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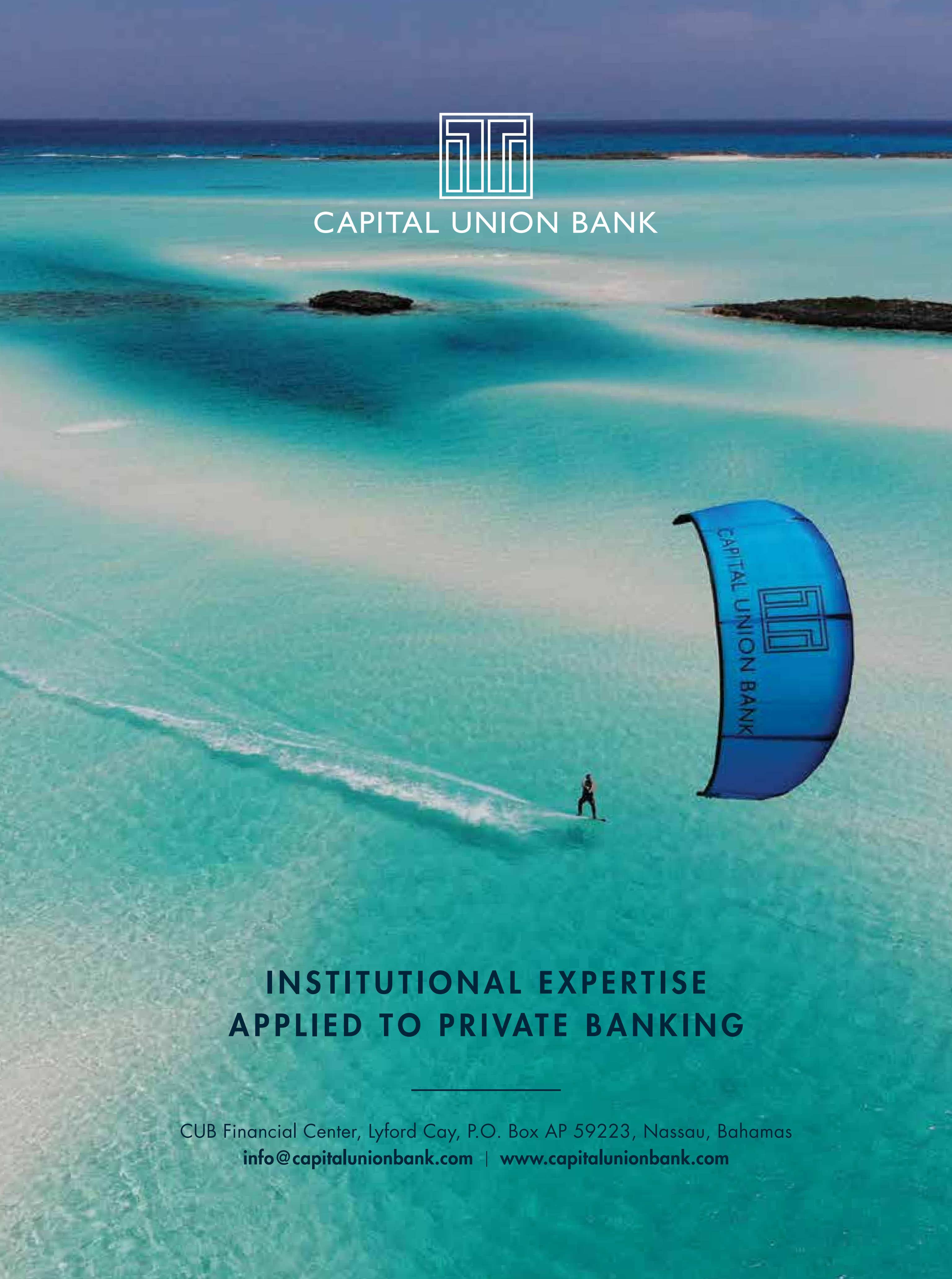
THE BAHAMAS FINANCIAL REVIEW

Fall 2020

Resilience marks the financial services industry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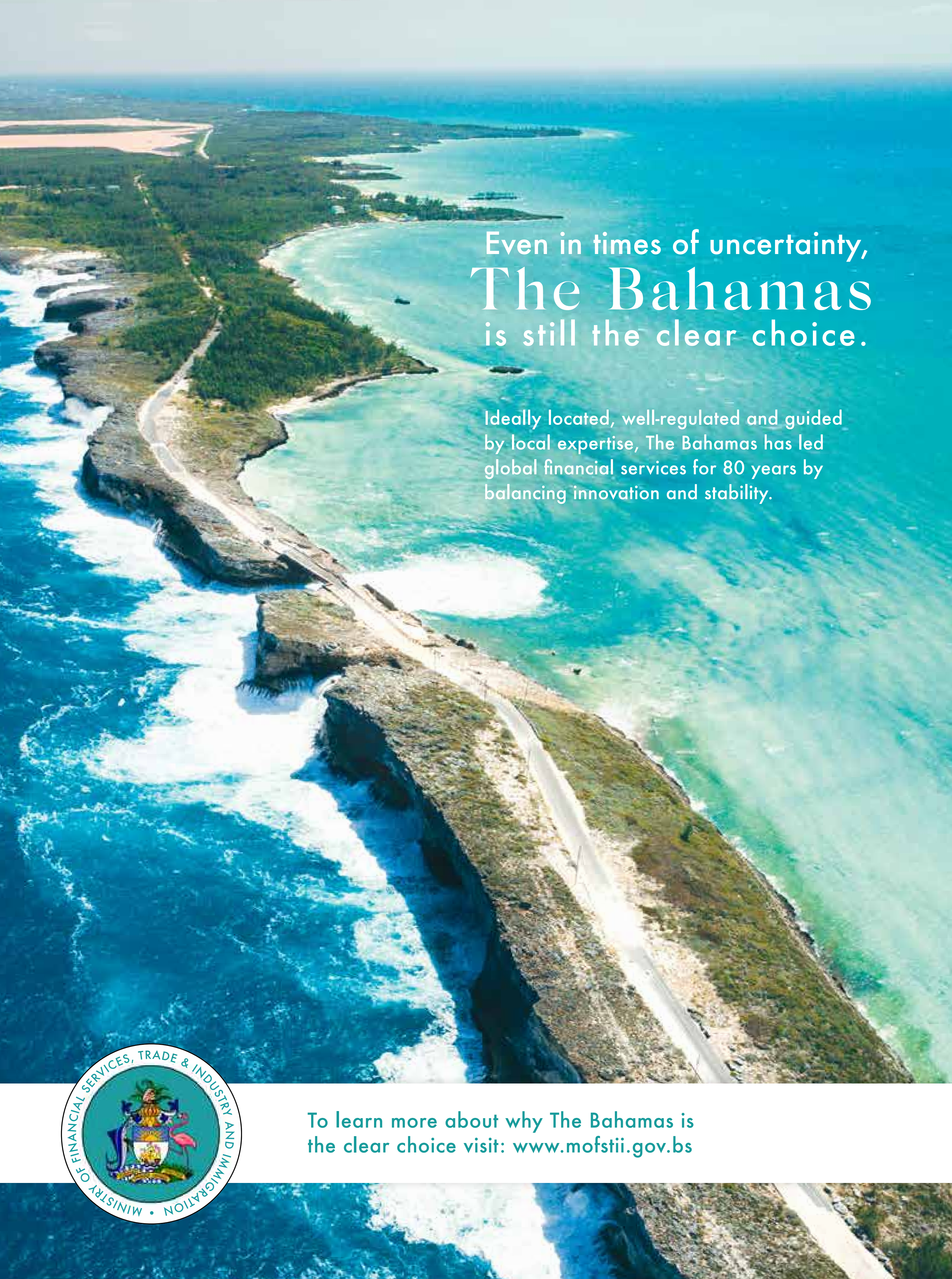
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From the Chairman & the CEO

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

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

Much has changed since our last issue of Gateway with the COVID -19 pandemic forcing all individuals and businesses to take measures to safeguard their personal health and business operations.

From a financial services perspective, it is noteworthy that The Central Bank of The Bahamas has released summary results from a survey of internationally active banks and trusts, in regard to operational impacts since March 2020 from the COVID-19 pandemic. The results from the survey are reassuring. The results indicate institutions in The Bahamas have been able to maintain effective operations in the new environment, and to date financial impacts have been minimal. The Central Bank is satisfied that its internationally active licensees are operating soundly in the pandemic environment.

As we move forward in a COVID19 “new normal” environment, jurisdictional competitiveness, the continued development of the sector and staying abreast of the various international initiatives impacting the financial services industry in The Bahamas sector remain at the forefront.

This issue of Gateway provides insights on each of these areas, underscoring the resilience of The Bahamas in the face of the global pandemic affecting all countries. It covers the advantages of The Bahamas as a Family Office hub; developments in the Fintech space, with crypto currency trust and the investment funds industry; economic substance opportunities; developments in the niche trading sector; and opportunities in the Middle East. There is also a multi- page excerpt of a Bahamas Roundtable published by Opalesque.

We hope you enjoy this edition of Gateway and come away with a better understanding of why The Bahamas is The Clear Choice for your financial service requirements. ::

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Resilience Marks The Bahamas Financial Services Industry

By Tanya McCartney

The Bahamas is the leading international financial centre in the Latin America and Caribbean region respected for its expertise in fiduciary services. The financial services sector has been impressively resilient and progressive in the face events such as Hurricane Dorian, the current COVID-19 pandemic, international initiatives and in midst of the continued and sometimes challenging evolution of the global industry.

None of these challenges have impeded the country's financial services industry from conducting business and delivering bespoke solutions to meet changing diverse client needs. Robust business continuity plans that are in place with all financial institutions have allowed business to continue doing business during Hurricane Dorian last fall and now as the world deals with COVID19. The far sightedness of business continuity measures have clearly been in play in cushioning the implications of these events and reinforces why the country is seen by many as an ideal location for financial institutions and the services they provide to their international client base.

This adaptability has been especially evident in the Bahamas's response to international initiatives which has ensured adherence with the highest standards of compliance with every internationally agreed standard of conduct.

The Bahamas has evolved over the years from being an "offshore" centre which is with all that the word connotes, to the world's premier international banking and trust business centre in the Caribbean and Latin American region. The jurisdiction has been and remains demonstrably and effectively unwelcoming to those seeking to engage in questionable and illegal activities. Further, The Bahamas is a cooperative and transparent partner in tax and related matters. Acknowledgement of this commitment was the news earlier this year of The European Union's Economic and Financial Affairs Council's complete removal of The Bahamas from its List of Non-Cooperative Jurisdictions for Tax Purposes. Against this background The Bahamas joined more than 108 countries in the OECD's Global Forum in formally acceding to The Multilateral Convention on the Mutual Administrative Assistance in Tax Matters ("The Multilateral Convention"). The legislative framework for implementation of The Common Reporting Standard was also put in place by The Bahamas in 2016.

In addition to CRS implementation, signing MCAA and entering BEPS, the integrity of the jurisdiction is evidenced by the following:
(a) A Strong Anti-money laundering, counter financing of terrorism Regime; and
(b) US Foreign Accounts Tax Compliance Act implemented (FATCA Compliance).

The Financial Action Task Force (FATF) has acknowledged that The Bahamas has remediated the issues identified in its assessment of its anti-money laundering framework and had agreed to an onsite inspection as a part of the formal process of exiting the FATF 'Grey List'. This onsite visit was scheduled for April 2020 but had to be postponed as a result of the COVID19 pandemic. The Bahamas remains buoyed by that announcement notwithstanding later conflicting news of the EU's intention to include The Bahamas on the list of high risk third countries which would take effect in October 2020.

