foreign Grantor's death (although other strategies could be utilized to accomplish that objective).

Conclusion

Although the TCJA may have eliminated planning techniques that were previously available under the 30 Day Rule, plenty of options remain viable. While these options vary in complexity and potential tax savings, advisors and fiduciaries should not discount some of the simpler approaches, which could produce the desired outcomes without incurring unnecessary costs and aggravation. ❖

This article is for general informational purposes only and should not be viewed as legal advice. The views expressed herein are those of the authors and should not be attributed to the authors' firm or its clients. Advisors and their clients should consult with qualified U.S. tax counsel before implementing any of the planning structures discussed herein.



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Hal frequently deals with foreign trusts with U.S. beneficiaries, pre-immigration planning for foreigners moving to the U.S., large gifts and inheritances being received by U.S. persons from foreign persons or foreign estates, tax compliance and voluntary disclosures, structuring a foreign person's investment into the U.S. (particularly the acquisition of business interests and residential and commercial real estate), and expatriation planning. He also handles matters involving tax planning for foreign companies doing business in the U.S. Hal's technical expertise helps him tailor a solution which best fits the needs of his clients. Hal is discreet and highly professional.

Hal is a frequent author and lecturer on various topics of international tax and estate planning. Additionally, he is former Chair of the International Tax In-Bound Committee of The Florida Bar Tax Section, and a Past Chair and Director of the Miami Branch of STEP. Hal has consistently been recognized by legal publications and by his peers as being a top tax and estate planning lawyer, including being named in Chambers and Partners, Best Lawyers in America, Florida Super Lawyers, Best of the Best USA, Citywealth Leaders List, Legal Week International Trusts & Private Client Elite, and Guide to the World's Leading Trusts & Estates Practitioners. Hal earned his J.D. from Widener University Delaware Law School, and his LL.M. from the University of Florida. He received his B.A. from the University of Miami.

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Latest trends and issues of the global brokerage industry

Over the past year, the trading industry has made a qualitative leap forward. We suggest figuring out which challenges the professional industry players will encounter over the next year, as well as which trends to develop in order to meet the highest expectations of modern traders.

CHALLENGE: "TRADING AS GAMBLING" IS A THING OF PAST

Two to three years ago, the attitude towards trading as gambling among the Internet users was in the order of things. The main criteria in favor of choosing a brokerage company was the Welcome bonus or the

Deposit bonuses, as well as all sorts of contests on demo accounts, trade volume battles, and other fast and low-quality trading stimulants.

Now, all that is a thing of past: traders understand that they need to work out the virtual welcome bonuses and tempting increases of the deposit are not allowed to withdraw profit freely.

Of course, there are still some traders who are greedy for an attractive shell but they are being replaced by professional investors who want to engage in serious trading, which has nothing to do with online casinos.

Trend solutions

Welcome test instead of welcome bonuses

Bonuses has become a bad form, giving way to the official industry licenses that prohibit such methods of stimulation. The brokerage companies changed the orientation, offering their services to serious clients with professional prospects, not one-day players.

One of the illustrative trends are the questions regarding previous trading experience. They are asked during the filling out of the account opening form due the motto of the modern brokerage companies is "Trade responsibly": the future client must approach trading on the financial markets consciously.

Free Affordable Education

Modern traders are highly motivated people who begin to treat trading as a profession. If earlier the inexperienced trader registered the account first, then lost his first deposit (because he had absolutely no idea how to manage it) and only then started to study, now this scheme works differently. A trader needs to gain the knowledge first, then open an account, then train on the demo, and only then – enter the real market.

All that is facilitated by the versatile free online education about financial markets, which is constantly being improved by the brokerage companies. E.g., one of the most popular formats are the interactive videos in social networks. Today, the quality of these materials – but not the bonuses availability – is one of the arguments in favor of choosing one or another broker.

CHALLENGE: NEED FOR SPEED

Megapolis residents impose new requirements for trading. Now they don't want to sit in front of the monitor for an extra hour, tracking the assets' quotes. Their dynamic rhythm of life dictates its own rules: they listen to business radio on their way, watch the mobile charts in a lunchtime, want to receive push notifications about the most important economic news, manage trading accounts on-the-go, and open trades in milliseconds.

If the brokerage company does not fall into the rhythm of life of a modern business person, it turns out behind the industry borders.

Trend solutions

Ultra-fast execution

The most advanced type of modern brokerage company is NDD, means that all traders' transactions are executed without dealing intervention and conflict of interest with ultra-low latency datacentres. As a result of such cooperation, brokerage companies can offer traders the best 'bid and ask' prices possible in conjunction with dynamic leverage.

Mobile apps interconnection

Also, taking the total mobilization trend into account, brokerage companies try to determine which trading tools are used most frequently by traders and eliminated any redundant, unnecessary features, creating useful browser extensions and the mobile applications for iOS and Android. In such applications, you can configure push-notifications, get the most important information in a couple of clicks, as well as go over to another app of this broker. For example, an interconnection is used to be created between the account management and trading tools apps.

As a rule, the account management app has at its core the branded online wallet (deposit vault). Usually, it can be topped up via different payment methods.

There are already appearing applications that allow completing a multistage and previously complex client verification in several minutes, without a tedious wait.

Information concentrate

Speed also applies to the ways of info obtaining. Among the modern options offered by brokers are channels and infobots in messengers, accelerated educational options in the form of online cards and short videos, and a daily digest of key economic news (via email/WhatsApp, etc).

