

TRUST BAHAMAS



WHY THE BAHAMAS IS THE CLEAR CHOICE

DEEP EXPERTISE

The jurisdiction ticks all the boxes as a progressive global financial hub

FAMILY OFFICES

Wealthy families are choosing to manage their affairs in The Bahamas

ISLANDS OF INNOVATION

From SMART funds to foundations, The Bahamas continues to stand out

CONTENTS

- 4 THE CLEAR CHOICE**
The factors that set
The Bahamas apart
- 8 BAHAMAS AT A GLANCE**
Quick facts about The Bahamas' wealth-planning offering
- 11 BRING THE FAMILY**
For wealthy families, The Bahamas' appeal speaks for itself
- 14 ISLANDS WITHOUT EQUAL**
Three outside service providers explain why they recommend The Bahamas
- 19 AT THE CUTTING EDGE**
How Bahamian trust law continues to keep pace with international developments
- 21 OPEN FOR BUSINESS**
Cutting-edge businesses can now profit from The Bahamas' expedited work-permit regime
- 23 AN ELEGANT SOLUTION**
Why executive entities have proved a hit with families
- 25 THE SMART CHOICE**
Why private funds are the future in The Bahamas
- 26 ONE STEP AHEAD**
How and why the government is transforming financial services

TRUST BAHAMAS

SPONSORED BY THE BAHAMAS FINANCIAL SERVICES BOARD

Montague Sterling Centre, 2nd Floor, East Bay Street, PO Box N-1764, Nassau, NP, Bahamas
Tel: (242) 393-7001; fax: (242) 393-7712
info@bfsb-bahamas.com
www.bfsb-bahamas.com

PUBLISHED BY THINK

Capital House, 25 Chapel Street, London NW1 5DH
Tel: +44 020 3771 7200
www.thinkpublishing.co.uk
Managing Director **Polly Arnold**
Editorial Director **Matthew Rock**
Managing Editor **Mike Hine**
Art Editor **Peter Charles**
Advertising Manager **Tony Hopkins**
t +44 (0)20 3771 7251
e tony.hopkins@thinkpublishing.co.uk

This is a sponsored supplement, the content of which is paid for and controlled by the sponsor. STEP's editorial team, including the STEP Journal Editorial Board, has not been involved in the production of this supplement. The views expressed in this supplement are not necessarily those of STEP and readers should seek the guidance of a suitably qualified professional before taking any action or entering into any agreement in reliance upon the information contained in this publication. Whilst the publishers have taken every care in compiling the content to ensure accuracy at the time of going to press, neither they nor STEP accept liability or responsibility for errors or omissions therein, however caused. STEP does not endorse or approve any advertisement and has no liability for any loss caused by any reliance on the content of any such advertisement. **Print:** Pureprint, East Sussex



A WARM WELCOME TO THE BAHAMAS



Tanya McCartney is CEO and Executive Director of the Bahamas Financial Services Board

On behalf of the Bahamas Financial Services Board (BFSB) and its member firms we are pleased to present our STEP colleagues with this special report on The Bahamas. We hope that the contents demonstrate the keen commitment of The Bahamas to ensuring that our financial services industry and business environment continue to provide a world-class experience for you and your clients.

We thank our many STEP partners for their continued support of The Bahamas. Your valuable insights over the years have played a significant role in shaping our industry and many legislative initiatives, enabling us to be nimble and responsive to the ever-evolving global environment for financial services.

In this report we focus on a number of areas that show how The Bahamas has achieved appreciable success despite global headwinds and regulation affecting the industry, and how it remains a premier jurisdiction for international business.

The Minister of Financial Services, Trade and Industry, and Immigration in this supplement outlines key elements of The Bahamas' strategic plan for the transformation of financial services to ensure the long-term viability and competitiveness of the industry.

And the Association of International Banks and Trust Companies (AIBT) in the Bahamas, which enjoys a close partnership with BFSB, realising the importance of being able to articulate a strong value proposition, examines why The Bahamas

is the clear choice for financial services, and how it is developing to remain in step with global change.

A number of your STEP colleagues have also given their insights on the business environment in The Bahamas, its advantages as a jurisdiction, and why they might recommend the jurisdiction to clients.