The Bahamas is engaged with EU officials at the highest diplomatic and political level to demonstrate the strength of The Bahamas' AML/CTF regime. The Bahamas maintains that it is attaining the highest standards in the fight against money laundering, terrorist financing and other identified financial crimes risks.

A shared commitment

Financial services is the second most important industry in the Bahamas after tourism. As such, successive governments have recognised the importance of the industry to the country's continual economic and social development. The financial sector's viability is therefore a priority for both public and private sectors alike.

This level of importance is indicated by the responsiveness of the legislature and regulators to the needs and demands of the market, as well as the swiftness with which these processes can take place. It is also demonstrated by the balance that regulators strike between ensuring that the financial services industry keeps its integrity, while still encouraging lively competition. What's more, The Bahamas has a government ministry dedicated solely to financial services, and a shared commitment exists between the public and private sectors to help promote and develop the industry.

Transparent environment

With a history of financial services dating back to the 1930s, The Bahamas ranks among the world's most significant international financial centres (IFCs). The jurisdiction is one of the world's leading international banking centres, alongside New York City and Miami in the United States, London, Switzerland, Toronto, Dubai, Honk Kong and Singapore; and it is the preeminent banking jurisdiction of the Caribbean region. The centre comprises several sectors, including banking, private banking and trust services, mutual funds, capital markets, investment advisory services, accounting and legal services, insurance and corporate and shipping registry. While providing the largest offering of international banks – US, Europe, Asia and Latin America – in the region, including South and Central America.

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

First, multi-national and multi-generation families and family businesses find that they can preserve their wealth for the long term and transmit it to younger generations with ease when they site some of their assets in a jurisdiction with trust laws. Their home jurisdiction might be subject to civil unrest or have a history of political or financial instability, while its government might want to expropriate their wealth and subject them to capital controls.

It is therefore important for HNWIs to offset these risks by keeping at least some of their assets in a jurisdiction that does not suffer from these problems. Further, international banking and wealth management centres often possess financial products and services that are superior to those found in their home countries.

The Bahamas requires businesses and other entities to disclose information to the government about the ways in which they generate their income and the amount of tax they pay. The jurisdiction can also be said to be tax transparent because it follows the doctrine that nations ought to exchange information with one another about people's and entities' tax affairs ¬– on request in some cases and automatically in others.

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

Tanya McCartney has over 25 years of professional legal and financial services experience. She has been CEO of the Bahamas Financial Services Board since December 2015. She is an barrister and chartered banker.


TRUSTED FOR
GENERATIONS

The Bahamas Committed to The Fight Against Financial Crime

The following are excerpts from remarks by Senator The Honourable Carl W. Bethel Q.C.,, the Bahamas' Attorney General in May 2020 during a virtual symposium for financial services stakeholders in The Bahamas

In an Article posted on a website maintained by the International Consortium of Investigative Journalists (ICIJ) on the 11th May, 2020, the Secretary General of the Financial Action Task Force (FATF) David Lewis is quoted as saying that governments were failing to stop organized criminals and corrupt regimes from washing vast sums each year. Noting that most countries have dedicated laws and regulations to combat money laundering, he is quoted as saying: "they are rarely being used effectively, or to the extent that we would expect."

The Article continues by pointing to a tendency for countries to display a 'last-minute commitment' to tackling money laundering because they faced an up-coming FATF evaluation: "You see a sudden uptick in money laundering investigations and activity as they prepare to compensate for [past inaction] or to tell a good story to the assessors". The Article attributed to him a suggestion that "some countries were said to only be concerned not to be placed on the FATF Grey List".

In 2015, when the last Mutual Evaluation of The Bahamas took place; which evaluation led to our placement in the FATF ICRG process in 2017, even that assessment mentioned above, if applied to The Bahamas in 2015, would have been extremely generous. Quite frankly, as a nation we had failed to keep up to date on the evolving FATF standards. Yet, by the hard work of all concerned, both government and industry, we were able to right the ship, pass a host of new enabling laws, strengthen the regulatory and supervisory framework governing financial services; and to commence the long and hard road, once again, to prove our resilience and worth as a financial services jurisdiction. Our progress to date has been considerable, and we are now poised to make that last great effort to show the effectiveness of all the efforts we have made together to address the need for change and improvements.

What is the lesson in all of this for us as a jurisdiction? Simply that we cannot afford to let our guard down again. If we wish to remain relevant and effective, we must strive every day to stay abreast of evolving standards and expectations. It is an easy thing to slip, take the easy road and end up being listed. Experience shows that it is easy to be listed, but a far more difficult thing to repair the damage.

We must all develop a firm resolve to work assiduously and in a mutually supportive manner, firstly to keep abreast of all initiatives and developments as they arise, and secondly, to seek to prepare ourselves to meet all impending challenges, even before they are made, and certainly before the World decides to impose the same.

For far too long we have adopted a passive approach, trying to lag behind so-called "competitors", and each time have felt the brunt of international disdain, and criticism.

We cannot continue doing the same things the same way and expect any different results than those experienced in the past. So, I enjoin each of you to see all approaching storms and to adopt an attitude of engagement with each other, with your regulators and indeed with the World. This has been our posture and is the posture we now embrace as we move towards the possibilities of the FATF ICRG on-site review.

Although a date for the on-site cannot yet be set, due to travel restrictions imposed by the COVID 19 pandemic, we are pushing forward as though it were imminent.

In an era where vigilance is golden, during the Emergency Orders issued world-wide for lockdowns, we have become aware that there are those organizations and groups that are taking advantage of the COVID19 pandemic to carry out scams and illicit activities. Accordingly, all regulators and enforcement agencies were issued copies of the FATF Statement on emerging COVID19 related financial crime risks and the FATF's policy paper on COVID19 related ML/TF risks, for review and necessary action.

The remarks of FATF Secretary General David Lewis included his summing-up, which hearkens back to a famous conclusion in George Orwell's book "Animal Farm" that 'all animals are equal, but some are more equal than others'; where Mr. Lewis is reported as saying: "everyone is doing badly, but some are doing less badly than others".

We must positively seek to do better than others, lean forward, and continue to strive to attain and maintain the highest standards of practice, oversight, supervision and enforcement, in order to have a healthy, wealthy and respected financial sector.

Senator the Hon. Carl Bethel, Q.C.

Carl Bethel is the Attorney General and Minister of Legal Affairs of the Bahamas. He was educated at London School of Economics, (University of London)(LLB (Hons.)); and Holbom LawTutors, London, England (CLE). He is a member of the Honourable Society of Lincoln's Inn. Carl was called to Bar of England and Wales on the 25th July, 1985 and called to The Bahamas Bar on the 27th September, 1985. Carl received his appointment to Queen's Council on 9th January, 2015.

The Bahamas

The Ideal Location For A Family Office

By Linda D'Aguilar

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

Despite differences as to the type of governance that family offices and their associated structures should have, there is no question that present political and regulatory conditions suggest that substance prevails over form. Anyone who wants to establish afamily office must consider "permanent establishment" regulations (which govern fixed places of business which usually generate direct-tax liabilities in the jurisdictions where they are situated) and "controlled foreign company" (CFC) rules. He or she must also contend with rules that relate to tax, residency and immigration while overseeing and managing things competently. The Bahamas' legislative and regulatory regime gives such people the opportunity to create effective and efficient structures for family offices that comply with financial regulations. Service providers (including financial institutions, lawyers and accountants), skilled professionals and staff are readily available. The Bahamas' proximity and direct flights to major cities such as Miami, New York, Toronto and London, as well as the opportunity for families and their trusted advisors to take up residence and purchase property, are highly advantageous for long-term strategic planning. As persons seek safe harbour in a post COVID-19 environment, The Bahamas should be top of mind.

This article examines the ways in which family offices can take a holistic approach to "succession planning" - the handing over of wealth from one generation to the next - while creating durable governing structures at the same time.

What is a family office?

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

Reasons to establish a family office

When a family uses a single comprehensive structure, it can spot evolving opportunities and evaluate its overarching objectives with ease. When such a structure controls that family's various interests and keeps an eye on its obligations, its affairs are likely to be stable over a long period of time. A family office also helps the family evaluate the goods and services that firms offer it and can also keep information about relatives' lives confidential because it consolidates advisory services, wealth management, income distribution and other services for them inside a structure that they themselves own. This is the antithesis of a piecemeal review of disparate elements in isolation from one another.

Multigenerational Relations

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

The overseeing and management of family trusts or foundations can be placed in the hands of third parties who report to a family office. Alternatively, the family office may itself establish a Bahamian private trust company (PTC) for the express purpose of acting as the trustee of this-or-that trust or group of trusts; equally, it can act as the founder or supervisory party to a foundation. A PTC commonly takes the form of a limited liability company and its board of directors can include members of the family in question as well as trusted advisors and independent third parties. Consequently, the family may retain a measure of control over the strategic management of the assets without prejudicing the validity of the underlying trust or foundation. If the family establishes the structure with an unlimited life-span, subsequent generations can help to govern it.

Succession Planning

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

- The preparation of a family constitution or charter which may encompass such concepts as the family's overarching aspirations and goals, the things that it values, the missions of its businesses, the jobs and responsibilities of family members and various third parties (persons and entities) that work for it, and policies, procedures and processes that might resolve disputes that arise in crucial areas (business or otherwise).
- A regular evaluation of the executives (who may or may not be family members) who work at the office, along with a continual assessment of the jobs and responsibilities that people at the office shoulder.
- The development and augmentation of knowledge and skills through formal training, plus an encouragement of the flow of information between people in the office and between family members and their internal and external advisors.
- Plans of action to help the family live up to its social responsibilities and further its philanthropic interests.

Family Governance

Much of this planning depends on the amount of time that the members of this-or-that family wish to devote to their tasks, their willingness to deal with internal and external advisors and their attitudes towards the disclosure of information about themselves to people outside the office. A family that wants to derive the greatest benefits from its office ought to take corporate governance very seriously.

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

Linda Beidler-D'Aguilar
Partner, Glinton, Sweeting, O'Brien

Linda Beidler-D'Aguilar joined Glinton Sweeting O'Brien as a partner in July 2015. In her practice she specializes in the structuring and creation of investment funds for both institutional and private clients. She advises individuals, family offices, entities and institutions on corporate structuring, transactional matters and secured lending; she also provides advice on regulatory matters, securities law (including public and private offerings) and general commercial matters.

Linda graduated from Georgetown University School of Foreign Service with a Bachelor of Science in Foreign Service. After obtaining her law degree from the Georgetown University Law Center she was called to the bar in the State of Illinois. She was an associate at top tier firms in Chicago and Washington, D.C. before she relocated to the Bahamas in 1991. Linda worked at two major trust companies in the Bahamas, then served as in-house counsel for Bacardi & Company Limited from 1995 to 2003, following which she returned to private practice. She served as a Director of the Bahamas Financial Services Board from 2010 through 2014, and remains actively engaged with various BFSB working groups.


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Estate planning for the Cryptocurrency Investor

By Kamala Richardson

With the rise in popularity of cryptocurrency as a highly sought after asset, there is no doubt that estate and trust practitioners will come face to face with the estate planning challenges presented by this new asset class on an ever increasing basis.

Cryptocurrency rose to prominence within the last ten years, almost seamlessly becoming a part of the investment vernacular overnight. Some credit Satoshi Nakamoto, an enigmatic entity whose identity has never been confirmed, with creating cryptocurrency as evidenced by the publication of the white paper in 2008 entitled "Bitcoin: A Peer-to-Peer Electronic Cash System" and the launch of Bitcoin a year later. There are others who contend that cryptocurrency has a more extensive history, stemming as far back as 1998, when computer engineer, Wei Dei, hypothesised "b-money: an anonymous, distributed electronic cash system". Even still, there is another faction that claims its history stretches back a bit further. Nonetheless, origins aside, cryptocurrencies have become a treasured component in investment portfolios, particularly for the tech savvy, on-trend investor.