Professional Trading Signals

Traders spend a lot of time analyzing the market, creating their own forecasts and building a daily technical strategy. The difficulty with that lies in trying to keep on top of all the current news and events, especially if trading is carried out using several instruments at once. Third-party analytic can help with this issue but in order to use it, a trader needs to be confident in its quality and reliability.

Modern brokerage companies provide non-stop analysis and trading signals on all the assets available. They prepare the statements either on their own, at the expense of the internal analytical department, or they provide clients the access to the information packages of the largest world agencies. That is no longer a luxury but a necessity.

Such a service should provide a view and explanations on a range of instruments gathered via different sources: from graphical patterns and monitoring of levels to analyzing the values of almost all indicators available on the MT4/MT5 platforms.

Now there is a trend that such a system is used to provide Forex technical analysis online and gives intraday and long-term forecasts. A significant part of market analysis is detected by such systems automatically. However, high-level forecasting is impossible without a team of professionals. They typically use the most advanced tools in the industry to gather all the comprehensive and in-depth information. Their decisions are based on building price corridors and resistance levels, digital and graphical indicators for various classes, as well as recognizing candlestick patterns.

CHALLENGE: ERA OF AUTOMATED TRADING

More and more traders are beginning to understand that one of the main reasons for profitable trading impede is the human factor. Emotions, events of the day, nervous environment – all that contributes to open the impulsive trades.

The modern world is a world of robots controlled by intelligent and attentive people. In 2019, clients expect from trading the same.

Trend solutions

Multiplatform trading

First, a modern broker seeks to provide not one-two but at least three-four trading platforms that are suitable for different needs and trading styles.

Of course, even in the “new world” the most popular ones still are MetaTrader4 and MetaTrader5, since they are already well studied: there are a lot of professional

groundworks, proven strategies, and video tutorials. Plus, these platforms offer to trade with the competitive floating/fixed spreads, powerful technical indicators, and wide EA’s environment.

Custom trading robots

In 2019, cTrader is definitely one of the most progressive platforms. It includes an advanced algo- and technical indicators coding application cTrader Automate that allows to create and build algorithmic trading strategies and custom indicators. It features its own code editor so the trader can create own robots and test how they perform over the historical data.

cTrader Automate (cAlgo) is now seamlessly integrated with cTrader and provides an all-inclusive trading solution. Clients can build own robots and custom indicators in the universal C# language. cAlgo also features advanced optimization and backtesting capabilities that allow to determine the best parameters for any strategy.

It’s rather simple to learn how to add robots to cAlgo and how to integrate them into the client’s cTrader platform.

Virtual Private Server

One more tool to auto trading is VPS. The Virtual Private Server enables to upload and run MT4 Expert Advisors 24 hours a day, without a necessity to keep trading terminal running. The client can completely automate his trading and benefit from significantly reduced latency and no downtime. For example, at FxPro, Virtual Private Server is provided by BeeksFX, a global leader in VPS infrastructure with an established record of providing low latency solutions: 1300 MB RAM / 1 VCPU, 25 GB Disk Space, Windows 2012 / 2008, Linux Servers. Trades are executed at one of Equinix Data centers in either LD5 London or Amsterdam. Trading servers are co-located and cross fiber connected with Tier-1 banks who provide liquidity via proprietary aggregator.

CHALLENGE: RELIABILITY CRISIS

Over the past year, almost every major brokerage company has faced the problem of the emergence of clone sites. In addition, unfair advertising misleads and transfers the client to unverified resources, making it difficult to carry out transparent and honest branded activities.

The number of such incidents undermines the credibility to the professional market players. Hence the actual issue to confirm the reliability of the original company, its level, and quality of services provided.

Trend solutions

Regulation expansion

Any brokerage company that sees its core mission as the provision of accessible service to international clients has to pay great attention to the legal aspects.

Multiregulation is an essential feature of the modern trading business and can be seen as a measure of the reliability of a company. An established international company always strives to legitimize its activities in any given region and ensure the highest protection for clients' deposits before offering its product to the market.

License of the Bahamas

There is a trend that professional market participants are starting to pay attention to a series of key aspects that made global brokerage companies to choose this jurisdiction.

Among them are the rather reasonable business rules and the excellent reputation of the SCB. Moreover, the government is guided by the global anti-laundering policy and strictly adheres to Common Reporting Standards (CRS) established by the Organisation for Economic Cooperation and Development (OECD).

From an executive point of view, the Bahamas offers ample opportunities for effective marketing campaigns as well as an expansion of service offering.

As a result, such a regulation has a positive effect on the quality of the broker's business and provides customers with additional proof of service reliability and security.

CHALLENGE: INCREASED COMPETITION

When a company moves to a professional level, it already begins to compete with completely different players than before. Different PR and a different level of communication are required.

Trend solutions

Global influence

The brokerage companies' influence begins to spread to all the dynamic areas of life. For example, modern brokers prefer to support large international sports projects, such as Formula 1 racing.

This is a prestigious investment because it allows not only to tell about the company to the whole world but also to contribute to international sport. In addition, large brokers often have their own teams: the most popular is sailing, football and volleyball ones.

In addition, brokerage companies are trying not only to make a great product but also to confirm its quality with the international awards. Their number proves the global independent recognition. Also, the Award organizers usually conduct an in-depth review of the company's services with the detail and objectively describing of all the products.

Media coverage

There is a real struggle for the Google News mention. If it is almost impossible to squeeze into global search, brokerage companies start to publish their analytics on the local resources, which make it easier to reach the target audience in a particular region.

With the same purpose PR-departments are switching from the collaborations with large bloggers to the cooperation with micro influencers, due to subscribers trust them more. Plus, the level of reliability of such a publication is higher, since micro influencers will not advertise the product they don't like, worrying about the reputation, – and the audience knows about it.