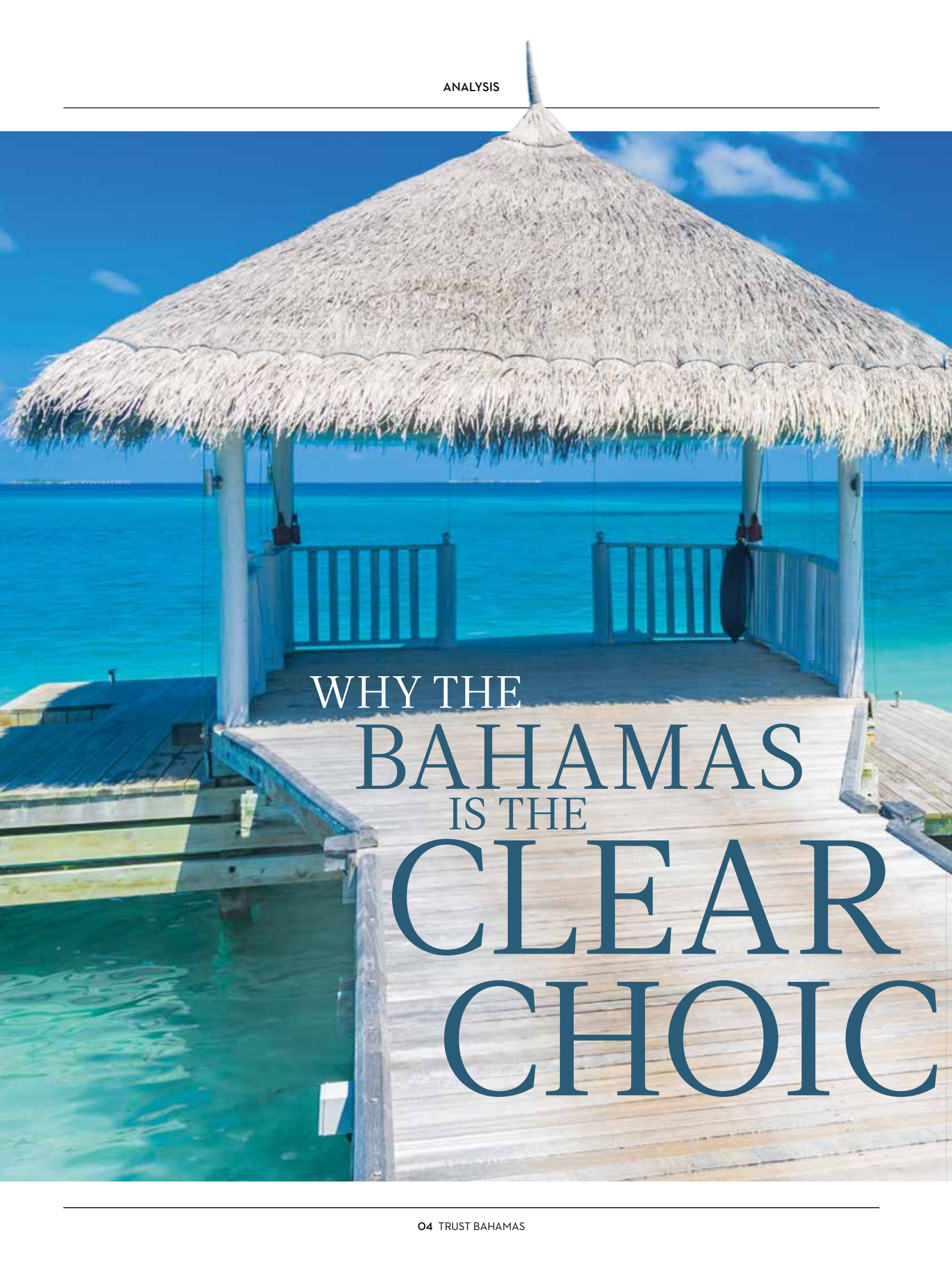
Family offices have emerged as a major growth area for The Bahamas in recent years. Three STEP members from The Bahamas provide a deep dive into the growing attraction of the country for families that have recognised the advantage of using The Bahamas as a base for their business and financial interests.