Cryptocurrencies are not be confused with traditional forms of digital fiat currencies, such as The Bahamas' very own Central Bank-backed and regulated Sand Dollar. Cryptocurrencies differ from theses types of currency in that it is entirely decentralised and regulated by its community of users, as opposed to governmental monetary authorities.

Unlike its digital fiat-styled counterparts, cryptocurrencies are supported by a highly complex digital ledger, known as "blockchain". This is system that records each transaction made, using the cryptocurrency via a series of information stores called "blocks". Blockchain is public, and as such, the date, time, and nature of each transaction, is recorded to be viewed by all. Cryptocurrencies are accessed and their ownership validated by possession of a private key. Cryptocurrency owners typically use password protected digital wallets to consolidate, store and transact with their cryptocurrencies. Unfortunately, there is a downside to the use of cryptocurrency. When a private key or password is lost, recovering the cryptocurrency may be impossible, if not exceedingly difficult.

As a corollary of the popularity of cryptocurrencies over the past two years, there has been an uptick in case law from across the common law world which considers the nature of cryptocurrencies All of these cases conclude that cryptocurrencies are property. The main take away from this development for estate and trust practitioners is that cryptocurrencies, by virtue of being property, are transferrable from person to person and as such, can devolve to beneficiaries of an estate under a Will or form the corpus of a Trust.

However, despite the novelty of this emerging technology, there are certain well honed estate planning strategies that clients and practitioners can adopt to deal with the complexities presented by cryptocurrencies. With the right tweaking, two of the most common estate planning tools, the Will and the Trust, are capable of adequately dealing with cryptocurrency.

Leaving cryptocurrency in a Will

Where cryptocurrencies are intended to form a part of the client's estate, the draftsman should take great care to ensure, and in most cases should recommend, that specific reference be made to the cryptocurrency in the Will. The reason for this is that cryptocurrencies, much like online subscriptions and player skins in the computer gaming world, form a part of the digital lives of their users, an aspect of their virtual identity which their loved ones may very well not know exists. By referencing the cryptocurrency in the Will, these potentially highly valuable assets become known to the executors of the estate. On the other hand, an omission to make such reference could relegate the cryptocurrency to the residuary estate of the testator, making it near undiscoverable unless a relative or close friend has knowledge that the testator owns those assets.

Access is key when dealing with cryptocurrencies. In light of this, consideration should be given as to how to enable access by the executors or the beneficiaries of the estate to the cryptocurrency. It is not advisable to include wallet passwords and private key details in the Will itself. It should be remembered that once submitted to probate, the Will be-comes a matter of public record, available to the world for inspection. In order to overcome this, access information can be recorded in a memorandum referenced in but not annexed to the Will. Such action would enable the executor to better comply with his duty to make a proper accounting of the estate, as he will be alerted to cryptocurrency existence.

Another consideration when planning for estates which include cryptocurrency is to ensure that the executor is able to aptly deal with the cryptocurrency. Some beneficiaries may find the prospect of holding cryptocurrency unpalatable and may prefer a more familiar asset instead, such as cash. In such instances, it may be useful to include provisions in the Will which enable the executor to convert the cryptocurrency into cash or trade it for another asset which is more desirable to the intended beneficiary.

Settling cryptocurrency in a Trust

Drafting considerations for Trusts comprised wholly or partly of cryptocurrency, are similar to those for Wills. In jurisdictions such as The Bahamas, for instance, where there is no requirement for Trusts to be publicly registered, and where discretionary beneficiaries have no automatic right to disclosure of Trust documents, added comfort can be given to clients who seek a high degree of confidentiality in their estate planning.

As with a Will, a Trust can be drafted so as to make specific reference to any cryptocurrency settled in it. However, such an action may not be necessary where the cryptocurrency does not form the initial corpus of the Trust, but is instead transferred to an already existing Trust Fund. This is so as due administration of a trust calls for thorough record keeping. In this vein, a prudent trustee accepting cryptocurrency as an addition to the trust would ensure that the acceptance of the cryptocurrency is recorded in a trustee resolution or Deed of Addition to Trust Fund, whichever appropriate for the Trust concerned.

Similar to a Will's testator, a settlor of a Trust should consider providing access details for cryptocurrencies to his trustees in the form of a memorandum or he may opt to provide them in his Letter of Wishes. These documents will form a part of the package of Trust documents held by the trustees and will aid them in administering the Trust according to its terms and the wishes of the settlor.

Trustees should be given sufficient powers to enable them to deal with cryptocurrency settled in the Trust in the manner the settlor intends. If the settlor intends that the cryptocurrency form a part of the Trust for the long haul, the terms of the Trust should permit the trustees to retain the cryptocurrency. In default of such terms, trustees have a duty to make and change investments as a prudent investor would. Such a duty may necessitate that the trustee invest Trust assets or convert them to avoid the diminution in value of the Trust Fund. This duty can be highly frustrating to trustees faced with administering cryptocurrencies, the values of which are known to be volatile.

By expressly excluding the prudent investor duty in the Trust Instrument, the trustee will have freedom to continue to hold the cryptocurrency in trust in the face of market fluctuations. In addition to this, trustees, particularly professional and institutional trustees, may insist that the Trust Instrument include indemnities sufficient to insure them against the risks associated with taking on trusteeship of cryptocurrency. On the other hand, where the settlor intends that the cryptocurrency is to be used for investment purposes, the Trust Instrument could contain provision to appoint an investment advisor or manager adept in handling cryptocurrencies so that investment of this asset can be appropriately delegated. A provision such as this is especially useful when appointing an individual trustee who may not have sufficient knowledge of cryptocurrencies to manager them or where an institutional trustee's policies adopt a risk averse attitude toward cryptocurrencies.

Conclusion

Estate planning for cryptocurrencies can be a daunting task even for the most sophisticated investor or estate and trust practitioner. However, with careful thought and expert advice, the task can be scaled down to a less Goliath-like prospect. That being said, as advisors begin to interface more and more with the estate planning challenges presented by cryptocurrencies, a natural ease of doing so will begin to emerge along with a broad spectrum of solutions to address the challenges faced.

Kamala Richardson

Associate, Higgs & Johnson

Kamala Richardson is an Associate in the Private Client & Wealth Management practice group, specialising in wills, estate planning and matters related to trust law and company law. She also advises clients on all aspects of commercial transactions and regulatory requirements. Kamala is a STEP Affiliate and a member of the Bahamas Financial Services Board's Trust Working Group.

The Commercial Entities (Substance Requirements) Act

By Kevin Moree

For some time now, there has been a steady shift in the financial services industry toward the implementation of global standards and international coordination. The rationale for this is said to be a desire to prevent money laundering, terrorist financing and tax evasion/avoidance. Specifically, with respect to tax evasion/avoidance, there is growing international concern that some businesses are artificially transferring profits from one jurisdiction to another with the sole purpose of minimizing their tax liability. The European Union Code of Conduct Group ("the COCG") and the Organization of Economic Co-operation and Development ("the OECD") are leading the charge to combat this concern and have created frameworks which are widely accepted as the global standard. Economic substance requirements feature in both frameworks, namely Criterion 2.2 in the COCG framework and Action 5 of the OECD Base Erosion and Profit Shifting Initiative. It is not controversial that entities should be engaged in real economic activity in the jurisdiction in which they are deemed to be resident for tax purposes.

At the end of 2018, the Bahamian Government passed the Commercial Entities (Substance Requirements) Act ("CESRA") in an effort to ensure compliance with international best practices while maintaining The Bahamas' leading role in the competitive market of international financial centers. The purpose of CESRA is essentially to ensure that certain Bahamian entities are either i) engaged in real economic activity in The Bahamas or ii) tax resident and compliant in some other jurisdiction.

This is a welcome development for some who may have experienced difficulty in the past satisfying the relevant authorities in other jurisdictions that an entity was tax resident in The Bahamas. For others, it has necessitated fundamental changes to corporate governance and operational practices. Further, business, tax and estate planning structures often include corporate vehicles in various jurisdictions for a plethora of legitimate reasons. Beneficial owners of Bahamian companies, individuals involved in a Bahamian partnership and advisors who have clients that utilize Bahamian companies or partnerships must now be aware of the possibility that those corporate vehicles may be subject to economic substance legislation and consequently required to fulfill certain substance requirements.

It is important to understand i) what entities are subject to the Bahamian substance requirements legislation, ii) when entities are required to have substantial economic presence in The Bahamas, iii) what qualifies as substantial economic presence and iv) reporting requirements.

What entities are subject to CESRA

CESRA came into force on 31 December, 2018 and applies to Bahamian entities incorporated, registered or continued under the Companies Act (including foreign entities which have been registered under that Act), International Business Companies Act, Partnership Act, Partnership Limited Liability Act and Exempted Partnership Act. Other Bahamian corporate vehicles, including trusts and foundations, are not subject to CESRA and therefore are not required to have substantial economic presence in The Bahamas or submit a CESRA report.

When is substantial economic presence required?

An entity which is subject to CESRA is required to have substantial economic presence in The Bahamas if it, or any of its subsidiaries, is engaged in any of the following business activities: banking, insurance, fund management, financing and leasing, headquarters, distribution and service centres, shipping or the commercial use of intellectual property. However, there are two exceptions: 1) if the entity is wholly owned, either directly or indirectly, by one or more persons who are either a. ordinarily resident and domiciled in The Bahamas or b. an annual or permanent resident of The Bahamas and physically there for at least three months cumulatively each calendar year and the entity conducts its core income generating activities in The Bahamas or 2) if the entity is centrally managed and controlled outside The Bahamas and is tax resident in a jurisdiction other than The Bahamas. If either of these exceptions are satisfied, the relevant entity is not required to have substantial economic presence in The Bahamas. The first exception has enabled beneficial owners of entities subject to CESRA who reside in The Bahamas to avoid the sometimes arduous analysis associated with determining whether or not substance requirements have been satisfied. Holding companies are subject to reduced substance requirements.

What qualifies as substantial economic presence?

What qualifies as substantial economic presence will vary on a case by case basis. Generally, entities which are subject to the substance requirements and are not tax resident in a jurisdiction other than The Bahamas must have adequate assets, qualified personnel, physical office space and control in The Bahamas. With respect to having adequate control in The Bahamas, while there is currently no Bahamian jurisprudence on this topic it is anticipated that the seminal UK cases, which are persuasive but not binding in The Bahamas, will be instructive.

What are the reporting requirements?

All entities which are subject to CESRA are required to report within nine months of the entity's financial year end (a three month extension has been granted for 2019 CESRA reporting in light of the COVID-19 pandemic). However, the level of detail required in the report depends on what category the entity falls under pursuant to the legislation. Regulated and included entities have to report the greatest amount of information, including a description of the nature of business the entity is engaged in; the names, addresses and contact information for all of the directors; the names, addresses, contact information and jurisdiction of tax residence for all shareholders; amount and type of gross income; amount and type of expenses and assets; number of full-time employees; summary of the core income generating activities and a summary of the management and control activities. Holdings entities are required to provide the least amount of information. Consistent with the Bahamian Government's public commitment to increase the ease of doing business and leverage technology, CESRA reporting is done using an electronic smart form via an online portal which is also used for business licence and value added tax applications, renewals and filings. It is important to note that every reporting entity is required to obtain either a tax identification number, if it will be a value added tax registrant, or an entity identification number prior to submitting a CESRA report.