Live broadcasts

Another interesting way of communication is live trading broadcasts when viewers can follow the experienced analyst's actions, ask questions, conduct parallel analysis and receive recommendations.

The two-level webinar formats work perfectly: the first part is open for everyone, and the second one with more practical information is available to the clients only. This encourages traders to join the professional community.

Own-hosted analytical website

International brokers caught the trend of the independent informational platforms creating. The main purpose of such websites is a comprehensive assistance to traders in their day-to-day analysis. For the same purpose the world's largest brokers provide clients with the opportunity to receive free technical signals from global analytical agencies in form of online widgets.

At the same time, managing several blog spots on the popular platforms gives the opportunity to affect different layers of the target audience.

CHALLENGE: SECURITY AT RISK

In the modern world, the data security issues become more and more threatened. The hackers' skills are growing, so, the industry needs new levels of info security and adherence to the anti-laundering policy.

Trend solutions

Mobile-Desktop joint verification

Even if the client starts to register via the desktop, he needs a smartphone in order to get SMS, take a selfie or make a video (on which he performs simple actions on system request – for example, read the sequence of numbers aloud). Now, it will not work to receive a message to a one-time online number, as fraudsters could do before. This time trader needs a real SIM-card and a real smartphone to go through the verification procedure: the link, sent to the SMS, does not open on the computer.

It can be said that over the next year we will see a quality-new industry, in which there will be more major serious players and far fewer companies that are not ready to the healthy competition with the giants that have reformed this market for a dozen years. ::

The FxPro Analyst Team

Founded in 2006, FxPro is an industry-leading online broker that offers CFDs and Spread Betting on Forex, Shares, Futures, Spot indices, Spot metals and Energies to clients in 170+ countries.

Over the years, the company has built a reputation as a trusted and reliable broker, committed to transparency and that champions the adoption of fair and ethical trading practices.

FxPro has received consistent recognition for the quality of its services as “Best FX Provider” and “Best Tablet Application” at the “Online Personal Wealth Awards 2019”. The company has already been awarded this prestigious title four times before in 2014, 2016, 2017 and 2018, adding to the FxPro Trophy Cabinet which has more than 60 UK and International awards.



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Aviation & Financial Services Linkages

By Michael F. I. Allen

A wonderful place to begin is the awareness The Bahamas has developed, as a responsible and progressive financial services industry which is managed in an environment of political stability. The Bahamas is known for maintaining best practices and internationally recognized standards in financial services. It is also positioned in an enviable location at the cross roads of the Americas and the Caribbean and is used as a gateway to Europe. The Bahamas also operates a credible aviation sector; holding a Category 1 rating by the United States Federal Aviation Authority. These are the prevailing fundamentals in The Bahamas. Together they foreshadow The Bahamas as being an enduring premier jurisdiction of choice for accessing the best in both financial and air transport services. Collectively these fundamentals augur well for the ongoing recognition of The Bahamas as a leading jurisdiction, uniquely suited and ably positioned to capitalize on valuable and lasting linkages between the aviation and financial services sectors.

What could possibly be a crucial part of the focus for the next generation of Bahamian economic activity in the context of a competitive global environment for international trade and where there are persistent demands for innovation in the development of commerce? Strong indications are that the focus will involve The Bahamas' aviation sector. The aviation sector is readying itself for breaks off and wheels up as it advances en route to a space of expanding opportunity; leveraging a tradition of stability and innovation established by The Bahamas' exceptional brand of financial services.

On the 17th December, 2017 the Minister responsible for Financial Services brought into effect the Commercial Enterprises Act, 2017 (the "CEA 2017"). The CEA 2017 granted concessions to specified commercial enterprises established by either (i) a Bahamian, (ii) a non-Bahamian with an investment of not less than two hundred and fifty thousand dollars or (iii) a joint venture or partnership between a Bahamian and a non-Bahamian. Specified commercial enterprises included the business undertakings or services related to aviation registration. Statutory concessions were also created for the establishment of aviation approved maintenance operations.

The CEA 2017 signaled awareness within the government of a potential economic value inherent in the aviation arena that is largely undeveloped. An enhanced world class aircraft registry for both the domestic and international markets, along with state of the art aircraft maintenance facilities were specifically targeted as a focus for an exciting new initiative directed towards a largely unexploited theater of commerce. The initiative is set to transform the aviation sector into a more visible and contributing component to the Bahamian financial services sector; a sector which continues to undergo somewhat of its own renaissance, necessitated by global dynamics impacting the country's economic machinery which is driven significantly by financial services and tourism.

In the aftermath of the commencement of the CEA 2017, some five months later, on the 30th day of May, 2018, the Deputy Prime Minister, who was also the Minister of Finance, during his 2018/2019 budget communication pronounced in the House of Assembly that the government was eliminating the duty on airplanes and helicopters in an effort to build an airplane registry industry within the country. By so doing, The Bahamas government reaffirmed its commitment, among other initiatives, to capitalize on the unexploited potential for economic expansion within the aviation sector. It marked an apparent shift in the government's thinking, away from aviation existing simply as a service-related appendage to the Ministry of Tourism or the Ministry of Transport (as the case would be from time to time), towards a perspective that the aviation sector has its own significant commercial promise with the capability of supporting the financial services sector.

In the months following the elimination of customs duty on airplanes, the government commissioned a committee to advance its twin initiatives of i) effecting enhancement to the aircraft registry of The Bahamas and ii) The Bahamas' accession to The Cape Town Convention on International Interests In Mobile Equipment On Matters Specific to Aircraft Equipment ("The Cape Town Convention").