Three core product areas and one game changer for doing business in The Bahamas are also reviewed, including:

- an update on trusts, foundations and private trust companies in The Bahamas;
- the introduction of commercial enterprise legislation;
- the innovation behind the Bahamas executive entity; and
- how the funds industry has become a natural fit for The Bahamas' private wealth and trust product offering.

We hope that when you have finished reading the report you will understand why we believe The Bahamas is the clear choice.





WHY THE
BAHAMAS
IS THE
CLEAR
CHOICE



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, Miami, London, Switzerland, Dubai, Hong Kong and Singapore; and it is the pre-eminent banking jurisdiction of the Caribbean.

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, European, Asian and Latin American) in the region, including South and Central America.

During the late 1970s, merchant ship registration emerged as a niche service for The Bahamas, most notably at the time for commercial letters of credit and bills of exchange. And during the 1960s and 1970s, The Bahamas was deemed a particularly advantageous jurisdiction for commercial financing for sovereign debt and syndicated bank lending for large infrastructure projects. Meanwhile, the country's political stability, still a key feature, has been an important pull factor over the decades for institutions weathering political tensions and seeking to guard against various onshore political threats.

The financial services sector in The Bahamas has been impressively resilient and progressive amid the continued and sometimes challenging evolution of the global industry. In years past, 'offshore' often seemed like a tainted word, given the attraction, in considerable proportion, of tax avoiders and proceeds from illicit activity to the world's international banking and trust business centres. This era

Prosperous, progressive and with deep expertise – it's no wonder The Bahamas is a global financial hub

By the Association of International Banks and Trust Companies (Bahamas)

unfortunately still sometimes casts a shadow on the continuing success and tremendous growth of legitimate business in private banking and wealth management in well-regulated regimes like The Bahamas, where such practices have largely disappeared. The jurisdiction has been and remains demonstrably and effectively unwelcoming to those seeking to engage in questionable and illegal activities.

The Bahamas provides one of the world's leading environments for legitimate financial services to thrive. For many, banking and wealth management outside one's home country is simply good business and wise investing. How so?

- a) Multinational and multigenerational families and family businesses find that siting some of their assets in a strong trust law jurisdiction is appropriate for long-term preservation and transmission of wealth.
- b) Keeping assets in a jurisdiction less exposed to expropriation, capital controls and civil unrest is an excellent risk mitigation technique, particularly if one's home country has a history of political or financial instability.
- c) International banking and wealth management centres may possess products and services that are superior to those available domestically.

WHAT MAKES THE BAHAMAS A JURISDICTION OF CHOICE?

Prerequisites for a progressive and prosperous IFC

The Bahamas ticks all the boxes of 'must haves' essential for a progressive and prosperous IFC:

- well regulated;
- multi-currency platforms and services;
- multi-language institutions;
- tax-neutral platform;
- competitive products and services;
 - strong pool of qualified professionals;
 - competitive time zone;
 - ease of access to major jurisdictions; and
 - stable political environment.

WHAT MORE CAN IT OFFER?

But here's what the country adds. Here's how, in The Bahamas, the essentials are tailored into comparative advantages:

- motivated, entrepreneurial environment;
- high standard of regulatory compliance;
- personal service and intellectual creativity;
- deeply knowledgeable domestic workforce; and
- strategically beneficial legal and geographic identity.

Motivated, entrepreneurial environment

Financial services is the second most important industry in The Bahamas, second only to tourism. The industry's viability, therefore, is a demonstrated priority of both the public and private sectors, evidenced by:

- the responsiveness of legislative and regulatory solutions to market needs;
- the swiftness with which these tools are effected;
- consistency in ensuring the regulatory integrity of the industry while underpinning factors conducive to industry competitiveness;
- a shared commitment to the promotion of the industry. Distinctly, the Bahamas Financial Services Board, funded by both the private industry and the government of The Bahamas, retains responsibility for the promotion and awareness of the industry in what has been described as 'an innovative commitment' between the industry and government.

These efforts are possible because of a robust public-private sector partnership whereby government and business interests collaborate.