What are the greatest challenges and opportunities associated with CESRA?

Presently, the greatest challenge encountered by advisors and clients alike is confirming what is sufficient to fulfill the relevant substance requirements. Specifically, the "adequacy" test (which is used to determine whether the entity has adequate levels assets, personnel, etc. in the jurisdiction) is unapologetically qualitative rather than quantitative and determining where central management and control is often a matter which only senior personnel in the entity are able to do.

Such a challenge is not peculiar to The Bahamas as evidenced by the voluminous guidance provided by various governments and international organisations regarding similar legislation in other jurisdictions as well as the significant breadth of jurisprudence on issues such as central management and control which provide insight into how jurists have interpreted similar legislative provisions elsewhere in the world.

This challenge, however, also creates an opportunity as The Bahamas can leverage the experience of other jurisdictions to clarify what the best approach is.
There is presently another significant challenge resulting from the travel restrictions associated with the COVID-19 pandemic. Usually, two of the most significant factors in determining the location of the central management and control of an entity are i) where the board meetings take place and ii) what is decided at those meetings. As directors are unable to travel board meeting which usually would have taken place in a certain jurisdiction are now being held virtually. Further, major decisions regarding business strategy, redundancy, etc. which would usually be made at a board meeting in a certain jurisdiction have had to be made urgently by an individual located in a different jurisdiction. Some jurisdictions have provided guidance as to how the relevant competent authority will adjust substance requirement sin light of the COVID-19 pandemic but no such guidance has been provided in The Bahamas to date.

Finally, it would seem that on the whole CESRA presents a great opportunity for The Bahamas. Having senior personnel (directors, management), or even the beneficial owner, of an entity living in the jurisdiction in which the entity was created is often very helpful with confirming that any substance requirements have been satisfied. If such a strategy is undertaken then quality of life is a major consideration and The Bahamas seems to have a strong competitive advantage as it has a stable government and economy, is easily accessible from anywhere in the world and has an extremely attractive climate and natural environment.

Kevin Moree

Partner, McKinney, Bancroft & Hughes

Kevin is a Partner at McKinney, Bancroft & Hughes and a member of the firm's Financial Services & Regulation, Litigation and Dispute Resolution and Tax & Trade practice groups. In addition to his civil and commercial litigation work, he has created a niche practice which straddles dispute resolution and transactional matters by leveraging his background in finance to specialize in Bahamian tax law. Since the introduction of value added tax (VAT) in 2015, individuals and corporate entities have come to appreciate the importance of obtaining bespoke tax advice. Kevin has developed expertise in this relatively new area of law in The Bahamas and is widely regarded as a go-to resource on tax matters. He is recognized as an attorney with his ear to the ground concerning the island's tax legislation and its constant amendments.

Kevin advises and represents a wide variety of clients in disputes regarding the VAT, real property tax and business licence tax regimes and frequently provides opinions in connection with the suite of legislation recently passed to ensure The Bahamas is in line with international standards on tax transparency; namely, the Commercial Entities (Substance Requirements) Act, the Removal of Preferential Exemptions Act, the Register of Beneficial Ownership Act and the Multinational Entities Financial Reporting Act. Further, he regularly appears in the Supreme Court and the Court of Appeal in connection with general civil and commercial litigation matters.

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Investment Fund Enhancements

By Antoine Bastian

Over the past three years, international financial centres, like The Bahamas amended their investment fund rules and introduced commercial substance rules as a greater part of global fair play and global transparency in response to international initiatives. Europe's persistence to eradicate harmful taxes practices and prevent base erosion taking place in some European Union countries international financial centres created an opportunity to provide clear and deliberate regulations to mitigate against global harmful taxes practices and base erosion.

As a part of the continued commitment to a global tax transparency, The Bahamas revised and updated, the Investment Fund Act, 2019(the "IFA") and the Investment Fund Regulation, 2020(the "IFR") and further introduced the Commercial Entities (Substance Requirements) Act, 2018("CESRA"). The legislative changes pertaining to IFA and CESRA were carved out of principles established by the OECD's Forum on Harmful Tax Practices and the European Union's Code of Conduct. While I can confidently say that the Bahamas has a long history of being a well-regulated jurisdiction, the updates of the IFA and IFR and the introduction CESRA based on those principles will ensure that as a jurisdiction, our product offerings amplify the need to counter harmful tax practices.

Prior to updating the IFA and IFR, there were no licensing or registration requirements of fund manager when performing management functions of Bahamian domiciled funds. It was typical to incorporate a company to serve as investment manager of a fund and that company was ostensibly the entity that traded, introduced clients, collected fees, meet clients, gave advice. The company did not need to have any sort of substance. Yester year, there was simply not enough legislative focus on fund managers, but this was simply how it was done. Most of the vetting for "fit and proper" and suitability was left to the experience of service providers that used strong internal and industry standards to mitigate business risk; the IFA and IFR again added the legislative teeth to mitigate not only business risk but now regulator and jurisdictional risks. The updated IFA, 2019 now requires an entity or a person to 1) be licensed if they intend to manage a Bahamian standard fund (fund without sophisticated investors) or a fund in any other jurisdiction other than the EU, or 2) be registered, if the intention is to manage a Bahamian SMART fund or professional fund or similar funds offered to accredited investors in other jurisdictions other than the EU. Fund managers that want to offer funds to the EU or manage EU funds must meet AIFM compliant requirements and are o reportable quarterly to ESMA

Most funds established in The Bahamas have been SMART Funds(private label funds) and professional funds. The managers, whether domiciled in The Bahamas or in another jurisdiction, of both type funds will now, at a minimum, require registration. The registration process is a formal application with the requirement to provide standard due diligence as we have become accustomed to over the past many years, e.g. passports, constitutive documents and certified due diligence on all directors and ultimate beneficial owners etc..

The IFA and IFR ensures not only from a tax perspective, offshore managers are now encapsulated in the global exchange of information through the Common Reporting Standards, but it also ensure that fund manager interested in using The Bahamas have a real and tangible nexus to the jurisdiction. The tenor of the IFA is to ensure that investors are protected from incompetency, anonymity and obscurity. The Bahamian fund manager is front and center of the structure and is not any longer a nebulous shell that can easily abscond from taxes or neglect regulations, or more importantly, abandon investors.

CESRA, the economic substance legislation, came in force in 2019 and is reportable to in 2020. This measure demonstrates The Bahamas' seriousness to continuing as an important and viable global international financial center. Fund managers that are required to be licensed or to be registered must to adhere to global substance requirement rules. While the CESRA focuses on several types of entities, for the purpose of this article, the focus relates only on fund managers operating or considering operating in The Bahamas.

The determination as to what, is considered substance is a matter of a few simple steps or question that should be asked with regard to fund management.

1) Are you a legal entity(Included Entity) that is tax resident in the Bahamas and conducts commercial activity through a:
a. Company's Act, including foreign entities registered under Part IV thereof
b. International Business Companies Act
c. Partnership Act
d. Partnership Limited Liability Act
e. Exempted Limited Partnership Act

2) Are you an Included Entity; and do you have adequate relevant commercial activities within The Bahamas? An Included entities must have the following characteristics:
a. Conduct Core Income Generating Activity("CIGA"),
b. Have adequate people, premises and expenditure and
c. Be directed and controlled

3) Are you tax resident outside of The Bahamas? Substance requirements under CESRA are NOT relevant for entities that are tax residents outside The Bahamas and are managed and controlled outside The Bahamas.
Like the United Kingdom, The Bahamas follows a common law legislative model and has adopted the interpretation of tax resident simply as where real business is conducted and moreover, where the conduct of real business happens, management abides and is controlled from that place.

Fund managers who intend to manage Bahamian domiciled funds via a foreign entity are permitted to do so but must meet the legislative requirement of registrations and must demonstrate a foreign tax status in the jurisdiction that they organized in. Further, the foreign fund manager must provide a tax id, a tax certificate from the jurisdiction they operate from and should file these requirements with the Competent Authority in accordance with CESRA.

The new and updated substance legislative frame work makes it clearer what should be defined as Core Income Generating Activity in an "Included Entity for fund managers. In accordance with CESRA:

i) The taking on of Decisions on the holding and selling of investments
ii) Calculating risks and reserves,
iii) Taking decisions on currency or the interest fluctuations and hedging positions; and
iv) Preparing relevant regulatory or other reports for government authorities and investors
CESRA is not exhaustive in the types of CIGA that a fund manager may do to be considered when measuring substance and is intended only to expresses some guidance on activities that are considered CIGA. CESRA intimates that there may be other CIGA activities not listed or mentioned in the CESRA. In other words, even if the legislation does not explicitly spell out an activity as CIGA, the responsibility is on the fund manager to demonstrate that it conducts CIGA to the Competent Authority.

As it pertains to board of director functions, The EU and OECD guidelines emphasize direction and control with reference to board of directors meetings as a fundamental determination of substance and CESRA mirrors this. Adequate board of directors meetings are to be held in The Bahamas. While adequate is not defined in the CESRA, its guidance exclaims "as much or as good as necessary and sufficient for a specific need or requirement." What constitutes adequate is really dependent on the business and commercial activity of each fund manager. CESRA is less concern with physical presence but the legislation wants to ensure that board of directors with knowledge and experience govern fund structures in The Bahamas and a fund managers in The Bahamas are decision-taking bodies". In today's COVID environment, where travel is seems to be a stand-still and video conferencing is the new normal, this seems fitting and clear. None the less, minutes, books and records must be maintained in The Bahamas.

As with all commercial business, outsourcing is a global solution to many companies that may have shortfall in human or financial capacity. Under the new legal regime fund managers are not able to outsource Core Income Generating Activities outside of The Bahamas. This is consistent with other international financial centres. Fund managers are allowed to outsource to third party service providers in the CIGAs only when:

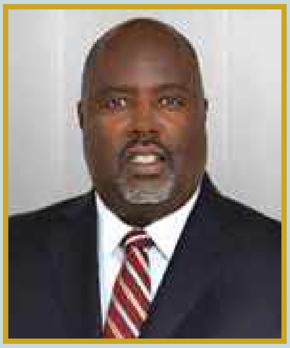
i. The fund manager is able to demonstrate adequate supervision of the outsourced CIGA;

ii. The outsourced CIGA is conducted within The Bahamas;

iii. The economic substance of the 3rd party service provider will not be counted multiple times by multiple included entities when evidencing their own substance in the jurisdiction provided that the 3rd party service providers will not be deemed to be counted multiple times by multiple included entities.

More importantly the core business of a) portfolio management function or b) the risk management function, rests on the shoulder of the fund manager and those two activities can only be outsourced by the approval of the Securities Commission. The historical business practice of a fund manager being a "letter-box", no longer exist in The Bahamas.

While the rules for fund managers have change with regard to IFA, IFR and CESRA, the changes made are not onerous or beyond what is now expected for any global or international financial centre. The Bahamas will continue to enhance and develop legislative initiatives that will keep fund managers and other service providers domiciled here competitive and relevant for many years. The Bahamas remains a clear choice for global cross boarder tax transparent and compliant structures and these new legislative updates are The Bahamas' true testimony of this.



Antoine Bastian

Managing Director, Genesis Fund Services Limited

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. Bastianis a Founding Member of the Bahamas Association of Investment Fund Administrators and works actively with the development and promotion of fund administration.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In the world of travel, there was pre 9/11 and post 9/11. One day we strolled through airports as casually as taking a Sunday walk on the beach. And before we knew it, we were taking off our belts, sweaters, shoes and subjecting ourselves to pat-downs and three-ounce packages of toothpaste. Pilots were separated from passengers and we were separated from our water bottles. To our surprise, or our credit, we got used to the new norm.