At the time of writing, progress with both initiatives is well underway. The Bahamas is trending towards launching an enhanced aircraft registry designed to attract first-class

aviation operators, high net-worth individuals, heads of state, multinational corporations, commercial operators and others wishing to take advantage of a premier aircraft registry operated in a favourable jurisdiction. Additionally, the ascension to the Cape Town convention will bring The Bahamas in line with other competing jurisdictions and will position The Bahamas to provide internationally recognized standards of predictability and enforcement to financing and leasing transactions involving aviation assets. It will also make available the opportunity for airlines of The Bahamas to receive a reduction in certain exposure fees on asset based financing transactions.

The Bahamas' creation of a first class aircraft registry and the harmonizing of its laws, in keeping with internationally recognized standards for facilitating asset based financing of aircraft assets, provides the framework within which The Bahamas may position itself as a jurisdiction of choice for finance lease arrangements; particularly having regard for its tradition of providing best in class international banking services. Central Bank licensees may now give serious consideration to developing and/ or expanding their client investment portfolios with underlying aircraft related assets. At the ready, is a treasure chest of well understood and frequently utilized financial services products which remain on offer by reputable and experienced Bahamian based service providers.

From an investment sponsor's perspective, the goal is always to link investor funds with a structure designed to generate a reliable stream of revenue. In the aviation world it typically involves matching investor funds with aircraft users, whether they are private owners for general aviation purposes, business jet owners and operators or users of airliners. The Bahamas is well placed to meet the requirements for supporting viable structures for the acquisition and/or use of aircraft by such users.

The process may sometimes commence with the creation of investment funds as vehicles to receive investor funds and from which investor funds may be invested. Well-regulated corporate vehicles supported by a reputable legislative framework, along with the employment of trust structures may also feature in the desired investment structure. Further, the parties to commercial transactions may well take comfort from The Bahamas' recognition

of enforceable rights and obligations established under English and/or New York law security documents. Such rights and obligations may, if necessary, be subjected to adjudication by internationally recognized judicial tribunals. As a matter of Bahamian constitutional law, an appeal in commercial matters from the Bahamian Court of Appeal lies to the Judicial Committee of Her Majesty's Privy Council.

When the requirements for viable aviation investment structures are matched with what is available in The Bahamas to aid investors in the creation and administration of their investment structures, what is revealed is a collection of potential linkages between aircraft finance, aviation related commercial activity and the financial services sector. The financial services industry encompassing financing institutions, fund managers, lawyers, accountants, corporate and financial service providers, along with insurance brokers and underwriters will be among the primary beneficiaries of a burgeoning sector. The unavoidable trickledown effect will in the end benefit the community at large.

It may also be noted that for the international investor the proposed aviation and financial services offerings when married to the Bahamas' natural beauty, its strategic geographical location, and its history of political and social stability will provide an alluring enticement for investors to consider a deepening relationship with The Bahamas; possibly providing for foreign investment in second homes and a place for the creation or relocation of a base for the family office.

When the potential and possibilities for expansion within the Bahamian aviation sector are considered from high altitude, it cannot be overlooked that The Bahamas is, after all, an archipelagic country with islands, cays and islets, some 700 in number. They are largely underdeveloped. Many are little known and some are considered to be jewels of the hemisphere. It may reasonably be surmised that the inevitable future of The Bahamas lies in its development and utilization of strategies for providing access to what are currently remote and pristine locations within its interior. Access will need to be in a manner consistent with levels of comfort and efficiency demanded by sophisticated local and international travelers. This

is by its nature a consideration and a challenge for the promoters of the jurisdiction; including government and private sector enterprises that are committed to realizing the full economic potential of The Bahamas for the mutual benefit of the Bahamian people and willing investors.

As a fundamental position, the interaction with the Bahamian aviation industry by both Bahamian and non-Bahamian investors will need to be guided by Bahamian aviation professionals who appreciate the sometimes complex and esoteric environment of aviation law, regulations and treaties. It remains critical for The Bahamas, as a responsible member state, participating in international aviation treaties, to maintain ongoing observances of the rules and obligations under such treaties. Honoring its obligations and preserving a healthy aviation sector will go hand-in-hand with a responsible policy for developing The Bahamas through aviation activity.

Certain areas of The Bahamas are yet to be fully explored and experienced. These areas await the creative involvement of local and foreign investors engaging both Bahamian and foreign aviation and financial services professionals; working together to provide investment structures specially crafted to comply with first world aviation and financial services requirements.

So what sparks the imagination leading to the end result of unleashing for The Bahamas a burst of sustainable economic activity? Perhaps one answer is the possibility of private sector investment in aviation, geared towards the opening of new travel routes to uniquely picturesque locations. The scenario envisions destinations with accommodating facilities made accessible by the creation of well-placed water aerodromes, heliports, the more familiar land based general aviation airfields, or larger commercial airports, each designed to suit the requirements for the destination. High-end resorts in remote locations may proliferate and become supported by service communities in relative close proximity. Such resorts and communities may be fueled and sustained by airlift in a Category 1 rated jurisdiction. Aviation and financial services are a winning combination and the prevailing fundamentals, in both the Bahamian aviation and financial services sectors inspire an outlook which is decidedly positive. ❖



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Michael F. L. Allen is a partner in the law firm of Higgs & Johnson and is chair of the firm's aviation practice group. He was an inaugural member of the Board of Directors of The Bahamas Civil Aviation Authority and currently serves as chairman of The Bahamas Air Transport Advisory Board. He was appointed chair of the government commissioned Aircraft Registry Steering Committee mandated to facilitate implementation of enhancements to the Bahamas Aircraft Registry and to facilitate the effective implementation of the Cape Town Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment. He is a former chair of the Bahamas Financial Services Board and the author of publications on Aircraft Finance: Regulation Security and Enforcement and also Aircraft Liens and Detention Rights.

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Through My Eyes: Bahamas fund administration is finding relevance in a new dispensation

By Antoine Bastian

The Building Blocks of an Industry Rediscovered
For a little over two decades now, the financial services sector of The Bahamas has seen a transformation— what was once considered simply as a vibrant and lucrative environment for professionals that was critical and central to our economy has evolved into what is now viewed by many as a highly regulated, stringent and costly. Early on, we were taught in elementary school that the building blocks to the Bahamian economy were tourism, financial services and construction. From the most formative school years, the financial services industry was a popular field for many young Bahamians. Not for the reasons citizens of some onshore countries might conjure up, but for a few simple ideals: it could lead to a career that fostered one becoming a global professional, it was profitable for one and one's family and most importantly it could enrich the individual and their families without the compromise of tainted

business, i.e. it was legitimate and honest money-making. With time the winds of change driven mainly by global regulation has shifted the sector and created an opportunity for the revisiting of the Bahamian narrative as it relates to financial services.

The reason the financial services was a second pillar of the economy was because it was not undergirded by any nefarious activity. Rather, it provided an opportunity for a young nation to empower young professionals. Countries like The Bahamas that once bolstered its economy on its financial services industry thanks to privacy laws and tax neutrality, since that heyday, have become malignant to onshore and large financial services jurisdictions. Despite our history of securing client's privacy The Bahamas has now seriously and intentionally acquiesced to global initiatives against harmful tax practices and tax avoidance. As students

eyeing our place in the society and charting a course for professional development, we could all sing harmoniously the 1-2-3's of the economy in a very syncopated calypso beat; but new times have brought on new changes and new observations. We now sing from every street corner, in more of an Anglican chant, and bemoan the fact that the financial services industry is dead! How is this possible? It's the second pillar of the economy; it can't be dead. I really don't think that it is! Today, after nearly fifty years of Independence, more than three hundred years of sovereignty from British rule and over five hundred years since Christopher Columbus, our country and its financial services sector still remains relevant. The Bahamian financial services industry today is not dead; it is simply different from the one we knew.

Sweeping Regulatory and legislative changes

The Bahamian government, the financial services sector and industry regulators have and continue to make sweeping regulatory and legislative changes to ensure that our second pillar of the economy remains a compliant industry and The Bahamas, a respected jurisdiction. The primary purpose for these imitative changes were based the USA Foreign Account Tax Compliance Act (FATCA) and The Common Reporting Standard (CRS) which was developed in response to the G20 request and approved by the OECD Council on 15 July 2014.

The Bahamas is committed to cooperating with its international counterparts in the elimination of harmful tax practices. This is evidenced by our implementation of The Common Reporting Standard for the Automatic Exchange of Information and entry into the Base Erosion and Profit Shifting (BEPS) Inclusive Framework. It is accepted that harmful tax practices can negatively impact countries in numerous ways. Whether it is social assistance programs or government agencies having their maintenance budgets reduced, in the grand scheme of things, insufficient tax collection means less money to reinvest into nation building.

To understand the value in The Bahamas as a jurisdiction and our financial services sector, we must not see

heightened regulation and compliance requirements as roadblocks but rather as building blocks. Notwithstanding all of the efforts above, what I have seen, admittedly from an investment fund administrator's perspective, is that the promoter and investors of funds have always tended to possess a more pragmatic and practical approach to tax efficiency.

It was never popular in The Bahamas or at Genesis Fund Services to use fund structures for pure tax avoidance by high net worth individuals and multi-national corporations. For instance, as fund administrators here in The Bahamas, tax efficiency was and remains a necessary factor in the approach for setting up investment funds; although it has not been the only reason. When a non-US investor wants or desires to invest with a US fund manager, in a US domiciled structure, a Bahamas base fund is ideal as a go-between because The Bahamas based fund is not a taxable structure. For example, the investor can invest directly in the US vehicle but they would be subject to both US taxes (on the income of US vehicle level) and also be charged relevant taxes of their home country (at the investor level). When the investment is passed through a Bahamian fund and then subsequently invested with the US manager, the earnings passed to the fund will not incur additional taxes because the investments in the Bahamian Fund are not taxable. These investors would therefore avoid paying double taxes while benefiting from global expertise in the management of their assets.

Some say that this is a unilateral benefit to the investors, however, because of this advantage, investors are able to participate in markets that otherwise might not be cost effective. Consequently, onshore countries benefit as well because the investment manager, investment management firm and its staff, perhaps domiciled in New York or Connecticut, will pay taxes on the earnings of the firm and employees will pay taxes on salaries earned. Using the same fund example, the custodians, law firms and prime brokers who are all generally onshore in the U.S. and some other jurisdictions, also benefit by employing numerous individuals to meet the demand of the Bahamian fund, and similarly pay taxes on returns and earned salaries.



Volatility an issue in some countries

Another reason for investors to consider structures such as Bahamian funds lies in the volatile political history of some countries. Investors who are citizens of Latin America or Europe may have experienced political unrest firsthand or are aware of their country's history, thus they are aware that their country's political landscape is precarious and can shift swiftly due to civil unrest, dictatorships and the like. The reality of those past times led individuals to safeguard the hard earned wealth of their former generations. Today, that history encourages investor to do the same. This has also traditionally been a key reason why vehicles of countries such as ours have been used.