We accepted it because deep down, we knew there had been a fundamental change in the way the world operated and it was never going to go back to the way it worked before. Today, we tiptoe on the cusp of another seismic shift. In the world of just about everything, there will be pre-COVID-19 and post COVID-19, modes of operating that will more quickly separate the past from the future than any peacetime event that has come before it.

At this moment we know what the past looked like. We can also surmise as to what the future will be as it relates to our everyday lives or in the always changing world of financial services and international asset management, but here are a few thoughts. Even in the face of unprecedented change The Bahamas remains an ideal location ideally suited to meet client needs in the post-COVID 19 era.

Innovation will rule. As an international financial centre, The Bahamas has demonstrated its ability to innovate in the investment funds and fiduciary services space. Technological efficiency and effectiveness will drive further development the world of high finance. Facial recognition will not only allow the most innovative cruise line to fulfill its promise of 10 minutes from car to bar; it will allow us to slide seamlessly through security lines at airports, check in to or out of hotels, prove we are who we say we are whether charging the purchase of a new vehicle or collecting our retirement benefits, ideally while maintaining our privacy and data security.

The fierce, maybe even voracious, appetite for deep-rooted, broad spectrum technological advances will reap leapfrogging financial rewards, doing for investments what the Intel Core® Processor did to the Atom or Celeron processors, making them yesterday's hot solutions and today's cold toast.

Investments in real estate will remain stable, particularly in highly desirable, safe countries and those perceived as secure, including The Bahamas, but increasingly those investments will be made by means of digital transmission. The use of digital assets will explode for everything from major purchases and investments to basic goods online. Five

The FINTECH Revolution

By Brian Jones
Written in collaboration
with Diane Phillips

years ago, when I first began talking about digital assets, it had an almost futuristic ring to it. Daring souls showed up at those early conferences, driven as much by curiosity as belief and countries began to consider how to regulate this new sector. To this end, The Digital Assets and Registered Exchanges Bill has been drafted and we expect that it will be passed into Bahamian law before the end of 2020. Gradually, the increasing emergence of types of blockchain and cryptocurrency fascinated the forward-thinking and struck fear in those who continued to feel if they couldn't see it, touch it, easily pay for it and get something tangible in return for the paper handed over, it just wasn't real.

Yet, a number of developers took risks and made sales, accepting digital currencies, such as Bitcoin, to develop futuristic ideas and businesses. Secure peer-to-peer value transfers to and from digital wallets were made possible. While more use cases are still being developed as adoption of digital currencies continues to grow, the primary use case at the moment is as a speculative investment. For those who play the markets, making money trading cryptocurrencies is not as easy as it might sound. Many were attracted to the possibility of quick gains and although a lucky few do generate positive returns, many end up losing money. Nonetheless, anyone who has conducted a digital currency transaction can confirm firsthand that the very nature of money is changing.

But the true widespread adoption of digital wallets came thanks to an unintended consequence of COVID-19 that forced shopkeepers to turn OPEN signs to CLOSED in an effort to contain the spread of the disease, causing more people to rely on the online life. Many learned the ease of ordering what they wanted online or via a mobile app, sitting back awaiting home delivery. Fast forward to the immediate future, storeowners and businesspeople who want to attract foot traffic will need to find ways to appeal to a public that will choose between fighting to find parking, traipsing through aisles hoping to find the exact product in the colour and size they want while trying to maintain social distancing, or stretching out, watching a made-for Amazon Prime movie and waiting for what they want to be delivered to them. COVID-19 has not slayed bricks and mortar, but it has awakened the sleeping giant of online competition and digital payment in places like The Bahamas which is in the infancy stages of rolling out digital currencies and regulating virtual currencies and assets. The Bahamian Sandollar was launched just in time to mitigate against the adverse impact of the COVID-19 pandemic in a country made up of many islands.

As we spend more of our money and more of our lives online whether for purchases, entertainment or information, data analytics will become increasingly important. Sellers need to understand buyers. Who is watching what? For how long? What colours and sounds appeal to 6-year-olds who influence parents' cereal purchasing behaviour? The need for data analytics combined with design thinking is becoming urgent and The Bahamas is perfectly suited to become the capital of hemispheric databases.

Why? Because The Bahamas has the strongest bandwidth in the region. The country is right on the edge with the fastest data connections through fiber optics cables. Hosting companies are running their operations and data collection from a data center right here in Nassau.

Ironically, while we are at the forefront of the new invisible reality, we are still stuck as a society in the age of paper. We conduct so many transactions manually, including title searches. Legal practitioners pour through old deeds and thick registers that could double as weights, search stamped pages of time-worn record books that need to be digitalized and then promptly placed in a historical museum as fascinating artifacts.

As people spin out of a certain skill, like stamping a deed to show it is recorded, then registering it in the record book, they can be moved into a more important and valuable job, helping to vet input data for fully digitalized public registry for quality control purposes, or learning how to read property appraisals accurately and know what to question should something seem amiss for enhanced risk management. Human capital is wasted daily on tasks automation can do when it would be better utilized on responsibilities for which there is neither time nor talent available to handle, leaving the most important work undone. As we move forward with the necessary digital transformations, any failure to truly advance our human capital resources could very well be our undoing.

When talking about data infrastructure and the need in The Bahamas for a proper land registry, key elements for a path to success post COVID-19, the interruption in business as usual also demonstrated our interdependence on the world as whole.

In introducing the first digital currency, the Sand Dollar, the Central Bank of The Bahamas looked at what others had done around the world. No one had to invent the wheel twice, nor refuse to take advantage of it because someone else designed it. The digital economy requires openness and cross-border collaboration so we must break the status quo and integrate deeper into the global community. We must embrace an open worldview knowing that the new business models that thrive in this environment are undergirded by flat, permissionless, decentralized, distributed global networks. The Bahamas is perfectly positioned lead in technology, innovation, virtual assets and digital age operations.

Equally disruptive as it is exciting, this new digital world is already expanding here in The Bahamas and its impact is being felt in various ways. While on one hand, the current industrial revolution has implications for financial services firms, many of which must seek to modify their business models just to continue to operate. On the other hand, we are seeing opportunities emerge as a response to the COVID-19 crisis.

We have seen very promising innovation with the introduction of digital wallets in anticipation of the launch of the Sand Dollar, which will foster greater financial inclusion. Once we achieve mass adoption within the digital economy, we will begin to benefit from the network effects in capital markets, which will be driven by a fully digitalized regional junior stock exchange and crowdfunding platform. Then we will see the knock-on effect in other sectors with the creation and increased demand of hi-tech businesses and new high-paying jobs in areas such as data protection, cyber security and digital marketing. Technology also facilitates solutions that let us re-tool, innovate, avoid waste and scale up much faster even in more conventional industries, such as agriculture and fisheries, than was possible just a few years ago.

In this digital world, it has never been easier for people to access knowledge and to learn, unlearn and relearn skills that are needed to thrive. Therefore, as we deal with the disruptions caused by COVID-19, we should keep in mind a timely quote from Rahm Emanuel, former mayor of the city of Chicago and former White House Chief of Staff: "Never let a serious crisis go to waste. And what I mean by that it's an opportunity to do things you think you could not do before."

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. 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.

Trading: Providing a local presence, global reach

By Ricardo Evangelista

As many wise men realised throughout history, in life the only constant is change. Our world is permanently evolving, and the pace of change is accelerating, driven by technological advances, socioeconomic dynamism and above all by the unstoppable march of history itself, as dramatic changes in the global geo-politics and the coronavirus crisis very recently reminded us of. The economic, political and social changes that will arise in the aftermath of the Covid19 crisis are very likely to, at least to some degree, shape the way we will do business and interact with each other for years to come. This dynamism is present in all spheres of life and demands from firms like ours the ability to constantly evolve and adapt to new challenges and landscapes.

Technological advances in hardware, software and telecommunications mean the way trading was carried out as recently as in the early 2000's, quite often by phone, sometimes even face to face, with clients visiting the broker's office to open or close positions, has fundamentally changed. Today service providers must offer ultra-fast execution, with latency measured in single digit milliseconds, available on a range of desktop, web and mobile platforms through which clients can access a vast array of different financial instruments, including foreign currency pairs, stocks, commodities, indices, ETFs and fixed income. The way trading decisions are made also evolved; today's trader is increasingly sophisticated, relying on cutting edge technology, with advanced chart packages supporting complex order types.

The traditional broker has evolved to become more than just an intermediary; today we transcend being a pricing and execution provider, we are also developers of cutting-edge technology. It goes without saying that competitive pricing, premium customer service and a vast plethora of educational resources are also a must, for any broker wishing to remain competitive.

But technology is but one of several competitive challenges we are faced with; Clients are culturally varied and geographically dispersed, through many countries across several continents, requiring a level of service that can be complex because of the different languages, cultures and varied time zones we need to cover. We also find that clients based outside of Europe tend to have different trading requirements, often demanding features that either aren't available or are overlooked in the old continent, such as higher leverage and a wider offer of educational resources.

Today, a large percentage of retail traders reside outside of Europe and the USA. Clearly, financial trading is no longer an activity exclusively reserved for those who are close to large financial hubs, such as London or New York; many in Asia, Africa, South and Central America, in the Caribbean, too, follow the markets avidly and are interested in trading. For these reasons, as interest for our products and services grew outside our traditional territories, a decision was made to expand beyond Europe. The Bahamas serves as an ideal hub for servicing these clients.

So why The Bahamas? Besides the natural beauty of the islands, nice weather and friendly locals, there were other reasons behind our choice; Chief among these, the availability of a well-educated and skilled workforce. The Bahamas is internationally renowned as a centre for financial services and we assumed it would be possible to recruit locally based individuals with experience in the industry; because of the relative complexity of the products we offer and diversity of our client base, our staff tend to be multilingual, university level educated and with work experience in the finance sector. Our assumption proved to be spot-on, as today we employ more than 20 locally- based finance professionals, who among them are proficient in seven different languages. Another important factor was the legal regime; the Bahamas legal system is based in English Common Law and for us this was extremely important. However, the reason that weighed the most in our decision to establish a hub in The Bahamas was the presence of a reputable and globally respected regulator; that was paramount, and we found it in the Securities Commission of the Bahamas.

The country and the respective regulator are extremely important when it comes to making such a decision; ending up based in a jurisdiction with poor global reputation is damaging for any financial firm, as trust is one of the most, if not the most, important factor for many clients when they are choosing a provider. In this respect, once again, The Bahamas proved to be the right choice; ActivTrades was granted a Securities Industry Act Licence from the Securities Commission of the Bahamas on 14 May 2018, having since onboarded several thousand globally based clients. The success story of brokers in The Bahamas is founded, to some extent, on the attractiveness of The Bahamas as a business destination given the geographical location of the islands and the excellent transport links with the Americas and Europe; there are several direct flights to the main business centres on both sides of the Atlantic. Last, but not least, is the social and political stability of the nation, as well as a growing international reputation for transparency, to which the adherence to the Common Reporting Standards of the Organisation for Economic Cooperation and Development pays testimony to the commitment to being a well regulated international financial centre.

As the number of international clients choosing to be onboarded under our Bahamas office grows, so will the need for recruitment of more locally based talent.

The increasing popularity of online trading across the planet and particularly in South and Central America will drive the success of The Bahamas as a trading hub.

In today's challenging environment, an online broker's success undoubtedly results from the ability to analyse and plan; to adapt and evolve. Over the last few years online trading faced several regulatory challenges, such as ESMA in Europe. Competitive online brokers have embraced the spirit of the challenge, recognising the legislation as being focused on the protection of retail clients. They have identified great growth opportunities in other regions and created new lines of products, specifically designed for institutional clients, which include white and grey label solutions, API and money management tools. Agile firms have also sharpened their focus on business partnerships, such as those established with IBs and affiliates.

About ActivTrades:

ActivTrades was founded in 2001. Our roots are European, having started in Switzerland in 2001 and moved to London in 2005. In less than 2 years we have been able to replicate in The Bahamas the success previously obtained in Europe which is a testament to the strength of Bahamian talent. As we move forward, we expect to continue the expansion of our firm's global reach; besides our London head office and its branches of Sofia and Milan, as well as Nassau, of course, we are currently at the final stages of obtaining a licence from the CSSF in Luxembourg, where our local office is ready to start operating once the licencing process is complete. Our Luxembourg base will allow us to continue serving EU based clients on the post-Brexit transition period, which starts from the end of December 2020. Find out more at www.activtrades.com

Ricardo Evangelista
Senior Analyst

Ricardo Evangelista has more than 10 years of professional experience in the financial services sector. As a passionate follower of the markets, geopolitics and global economics, Ricardo regularly contributes to audiovisual and written media, through analysis, opinions and articles, as well as speaking and presenting at public events. Ricardo has been published, quoted and interviewed by renowned international media outlets such as Bloomberg TV, CNBC, Reuters, The Guardian, Le Figaro and several others.

Dubai and the Middle East Opportunities

By Svetlana Stoilova

When the going gets tough, the tough get going. And we are going in the direction of unlocking $12 Trillion worth in market opportunities in agriculture, energy and city planning; critical to delivering the UN Sustainability Development Goals.

Despite the tragedies Covid-19 caused, it has undoubtedly allowed us to clearly strategize for the future we want. Our company wants to do its part in positively impacting economies and industries on a global scale. The clients we represent are active investors and corporations that not only want to establish their legacies but also want to share the responsibility of creating better ecosystems.

Speaking of ecosystems, both The Bahamas and the Middle East hold very special places in that of SPG's. The Middle East, because we have observed their tremendous ups as well as some downs to be able to navigate smoothly, and implement ambitious yet realistic strategies; and The Bahamas for their unprecedented support and ability to foresee global wealth trends.

HH Sheikh Rashid al Maktoum, the father of the current Dubai Ruler, was many times asked to give his reflections on the region's stability and its relationship to oil. He famously said 'my grandfather rode a camel, my father rode a camel, I drive a Mercedes, my son drives a Land Rover, his son will drive a Land Rover, but his son will ride a camel'. The eerie prophecy has been following the MENA region like a cloud; they're faced with pressure of having to offload their product in a global environment which is increasingly more concerned about our planet.

Whether or not we believe activists like Greta Thunberg or think she is George Soros's puppet, it doesn't really matter – the world is seeking solutions to our global problems therefore the region has to too! Having said that, Arab nations haven't fallen in the complacency trap just yet.

We take honour in having learnt valuable lessons directly from the late Sheikh's closest advisors who were part of his visionary ideas to push for new policies; we know first-hand his philosophies remain embedded in the next generation who are eager to tap into the sustainability market.

HH Sheikh Rashid showed incredible foresight in making sure that their billions buy modern infrastructure, latest communication, resorts and a financial centre. The Bahamian Government once said that no one wants to do business with a country whose infrastructure is run down – seems their thinking is aligned as The Bahamas allocated record amount of money for improvements to ports, roads, bridges etc. The new Lynden Pindling International Airport in Nassau has been ranked as the second Best Airport in the Latin America and Caribbean region!

The Middle East though, have not gone too far astray; pre-discovering oil, Dubai was a port town interconnecting the Gulf to the rest of the world; a similarity to The Bahamas on the other side of the planet. Since first spending millions on the Free Trade Zone in the harbour of Jebel Ali, it has become an important business hub with market access to 3.2 billion people – a staggering amount for the little port city which is not playing catch-up any more. Another similarity to The Bahamas with its access to the Americas and its Grand Bahama Free Trade Zone, which is superior to any other similar location in the region as it offers long-term tax concessions and benefits for financial, commercial and industrial enterprises.

The Bahamas and countries like the UAE (whose nationals travel visa-free to the Bahamas and vice-versa) have entered into numerous agreements, so herein lies an opportunity because every bit of cooperation is a catalyst for further trade and ventures between the two nations. One of the agreements aims to reduce The Bahamas' dependence on fossil fuels and increase trade between the two countries. Last year, The Bahamas inaugurated a solar panel car park funded by Abu Dhabi Fund for Development (ADFD).

The area with the greatest scope for growth is in sustainability and impact investment. The Bahamas have leverage purely from their geographic position and access they provide to the US (and US securities). Their ability to deliver financial services to the highest of standards makes them stand-out to the Arab countries which can greatly benefit. What we know from our experience in the Middle East is, particularly amongst GCC countries, while each one has its distinctive traits, their global objective remains united – they want to put their cash to good work for the prosperity of their nations so let's make sure we are all stakeholders of the process!

SPG are engaged in projects which aim to impact and positively disrupt the world around us. Sustainability is almost always at the core of the development work we do – from building eco-cities, to assisting family businesses be governed to make room for the next generation, we are concentrated on the long-term trajectory and are extremely passionate about profit with purpose. Where we believe The Bahamas can add value to our Middle East tactics, is making their financial services infrastructure available and better known to the right decision-makers within the region.

The Middle East rather than relying on luck, are trying to create theirs – maybe checking to see whether the cloud I mentioned earlier can instead, cultivate some new harvest for future generations?
There are major upcoming events in the MENA region, further highlighting their importance on the global scene but also their desire to bring together business interests from around the world. God permitting we can travel by November, the G20 Summit in the Kingdom of Saudi Arabia, has all its discussions directly related to sustainability; in one instance they highlight that KSA will continue the efforts of the Japanese G20 Presidency to advance talks of our oceans' ecosystems. The $12 trillion market is becoming to look increasingly real.

Sure, it can be met with scepticism, but the experience we have had with clients from the region is that they are actively engaging with their respective Governments, partnering to cultivate sustainability-driven developments and sticking to the agenda. Attention to climate change is not just 'trendy' as many countries in the Middle East realise its inconceivable domino effects. A lot of MENA Government officials and Diplomats I have spoken to say that the standard of living some Middle Easterners, especially from the Gulf, are accustomed to is simply not maintainable; they are afraid their countries have become welfare states. Furthermore, we all know that the local conflicts have led to mass migration and refugee crises that not only affect the region's Defence policies but strain infrastructure; add further migration due to climate change on top of the existing pressure and we see why the G20 are so fixated on sustainability.

Profit for purpose is our sweet spot. The wealth created nowadays is at unprecedented levels, so the responsibility factor is extreme. We work with corporate clients who can benefit from Government mandates (or vice versa) so often we find ourselves negotiating to unite a number of interested parties into executing the same vision. We are actually extremely careful as to what we call a sustainability investment; there are many ventures out there that have great potential but essentially it boils down to an investment in people.

Currently we represent a consortium, of which we are also a stakeholder, in securing partnerships with Government organisations in a few Middle Eastern countries with the aim of developing local aqua and agriculture projects. We ask ourselves 'Sustainability is becoming mainstream but is it moving the needle'? The fact that the G20 Summit have outlined the importance of fostering resilient water systems is extremely reassuring and is wave worth riding for multitude of reasons.

Another recent SPG undertaking, is the review of operations of a large Resort developer who want to enter the eco-tourism space. We assisted them in acquiring the land and have taken the approach to look at this Eco Resort from both ends; on one side making sure it fits the sustainability bill while ensuring we build it into an investment product with a solid proposition to back it up. We have been on board our partners who specialise in things like the treatment of sewage water or building sustainable infrastructure around plots of land to be used for agriculture as part of the Resort. It supports local labour and local economy while crucially achieving a global goal that is aligned with the mission of all the parties involved – namely sustainability.

Frankly, we can work with any offshore jurisdiction but we have witnessed The Bahamian professionals and their Government's desire in facilitating business by ensuring their legislation is robust without diminishing the integrity of their financial system or the law. The Bahamas is in a position not only to offer sophisticated structuring to wealthy individuals from the MENA region but can contribute their expertise and professionalism to more Public-Private Partnership scenarios which SPG has been developing.

We are all activists and we are all here to do our part in order to manifest the visions we have for the world around us. There is unbelievable amount of room for growth as we are no longer at the exploration phase, rather we are making sure we see the needle shift.

Positioning the Bahamas and its hub as a partner to these Middle Eastern nations controlling some of the biggest sovereign wealth funds is a solid starting point.

The private sector is about to do a lot more than philanthropy.

Svetlana Stoilova
SPG & PartnersLtd.

SPG & Partners caters to both international private clients and corporate groups. It advocates for the implementation of corporate ambitions which deliver multiple sources of value, not only to the immediate stakeholders but to the ecosystems within which they operate.

SPG & Partners work in tandem with the UN SDG initiatives and are passionate about undertaking projects which are impactful on a large scale.

Svetlana started her career in London in international wealth planning as a paralegal before qualifying to specialise in Trust and Corporate Law. She works closely with The Bahamas and believes they have a fantastically run financial infrastructure and can be a key player on the global wealth scene.

Svetlana loves reading about art, is a keen horse-rider and apart from English, she speaks Spanish, Russian and Bulgarian.

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Opalesque Roundtable Series ’20

BAHAMAS

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Editor's Note

Well before the Second World War, The Bahamas was already seen as a desirable place for persons with wealth to come and live. The Bahamas' financial services industry didn't come first: what really came first were those persons of mobile capital and being able to afford to live at a place of their choosing. Almost 100 years later, the country is very mature in having maintained and expanded its financial services infrastructure, while, of course, still being an obvious place for persons choosing to relocate for many reasons, whether it be the expertise offered to support wealth management, climate, lifestyle or just simply the location. The Bahamas is in close proximity to major centers around the world and midway between Latin America and North America. Insiders report a steady influx of family offices setting up in The Bahamas.

The Bahamas: A Safe Harbour

The COVID-19 experience has also shown that the archipelago can offer a certain element of security as people can potentially stay somewhat insulated from the possible ravages of international pandemics. To date, The Bahamas has been managing the response to the COVID19 pandemic well. *During the lockdown period throughout the archipelago a considerable number of yachts moored from various places around the world where people chose to come to The Bahamas because they saw it as a place of refuge.* We also know that a substantial number of global citizens reside in The Bahamas, and many of them chose to be in The Bahamas to wait out the pandemic. At the same time, The Bahamas remains open for business – the international banks and trust companies never stopped operating. Local advisors and lawyers helped clients take steps to transition or amend their fund structures, to service and prep their businesses, maybe making some changes adapting to the pandemic, to revise corporate planning, and possibly a bit more assisting family offices in doing, for instance, some planning around medical needs.

The Bahamas has a land mass of 3865 square miles or 10,010 km² and thus slightly smaller than Connecticut offering options and choices as premises are available for leasing, for renting, or to purchase. This makes it much simpler in The Bahamas to be compliant with the substance requirements because the infrastructure is in place, and there is availability of appropriate property and personnel.

New regulatory initiatives find international traction

More funds and fund managers are taking advantage of the Bahamas' new Investment Funds Act which is compliant with all international standards – FATCA, IOSCO, and also with the EU – while permitting that the fund's administrator can be anywhere in the world. In addition, The new Bahamas Commercial Enterprises Act allows companies from different sectors such as wealth management, advisory to FinTech to start operating on an expedited or fast-tracked basis with incentives around access to work permits. A new Digital Assets and Registered Exchanges Bill is in the works to solidify the legal framework for FinTech business. After extensive benchmarking, engaging with other regulators as well as local stakeholders in the trading space in an effort to develop a robust regulatory framework, The Bahamas implemented rules with respect to contract for differences and leverage ratios and has since attracted firms to open new, regulated entities in Nassau to better reach emerging markets.