As a wealth management alternative center, The Bahamas has had a continuous and an uninterrupted democracy with financial laws dating back to the early 1900s. Therefore, safety of investors' assets through strong legislation, the avoidance of assets being confiscated by unscrupulous governments, and not the avoidance of taxes, have been of utmost importance. It is therefore also safe to say that the aim for many investors being in The Bahamas is not to avoid taxes but rather to operate efficiently in an environment within a strong regulatory framework and a stable political government. As demonstrated through our commitment to FATCA and CRS initiatives, The Bahamas has been very intentional about tax transparency.

U.S. considerations

From a US investment perspective, an investment fund such as that created in The Bahamas fund is critically important. Firstly, US tax exempted investors like foundations and endowments often use such fund vehicles to avoid unrelated business taxable income (UBIT). Tax exempted investors may be subject to certain US federal income taxes when income is derived from activities unrelated to their activities; however, using a fund structure like a Bahamian Professional Fund or a Bahamian feeder can eliminate the UBIT, as corporations would not be subject to this tax.

Secondly, Non-US companies or individuals investing directly into a US domiciled fund may be subject to US withholding taxes and would also be required to complete the requisite tax forms to retrieve the withholding along with support. This can sometimes be onerous and also directly expose directly a Non-US person to US tax authorities. An investment made through a Bahamian fund keeps the anonymity by completing the tax forms at the fund level.

When setting up an investment fund in an international financial centre such as The Bahamas persons can be assured that jurisdictions such as ours have been successful, not because of tax avoidance schemes, because of our expertise, sound regulations and the attributes of our location overall which include being cost effective, flexible and swift in birthing investment funds from conception to trading.

Transparency leadership

From the outset of The Bahamas Mutual Fund Act, 1995 and The Bahamas Investment Fund 2003, industry stakeholders bore the regulatory responsibility for Know Your Customer documentation and ongoing due diligence, and despite the negative perspective of many, our jurisdictions have been leaders in a transparent industry.

Some industry professionals believe that there is no longer any use for funds from jurisdictions such as ours in Europe. While I can admit that over the last several years we have experienced challenges, this is perhaps the result of many misconceptions regarding international financial centers like The Bahamas. In response to these challenges, The Bahamas has introduced legislation for the cooperation of Bahamian funds (similarly to Cayman and other international financial centres) and fund managers, with regard to their connection to the European Union on Alternative Investment Fund Managers and Directives ("AIFMD"), Alternative Investment Funds Managers (AIFM), Alternative Investment Funds (AIF) and AIFMD Custodians.

The legislation is strategically drafted to make the appropriate legislative changes that mirror AIFMD and

thus when enacted, should allow eligible AIFMs, domiciled in The Bahamas, to market AIFs to EU-based professional investors.

As an important pre-requisite to this initiative, the Securities Commission of The Bahamas (“SCB”), has established Memoranda of Understandings (MOUs) with EU members through the supervision of the European Securities and Markets Authority (“ESMA”) on behalf of EU Member States. With the enactment of the legislation, “The Bahamas and Bahamian AIFMs and AIFs Act”, Bahamian AIFs should be treated in the same manner as EU domiciled funds and the marketing of Bahamian AIFMs including hedge funds, private equity and real estate funds should be allowed in the EU.

In the context of the European market, the case for Bahamian funds is further enhanced by the introductions of “substantive presence” legislation. For funds in The Bahamas, this means that a fund manager who desires to be in the investment management business should have meaningful physical presence in the country. Of course this is important for the safety of the jurisdiction and for proper investor protection. Those that want to occupy in this space should no doubt be regulated and have a nexus that can be substantiated, not just one that is attractive on paper. It is important to note that The Bahamas has taken on this element of funds business in a serious way and put legislation in place because it is important to take a proactive role in safeguarding our jurisdiction and industry. It is not a reactive stance.

With the attrition of service providers in the fund space in jurisdictions such as ours, due to high operational cost and mergers, the industry has been left, in my opinion, void of emerging fund management talent. When I started in this business in the late 90s, we provided fund administration for many commodity trading advisors who were able to open an account at a commodity broker, setup a Bahamian investment fund quickly and develop a track record. When the track records were positive, they attracted many

clients and some grew to sizeable funds. Those that did not have positive track records fluttered for a few years and eventually closed. Fund offering in The Bahamas still offers this.

The setup of funds in the European Union fund centers comes with its own unique challenges. The belief that the use of jurisdictions like The Bahamas will become obsolete is a myopic view.

Fund structuring

Now that a better understanding has been established of how The Bahamas manages its position in the market as viewed by some of the larger developed countries, the next consideration is how does The Bahamas then compete with jurisdictions like Delaware, the UK, Luxembourg that are supposedly onshore and wield super powers in the fight against perceived harmful tax practices. The answer lies in fund structure. With the introduction of The Bahamas Strategic Alternative Mandatory Regulatory Testing Funds (SMART Funds) in 2003, it was a surprise that these less formal funds for closely related parties were not used regularly from the beginning. This use of this structure was spurred by the 2007-2008 Financial Crisis and the Bernie Madoff scandal, not for tax avoidance but for safety. Family offices that used Fund of Funds and managed accounts simply needed a structure that had transparency and also that they ultimately controlled. Further it had become difficult for individuals to open accounts with prime brokers and the easiest way was through a regulated structure. Hence, in The Bahamas, the use of SMART funds grew and “funds of one” became increasingly popular.

SMART funds allow a bespoke and boutique methodology was not previously available in the past. The family office or high net worth individual are now able to choose their service providers including real auditors, and even more importantly, verify the portfolio and clearly measure the risk and return in comparison to its own objectives.



It is true the financial services industry of The Bahamas is not the same as it was two decades ago. Many of its participants have changed and the tools in its arsenal have also changed; but it has all been for the better. We have made tremendous moves to not only remain a central global financial services country, but now with the same level of compliance. In many instances, The Bahamas is more compliant with these global regulations than some countries of the EU or some states of the U.S.

Ongoing rediscovery and reinvention

Long after the imagination of our elementary school years, the financial services industry in the Bahamas has seen great transformation. The world is not stagnant and neither are the Bahamian people; as the world changes, so will we, adapting where we must in order to endure.

Clients will continue to be serviced by highly educated Bahamian professionals committed to transparency and the overall growth of this industry.

Our service providers will continue to provide outstanding services that are comparable to any other jurisdiction while remaining flexible and nimble, adapting where we must.

Ultimately though, there is an indelible commitment to not let this second pillar fall; as industry professionals at Genesis Fund Services, and The Bahamas at large, we will continue to rediscover and reinvent ourselves so that the product and service we offer to our clients will continue to provide us with an opportunity to play on the world's financial services playground. ::



Antoine Bastian

Managing Director, Genesis Fund Services

Antoine Bastian earned his B.Sc. in Accounting from Indiana University in 1989 and qualified as a Certified Public Accountant in 1993. He began his career in 1990 with Deloitte & Touche LLP. From 1993 to 1995, he was a Mutual Fund Administrator with MeesPierson Fund Service (formerly Fund Service International, Limited). Subsequently, he managed St. Matthew Investment Fund Accounting Limited., a Bahamian fund administrator that was associated with Michael J. Liccar & Co., CPAs of Chicago, Illinois. In 1999, he joined The Private Trust Corporation Limited as Manager of the Mutual Fund Department and was appointed to the Board of Directors in 2001. In September 2002, Mr. Bastian was appointed as Managing Director of Genesis Fund Services Limited, a licensed Investment Fund Administrator. Mr. Bastian is a Founding Member of the Bahamas Association of Investment Fund Administrators and works actively with the development and promotion of fund administration.

An aerial photograph of the Bahamas coastline, showing several small, dark islands surrounded by shallow, turquoise water. The water transitions from a light, milky blue near the shore to a deeper, darker blue further out. The sky is a clear, pale blue. The overall scene is serene and beautiful, highlighting the natural beauty of the islands.

The Overall Bahamas Value Proposition

By Francesco Vanacore



The Bahamas is a leading wealth management jurisdiction with robust regulatory compliance standards and a solid legal landscape comparable to those of the major financial centres across the globe.

Some of the world's most respected banking and financial institutions have made The Bahamas their key operations base. Therefore, the country recognizes the inherent value in being responsive to evolving international market requirements and the needs of High-Net-Worth (HNW) private citizens.

Some of the reasons for The Bahamas' success with HNW Latin American families include:

- **ONE OF THE CARIBBEAN'S MOST EXPERIENCED FINANCIAL CENTRE:** Committed to international business and finance since the 1930s.

- **WELL DEVELOPED TALENT POOL:** More than 6,000 financial services professionals that promote and administrate key products and services.

- **VESTED INTEREST:** The Bahamas regulatory bodies, law firms and service providers are committed to ensuring that the country remains a robust, innovative and leading offshore financial services centre.

- **INNOVATORY APPROACH:** The Bahamas continues to create new and robust products and offerings to meet the needs of HNW families.

- **CONFIDENTIALITY:** Respect for confidentiality coexists with the best compliance standards which are comparable to those of major financial centres across the globe.

- **STABILITY AND RULE OF LAW:** A sovereign nation with independent judiciary, The Bahamas has one of the oldest uninterrupted parliamentary democracies in the western hemisphere.

- **QUALITY OF LIFE AND SECURITY:** The Bahamas offers a stable, safe and luxury lifestyle with full amenities available to HNW families.

- **GATEWAY:** The island chain is strategically located 50 miles from the United States with global connection(s); direct flights from 18 US cities, Canada, UK, Europe and Latin America

The Needs of HNW Latin American Families

Whilst each family is unique, there are certain essential requirements that are a prerequisite for a successful HNW family and that can be easily satisfied through various solutions available in The Bahamas:

- Succession and legacy planning solutions are in high demand, in particular from the point of view of cross border needs geographic proximity and ease of doing business
- Full spectrum offering through a one-stop-shop approach
- Unrestricted access to international financial markets
- Bespoke investment advisory and in particular access to alternative investments
- Full family office services including concierge and lifestyle services

Innovation in The Bahamas and a Latin America Focus
The Bahamas has been growing its fund business with an innovatory approach to structures that work exceedingly well for Latin American jurisdictions. By way of background, The Bahamas is the first independent country in the Caribbean to be designated IOSCO “A” status – this was received in 2012. The implementation of The Bahamas Specific Mandate Alternative Regulatory Test (“SMART”) fund created an array of opportunities and solutions which incorporated a balanced approach to regulatory oversight. The many template forms of the SMART fund allowed (and continue to allow) investors to invest across a multitude of asset classes including but not restricted to real estate, commodities and even PE ventures.