The Opalesque 2020 Bahamas Roundtable took place online with the following panelists:

1. Christina Rolle, Executive Director, Securities Commission of The Bahamas; Vice-Chair, IOSCO Inter-American Regional Committee
2. Christel Sands-Feaste, Partner, Higgs & Johnson
3. Linda Beidler-D'Aguilar, Partner, Glinton Sweeting and O'Brien
4. John Delaney QC, Senior Partner, Delaney Partners
5. John Wilson QC, Senior Partner, McKinney Bancroft & Hughes
6. Brendan Davis, Business Development Manager, ActivTrades Corp
7. Tanya McCartney, CEO & Executive Director, The Bahamas Financial Services Board

Enjoy!
Matthias Knab

Participant Profiles

Christina Rolle

Christel Sands-Feaste

Linda Beidler-D'Aguilar

John Delaney Q.C.

John F. Wilson Q.C.

Brendan Davis

Tanya McCartney

Matthias Knab What is the message that The Bahamas wishes to convey to the international community about the country's financial services industry?

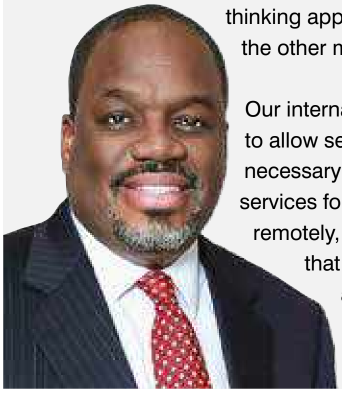
One thing I have noted is that I see more alternative investment managers setting up Bahamas-based alternative investment funds that are actually managed from The Bahamas, with the fund manager based there, so there seems to be a good momentum in your jurisdiction.

Christina Rolle: This is correct, and certainly from a regulatory point of view, the message that the Bahamas Securities Commission and other regulators in The Bahamas want to convey, is that we are a jurisdiction committed to best practices on a global level, while at the same time being practical in our approach to regulation.

As you mentioned, **more funds and fund managers are taking advantage of our new Investment Funds Act,** so indeed we are getting traction there with investment funds. That is one example of The Bahamas' commitment to both best practices and practicality, because in developing the investment funds legislation we took the position that we wanted The Bahamas, first of all, to be compliant with all international standards, with FATCA, IOSCO and also with the EU.

We recognize that there are some practical elements within the investment and financial domain that require specific action, and so we built those in as far as possible. For example, our Investment Funds Act is EU compliant, however, we still allow that the fund's administrator can be anywhere in the world. So we try to take a very holistic approach as regulators here.

John F. Wilson Q.C.: And also, just in case someone might be wondering whether The Bahamas is open for business, the response to that is that it most certainly is. I would like to commend the government on their forward-thinking approach to dealing with the COVID-19 pandemic by locking down the country and utilizing the other measures that were put in place.



Our international banks and trust companies never stopped operating. Provisions were put in place to allow senior one and senior two officers to essentially work remotely, attend offices where necessary to initiate urgent transactions, and we saw the same for law firms and all other support services for our international financial business. In essence, all of us were able to work very efficiently remotely, showcasing that that our technology infrastructure is strong and secure. The bottom line is that The Bahamas is most certainly open for business and that our sector performed admirably during the COVID-19 pandemic.

Brendan Davis: The ability to adapt in situations like this is essential in our line of business. For example, with the current pandemic and lockdown, our contingency plans allowed for all of our team to transition to working from home without interruption in service to our clients.

As a matter of fact, **we experienced some of our highest trading volumes in the last three months** as well as an increase in the number of new customers. At this time we still have 50% of our staff working from home.

Linda Beidler-D'Aguilar: What's interesting to note is that with the pandemic and the lockdown, our business activities continued just the same, so we helped clients taking steps to transition or amend their fund structures, to service and prep their businesses, maybe making some changes adapting to the pandemic, to revise corporate planning, and possibly a bit more assisting family offices in doing, for instance, some planning around medical needs. Similar to us, our clients usually were in a lockdown as well, but that didn't mean that they didn't need assistance and didn't require services.

And so it's been really important to us to be available via e-mail, via phone to do meetings like this on Zoom, to work remotely, to keep our clients and partners front and center and to keep them able to take care of their own business challenges.

Matthias Knab A jurisdiction like The Bahamas tends to be busy and proactive at all times, so let's look at some of the most recent changes that have occurred in The Bahamas financial services industry and where have you had growth.

Christina Rolle: On September 1, 2019, the **Investment Funds Act** came into force and we are still in a transition period with that Act, but certainly there are some new features. One I have already mentioned is that the administrator can now be anywhere in the world.

The investment fund manager can either go through a registration or licensing process in The Bahamas: (1) for managers who are only managing professional funds, they only go through a very simple registration process; (2) for those who would be managing retail funds, they go through a licensing process.

We also **rationalize in the legislation the concept of fiduciary responsibility** and where that fiduciary responsibility should lie. That's important because for many, many years in The Bahamas that fiduciary responsibility rested the administrator. We have now aligned that appropriately between the parties within the fund, that elect to have that responsibility, mainly the directors in some instances and the fund managers in others.

In the trading area, more recently The Bahamas implemented rules with respect to dealing in **contract for differences** in the Bahamas.

For the past three years, The Bahamas has seen some growth in this type of activity. We have some broker dealers who have been moving to The Bahamas to take advantage of the fact that our regulation was not as robust as other jurisdictions. And while The Bahamas had very strong securities legislation, we didn't zero in on this space because it was just not an activity, we had to pay attention to in the past.

Seeing this trend about three years ago, The Bahamas determined that we were going to regulate this space. We didn't want to fall into a scenario like what happened in other jurisdictions where this activity really damaged the reputation of a southern European jurisdiction. So, what we did was conduct extensive benchmarking and engaged other regulators as well as locals, in order to identify the real issues in the space and to develop a regulatory framework.

And now we have put in place rules that have appropriate leverage requirements, appropriate requirements for classifying someone as a retail investor, appropriate requirements around marketing. This business probably isn't going away in the short-term so we thought we ought to regulate it properly for the time being.

Tanya McCartney: It might be interesting to hear from Brendan then what this means for your business and why you choose to be here in The Bahamas.

Brendan Davis: Of course! We are unique in the way we do business and so are our motivations. The introduction of leverage as a part of this new set of rules presents a new challenge. However, there are so many factors that informed our decision to operate in The Bahamas. We were looking for a good mix of credibility and flexibility in the targeted jurisdiction. Credibility in respect of its international reputation and flexibility in respect of its willingness to allow the market to dictate the offer – as opposed to strict regulation as was the case in our ESMA regulated entities.

We were happy to be one of the first brokers here to be a part of the conversation and to be consulted on this, and it just affirms our thoughts in the beginning that The Bahamas has **a growing international reputation for transparency.** It's also important that the regulator is respected globally when it comes to making these kinds of decisions.

We were also motivated by a strong desire to be one of the brokers that truly made an investment in The Bahamas. Physical presence in the country was a primary target, therefore we have committed to being flexible as well to make the relationship work. The regulation still signals to the international market that The Bahamas is a strong regulatory jurisdiction focused on maintaining its fiduciary integrity and that's win-win for us.

Christina Rolle: To Brendan's point, we wanted to ensure that the brokers we attract in The Bahamas are those who want to be regulated well and who want to attach their reputation to a jurisdiction that is committed to good regulation.

John Delaney Q.C.: Transparency is certainly a key concept in today's world of finance, so we have implemented FATCA as well as the CRS regimes a few years ago which gives transparency for the purposes of those regimes – in the first case to the Americans and in the second instance for all of those participating in the Common Reporting Standards.

We also have recently updated our AML/CFT legislation to ensure that we remain compliant with the ever evolving international standards.

In relation to matters around tax, we have implemented the **substance requirements** regime which is comparable to that transpiring or required around the world for responsible international financial institutions. In addition, we have recently implemented the **Beneficial Ownership Register,** which again goes towards ensuring that we are compliant with requirements anticipated for financial centers at the forefront in terms of responsibility and engaging fully with the international community.

But apart from that, we have implemented legislation to facilitate business, such as the **Commercial Enterprises Act** in 2017. It enables easy entry to a whole range of services businesses, such as **FinTech, data, and other advisory services.** We're inviting those businesses to come to The Bahamas for its base of operations and **set up on expedited basis** as it relates to work permit, from which to use our infrastructure to render quality services to the rest of the world.

John F. Wilson Q.C.: That's correct, and I think the larger point here is that the legislation was really designed to place The Bahamas at the forefront as an International Financial center.

Additionally, from a regulatory perspective which is particularly important for **ultra-high net worth clients and residents** of The Bahamas, it has positioned us well because they are able to demonstrate that they are doing business in a well-regulated compliant jurisdiction which meets international standards. Having the structures, processes, people, products, and regulations in place that can serve also the larger pools of capital typically leads to more growth in the wider spectrum which supports some of the ancillary services that support the ultra high net worth individual such as concierge services and family offices management and all of this tends to support the economic permanent residency initiatives being launched by the government.

Christel Sands-Feaste: In addition to the regulation itself, it is important to speak to the country's approach to regulation. The Bahamas is very agile in its approach to regulation; in addition to having passed some of the pieces of legislation that we have spoken to on an ongoing basis, the industry collaboration with the government continues to work to refine the legislation to reflect the very unique features of this jurisdiction, to make sure that we are consistent with international best practices to ensure that the regulatory requirements are clear.

There has been work done by the government in conjunction with industry to **refine the substance legislation,** for example, to address issues that have been raised by the industry. In addition, notwithstanding COVID, there was recently tabled in the House of Assembly a **new Banks and Trust Companies Regulation Act and Central Bank of the Bahamas Act** to reflect that there is a constant focus on refining the scope of the legislation and sharpening our pencil to demonstrate to the world that we are best in class in this area. We regulate well, we are sensitive to industry's needs, but at the same time, we are working on an ongoing basis to reflect the new reality and the issues that arise in servicing our clients, in accordance with international best practices.

Linda Beidler-D'Aguilar: Just adding that we have also made **substantive investments in physical infrastructure.** For instance, we have a world-class airport in The Bahamas. Nassau and also other islands have seen large investments in airports, and that's expected to continue.

Significant investment in power generation is ongoing and there are also major investments in roads, telecommunications, and internet. As we pointed out, we have all been able to communicate notwithstanding a massive hurricane or the lockdown, demonstrating that we have the ability to function notwithstanding these potential setbacks.

And finally, for the companies themselves, we also offer the opportunity to create substance because we do have premises available for leasing, for renting, or to purchase. There are physical premises available for people to purchase to reside in and so it makes it much simpler in The Bahamas to be compliant with the substance requirements because the infrastructure is in place, there is availability of appropriate property and personnel.

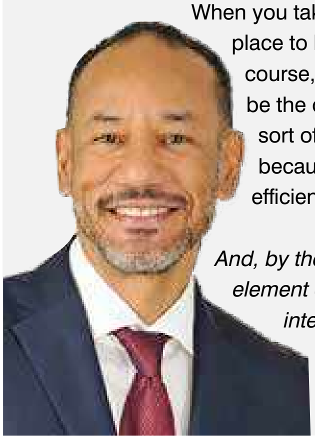
Matthias Knab Financial services are of course a very wide field, so I was wondering where from your perspective you see the most growth or potential for growth in your jurisdiction?