The regulatory approach to the SMART fund is one of the main factors in its efficiency both from an operational and cost perspective. It incorporates innovation by way of balanced flexibility. For example, an investment manager to a SMART fund need only produce a term sheet instead of a large Offering Memorandum. Similarly, there is a competitive fee structure and mandatory regulatory oversight at all stages. We have seen the SMART Fund templates 2 and 4 prove very popular with HNW Latin American

families and family offices. The likely rationale for this is the overall cost saving of preparing a term sheet instead of the Memorandum of Offering and the ability to elect to waive annual audits based on unanimous investor consent. SMART Fund 7 has also proved very popular with sophisticated HNW investors. With a maximum of 50 investors and a threshold capital of US\$500,000, it has similar features to a professional fund yet is more efficient and with a lower risk profile (due to limitation of 50 investors). Yet another feature of the SMART fund regime is its manageability and scalability from an operational and cost perspective, but also from a strategy perspective - the SMART fund can be utilized as an “incubator” fund or tester fund, allowing growth by investors upon performance metrics. Funds which start of as private may (based upon their success) convert to a professional fund if needed.

Following on the heels of the successful SMART fund The Bahamas then embarked on a Latin American client focused structure, the Investment Condominium (“ICON”). This ICON works well for investment managers throughout Latin America and it has already seen great success in the Brazilian market. In line and fully compliant with domestic Brazilian law, it provides an excellent funds platform for sophisticated investors seeking a cost efficient and fully compliant offshore funds solution.

The Bahamas has always been at the cutting edge of efficient and robust product development and the ICON is testament to that. Effective and innovatory, the ICON essentially incorporates a legally effective and well understood civil law structure, a condominium which is a contractual agreement whereby investors invest, in a joint capacity, into a fund in a common law (Bahamian) framework.

The ICON is therefore in strict alignment with many of the onshore Latin American regulatory regimes and it is hoped that similar success will be achieved in Mexico. The Bahamas’ approach in creating the ICON has been to work very closely and in harmony with the onshore financial legislative environment and funds’ regime to create a



Francesco Vanacore

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Francesco Vanacore has been working for more than 20 years in the areas of international tax planning, family office, family governance and related regulatory issues. He focuses on the advisor of international families in relation to their comprehensive wealth planning needs. He is a STEP member with the LLM in International Tax Law at the University of Zurich.

After more than 20 years of experience and very senior management positions at Deutsche Bank in Frankfurt and Credit Suisse in Zurich where he was board member of Credit Suisse Trust, he joined in November 2017 Ansbacher (Bahamas) Limited where he is responsible for the Fiduciary and Wealth Planning Department. One of the major reason for his move to The Bahamas is the possibility to exploit the enormous business opportunities out of The Bahamas.

bespoke and tailored offshore structure that is in close alignment both in spirit and in form with the onshore jurisdiction. The Bahamas has an excellent relationship with Mexico and has worked diligently to truly understand the Mexican fund regime framework in all aspects in order to provide HNW Mexican families and individuals with a cost efficient, innovatory and robustly compliant offshore fund services platform.

Indeed, the creation of the SMART fund and its augmentation with the ICON facilitates bespoke investment advisory and in particular access to alternative investments and indeed other investment classes with ease and in a cost efficient manner.

Next Steps

The Bahamas Financial Services Board (“BFSB”) is committed to working very closely with Bahamian financial service providers, local legal partners and government in ensuring that The Bahamas retains and enhances its position as one of the most robust, compliant and innovatory offshore jurisdictions for servicing the many needs of Latin American HNW families.

Ansbacher (Bahamas) Limited is the oldest trust company in The Bahamas, established in 1957. The Bank remains fully committed to servicing the financial needs of HNW Latin American families. In fact, in an era of de-marketing and an obvious transition to new markets, Ansbacher continues to prioritize the Latin American market. The Bank’s medium and long term prospective include increasing its Latin American portfolio by 20%. Confidently, The Bank believes that the suite of products it presently offers coupled with all of the other benefits of doing business with Ansbacher (Bahamas) Limited within the Bahamian offshore financial services regime, create tremendous opportunities for financial growth for HNW Latin American families. ❖❖



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The benefits, the beauty and the business sense of residing in The Bahamas

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





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

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

The Bahamas has evolved over the years into a bona fide Mecca for new and old wealth alike. When The Bahamas' international banking industry developed in the last century, it brought with it the promise of fresh investment and new options for wealth management and estate planning. Its growth also, of course, inspired high-net-worth individuals to begin to immigrate to the country to manage and support the operation of these financial companies.

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

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

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

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



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

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



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

Grand Bahama is poised to become a mini Silicon Valley of the Caribbean. Abaco is still the boating Capital of The Bahamas. Cat Island has retained its old-world charm. Andros is a labyrinth of adventures to explore. Harbour Island remains a playground for the rich and famous. All of these experiences are at your disposal.

The range of options to choose from in terms of real estate, moreover, is ever-growing. From Palm Cay, Port New Providence and Treasure Cove in eastern New Providence to Old Fort Bay, Lyford Cay and Albany in the West, areas for upper-middle-class and high-net-worth individuals are still growing and being developed. The developments at the extreme ends of New Providence offer gated access, beach and canal access at a range of prices for homes and vacant land. Of those, Albany (with such residents as Joe Lewis, Tiger Woods and Justin Timberlake, to name but a few) and Lyford Cay, the home of Sir Sean Connery, are the most exclusive communities, with private golf courses, restaurants and mega yacht parking.

In between those most easterly and westerly of developments have sprung up such places as One Cable Beach, Balmoral, Caves Point, Thirty Six on Paradise Island and the residences mixed into the

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

Families that reside in The Bahamas are sure to encounter some of the best educational facilities in the region. Windsor High School, the Meridian School and Lyford Cay School cater to children in western New Providence, while St Andrews is strategically located near Palm Cay, Treasure Cove and Port New Providence.

Dionisio D'Aguilar, the Minister of Tourism and Aviation, recently said that the Caribbean is being developed into one of the most desirable places to visit, work, live and do business in the world.

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



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