John Delaney Q.C.: Well, when we look at the future or future growth, I sometimes also think that in a way the more things change, the more they remain the same.

The Bahamas started out even before the Second World War as a desirable place for persons of the world to come and live. So, in fact, our financial services industry did not come first, what came first were those persons of mobile capital and being able to afford to live at a place of their choosing. That really came first.

And then to service these ultra-high net-worth population we evolved organically the financial services industry starting in the 1930s, but after the Second World War that picked up pace markedly. Today, you Sir John Templeton who founded Templeton and then Franklin Templeton, the successor, and many others.

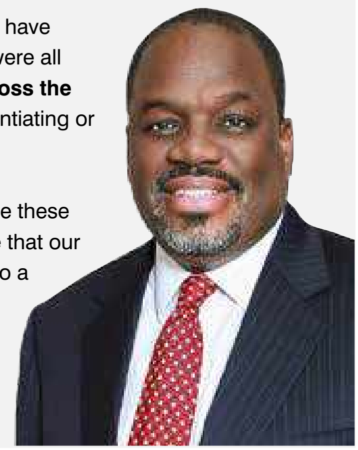
My point here is that we see The Bahamas as remaining relevant to the world by virtue of our history as a highly desirable place in which to live.



When you take a closer look at the infrastructure that has evolved responsively to that desirability as a place to live, we are now very mature in having maintained and expanded that infrastructure, and, of course, we are still an obvious place for persons choosing to relocate for many reasons, whether it be the climate, lifestyle or the location in terms of proximity to major centers around the world and sort of midway between Latin America and North America. All those things continue to matter because international persons can still choose to relocate here and carry on their affairs in a fairly efficient way while being compliant with global regulations.

And, by the way, the COVID-19 experience has also shown that our archipelago can offer a certain element of security as you can potentially stay somewhat insulated from the possible ravages of international pandemics. All during the lockdown period throughout our archipelago a considerable number of yachts moored from various places around the world people *chose to come to The Bahamas because they saw it as a place of refuge. We also know that a substantial number of global citizens reside in The Bahamas, and many of them chose to be in The Bahamas during the pandemic to wait it out.*

Coming back to your question, Matthias, so also on a go forward basis what we see is persons who can afford to live wherever they wish in the world have been choosing The Bahamas, and now they may have even more reason to choose The Bahamas as a place to live, so we will continue to see more utilization of our economy and financial infrastructure.



John F. Wilson Q.C.: We spoke about the regulations and tax transparency initiatives we have implemented, and in my view, those initiatives from the onshore jurisdiction perspective were all designed to protect their tax base and that has really resulted in a **level playing field across the globe.** From that perspective, I think it is all good. The question then is what is our differentiating or competitive advantage here in The Bahamas?

I would agree with John Delaney that this advantage is most certainly our ability to provide these residential enclaves for ultra-high net worth individuals. We have a geographic advantage that our competitors do not have. We can attract the ultra-high net worth individuals and families to a great environment that allows them to work and play where they bank and manage their investments. We have that ability and the physical resources here in The Bahamas to make that a reality.

Christel Sands-Feaste: Related to what both John Delaney and John Wilson have said is that, unlike some of our competitors, human capital is present in The Bahamas in abundance. The professional expertise required to establish and operate businesses carrying out many forms of activity is available here.

Historically we are well known for private banking and private wealth professionals, but ActivTrades is just an example of **brokerage houses** establishing themselves in The Bahamas. In addition, **we are seeing an increase in the number of family offices being established in The Bahamas.**

We have also seen increased interest, particularly after the new Investment Funds legislation, in updating investment funds or establishing new investment funds. So for clients seeking to relocate their businesses to The Bahamas, unlike some jurisdictions where it may be difficult to secure the required human resources, there is a significant pool of qualified professionals with international experience, available here.

In addition, as a result of the COVID-19 pandemic, one additional advantage, from my perspective, is that Millennials in very different spheres, with very different skill sets who may not otherwise have considered returning to The Bahamas will actually reconsider whether or not they wish to come to The Bahamas even for short periods of time and will bring increased skill sets with them.

Further, with the increased focus on technology, there are new opportunities for the transfers of skills remotely. Therefore, in addition to the working and playing in The Bahamas, professional expertise is here in abundance and with COVID and Dorian, there is an increased focus on the need to provide world-class quality service to clients at a very high level, on their terms, whether it's remotely or in person, and I certainly think we have a distinct advantage from the jurisdictional perspective and I feel very positive about that.

Christina Rolle: Christel's point about the availability of human capital cannot be overstated. One of the key responses that we often get from potential licensees and registrants when asked why The Bahamas is chosen over competitors within the jurisdiction, is the availability of human capital.

The Securities Commission of the Bahamas is currently developing legislation for FinTech and the digital space, and we hired an international consultant to help us with that work. Our consultant was from Hong Kong and they kept stressing to us that we just can't overstate the advantage that The Bahamas has over other jurisdictions in this space, because we have the human capital here and so we do not have to go outside the jurisdiction for it.

Brendan Davis: When you look at trading internationally, we see that our client base is dispersed geographically. 40% of our clients are in countries outside of Europe, a large number of which are in South America. This clearly says that financial trading is no longer just for people that are close to traditional financial hubs like London or New York.

There are people in the Caribbean, Central and South America who are serious about trading, follow the markets closely. and want access to products of their own. I see the future of The Bahamas financial services industry being one where the country is well-placed to become a hub for those types of clients.

Linda Beidler-D'Aguilar: On the subject of local human capital, The Bahamas has made a significant **commitment to education** in general. We have moved from having the College of the Bahamas to the University of the Bahamas, there is a law school in The Bahamas, there is an active CFA society, so we aren't just looking at tourism and educating service providers for the tourism industry. We have expanded from that and are saying we actively need and are taking steps to prepare professionals going forward who will be available to businesses, to the international financial community, to the family offices, and other businesses. So it's also not just what we have today, it's going to be who we have 10 or 20 years from now, who can continue to keep the Bahamas at the forefront of the knowledge and the skills and the expertise that we need not just today, but also down the road.

Christel Sands-Feaste: One further point I would like to add is that one of the things that are certainly going to be critical to the jurisdiction, not just from an international client services perspective but from a domestic perspective, is a holistic review of the tax system here in The Bahamas. Any future reform will result in benefits to both domestic and international businesses based in the Bahamas.

Matthias Knab John Delaney gave us a historical perspective on how the first ultra-high network individuals came to The Bahamas in the early 1930s and that the financial system really developed and expanded from there. I have also met a number of family offices that operate from The Bahamas, and I understand more are setting up here. Can you give us an update on how The Bahamas is servicing, welcoming, attracting family offices?

John Delaney Q.C.: We mentioned the Commercial Enterprises Act that was enacted at the end of 2017.

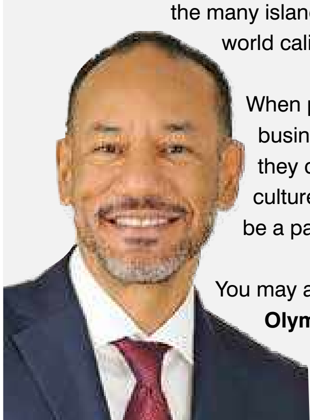
One of the targeted areas it sought to address was wealth management, and of course, a family office is precisely about wealth management, and so already we have the enabled infrastructure for family offices to be set up on an expeditious basis. *It's simply a matter of persons coming and obtaining their premises.* We've talked about the ready availability of human capital, so they can engage their staff and can start operating on an expedited basis as all is provided on a fast-tracked basis.

Let me also add that infrastructure and processes have in fact been here already for a long time but we have done in 2017 was the modernizing of it just to make it more frictionless as we continuously look at ways to improve the ease of doing business.

It is important to note that persons of wealth are human beings with many dimensions: Yes, they have wealth, but that's not the full definition of who they are. They are persons with general interest and increasingly people are concerned about the environment and climate sustainability and such matters.

Well, The Bahamas is an ideal place for that. We happen to have a pristine environment and were in fact very early in establishing national parks. We have the largest earliest **Marine and Sea Park** that was developed in the 1950s and that has continued to expand.

You see around the world that persons who can afford to, are spending their money and investing around their particular values, and that's also not new to the Bahamas. There's the **Perry Institute of Marine Science:** Mr. Perry, deceased, was an American who spent a lot of time in The Bahamas and in the Exumas where he owned Stocking Island which is one of the many islands in Exuma. That's just one example. From as far back as the 1950s Mr. Perry supported a world caliber marine science research facility that continues to exist to this day.



When people come here they don't just want to know that it's a place for them to manage their business affairs. That's obviously very important, but they also want to know that it's a place where they can pursue their other values and that they could enjoy the lifestyle, they could enjoy the culture, which is a culture of real depth and a few centuries of history that they can learn about and be a part of.

You may also know that we have world-class athletes: Bahamian athletes have won a total of fourteen **Olympic medals,** all in athletics and sailing. So, here is another field where The Bahamas is competing with the world's best and doing well.

Now, it's important to note that a lot of what might be said or written about the questions you have mentioned; The Bahamas doesn't readily accept that all of that is legitimate. Sometimes you can trace things back to maybe a competition based criticism or perhaps a failure to fully understand, so a major burden of the Bahamas is to make sure that the international community properly understands what we do so that we can dispel that which we consider to be largely a misunderstanding.

Christina Rolle: From a regulatory point of view, I would like to add that we always strive to be **early adopters of international best practices.** For example, about three years ago IOSCO came out with what is called an enhanced MMOU, and I think The Bahamas became the seventh country in the world to be accepted to IOSCO's MMOU, actually at the same time as the US.

Within the IOSCO community, we are a part of what's known as the **Inter-American Regional Committee.** Part of that committee is the Ontario Securities Commission, the US SEC, and The Bahamas has recently been adopted and in my personal capacity, I am **Vice Chair** of that Committee for this and the next year. We are as a result a **member of the Board of IOSCO** now. We are also a member of IOSCO's Committee on Market Regulation and Intermediation, IOSCO Committee on Enforcement.

We have also become a member of IOSCO MMOU Screening Group and the MMOU Monitoring Group. So now, we're not just a receiver of best practice, we are also putting ourselves in a position where we are contributing to the making of policy which underlines again the soundness and reputation of our institutions and regulations locally as well.

Matthias Knab To finish off, let's look again at innovation – things like bespoke products, your ICON SMART comes up, a legal regime for virtual assets, what's new here?

Christina Rolle: The Bahamas is currently developing a suite of legislation that will really cover the FinTech space comprehensively.

A key feature in one of the legislation is the **Digital Assets and Registered Exchanges Bill.** We were very deliberate in who we thought should be regulated. As John mentioned, you don't want to over-regulate innovation to the point that it will not develop in an organic way.

Therefore, our approach was to first observe what was happening globally and then give a practical approach to regulation around principles of what ought to be regulated, rather than specifics.

And so the Digital Assets and Registered Exchanges Bill will focus around principles of how marketplaces operate and apply that to the FinTech space.

It would also focus on regulation around principles about how offerings work, and apply that also to initial coin offering or initial token offering in the digital space.

We hope that this legislation will come into force shortly. We think that it will go to Parliament in the summer of 2020, and so that's something that is on the horizon and that we are very excited about.

Another one of our regulatory initiatives relates to the **financial and corporate service providers**' space where we are expanding the categories of licensees to allow international operators who may be in financial leasing, or in commodities trading, digital wallet services, or in a number of other businesses to become regulated and to be able to submit themselves toward a regulatory environment that is effective and practical.

CONTACT

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