High standard of regulatory compliance

The regulatory regime governing the financial services industry of The Bahamas is strong. It embodies not only 'the letter' of international best practices, but also 'the spirit' of the overarching regulatory principles. The Bahamas' approach to the evolving international regulatory environment has been participatory and proactive – including the country's leadership in advancing the principle of a 'level playing field'. ➡

Broadly, global regulatory initiatives have revolved around three issues: combating misuse of the financial system; making it more difficult to evade taxes; and increasing transparency. Sweeping regulatory reforms in 2000 and continued measures to strengthen compliance, in step with international efforts, have characterised the jurisdiction's anti-money laundering/countering the financing of terrorism regulatory structure. Ongoing strengthening includes the jurisdiction's compliance with and commitments to the Caribbean Financial Action Task Force and the Financial Action Task Force.

The international community's increased requirements of tax transparency underpin global standards on the exchange of tax information and the Common Reporting System (CRS), developed by the OECD. To date, The Bahamas is a party to tax information exchange agreements with 33 countries, and implementation of the CRS in The Bahamas is projected for autumn 2018, in line with the global requirement. The Bahamas has also been in compliance with the US' *Foreign Account Tax Compliance Act* since 2014. The Bahamas is a participant in the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, and is committed to implementing the base erosion and profit shifting initiative's minimum standards.

Personal service and intellectual creativity

The Bahamas can still provide a personal service, with high-end, tailored products. Not only is the jurisdiction client-centred and needs-driven, but its more than 80-year legacy in the business has allowed for the cultivation of long-standing relationships. There is a special comfort and assurance inherent in the stability of long-held relationships that carry significant personal value.

Tailoring product solutions to meet the personalised and often complex needs of clients has been a driver of intellectual creativity in the industry, as has the industry's appetite to create new product and service opportunities in response to changing market needs and regulatory requirements. Product innovation has historically been an important anchor of the financial services industry in The Bahamas –



'Product innovation has been an anchor of The Bahamas' financial services industry'

a feature strengthened by a motivated entrepreneurial environment that has effected timely legislative change in support of product development.

Most notably, product innovations have included the SMART Fund model series, which offers a range of options for investment; the Bahamas executive entity, which introduced a new private wealth structure; and the Investment Condominium (ICON), a particularly – as some have described it – 'iconic' legal structure, which was created for the Brazilian market, incorporating significant onshore features of the domestic Brazilian market into an offshore product with appeal beyond Brazil.

Deeply knowledgeable domestic workforce

A major benefit of the country's 80-year record in financial services has been the depth and scope of industry knowledge in a domestic professional base that is also internationally trained and educated. This continuity in industry capabilities is significant, because the jurisdiction offers stability in an area where typically one finds a revolving door.

This skilled domestic base works alongside a talented core of expatriate experts in major international institutions and locally owned financial institutions, and helps to shore up the industry's global presence while maintaining a strong domestic base. Taking these factors into account, with a broad base of knowledge of products and an enviable track record of service in the business, the professional environment in financial services in The Bahamas is highly conducive to intellectual creativity. This has allowed for ongoing product and service innovations tailored to fit client needs and market demands.

Strategically beneficial legal and geographic identity

The legal system in The Bahamas has been successful in facilitating a legislative environment that is effectively responsive to changes in market needs and demands, while also offering the certainty of common

law. As an independent nation with a financial services industry bolstered by a strong public-private sector partnership, legislative change in The Bahamas is efficient and timely in its responsiveness to market shifts. As a member of the Commonwealth of Nations, The Bahamas is a common-law jurisdiction, with a legal system based on that of England. The ultimate court of appeal for judgments issued by Bahamian courts is the UK Privy Council. This combination of advantages affords the jurisdiction a special balance to its legal identity.

Geographically, the country's location provides strategic advantages. Situated just 65 miles off the eastern coast of Florida, The Bahamas is exceptionally well positioned as a regional hub for business and investment in the eastern US and Canada, and Central and South America. Accessibility of the market is further enhanced by the Eastern Time Zone, which the country shares with New York City, Toronto and other major business centres in the region. The country's accessibility is an added advantage to its brand of personal service, making the conduct of business in person a viable option in an economic environment structured around the visitor experience.

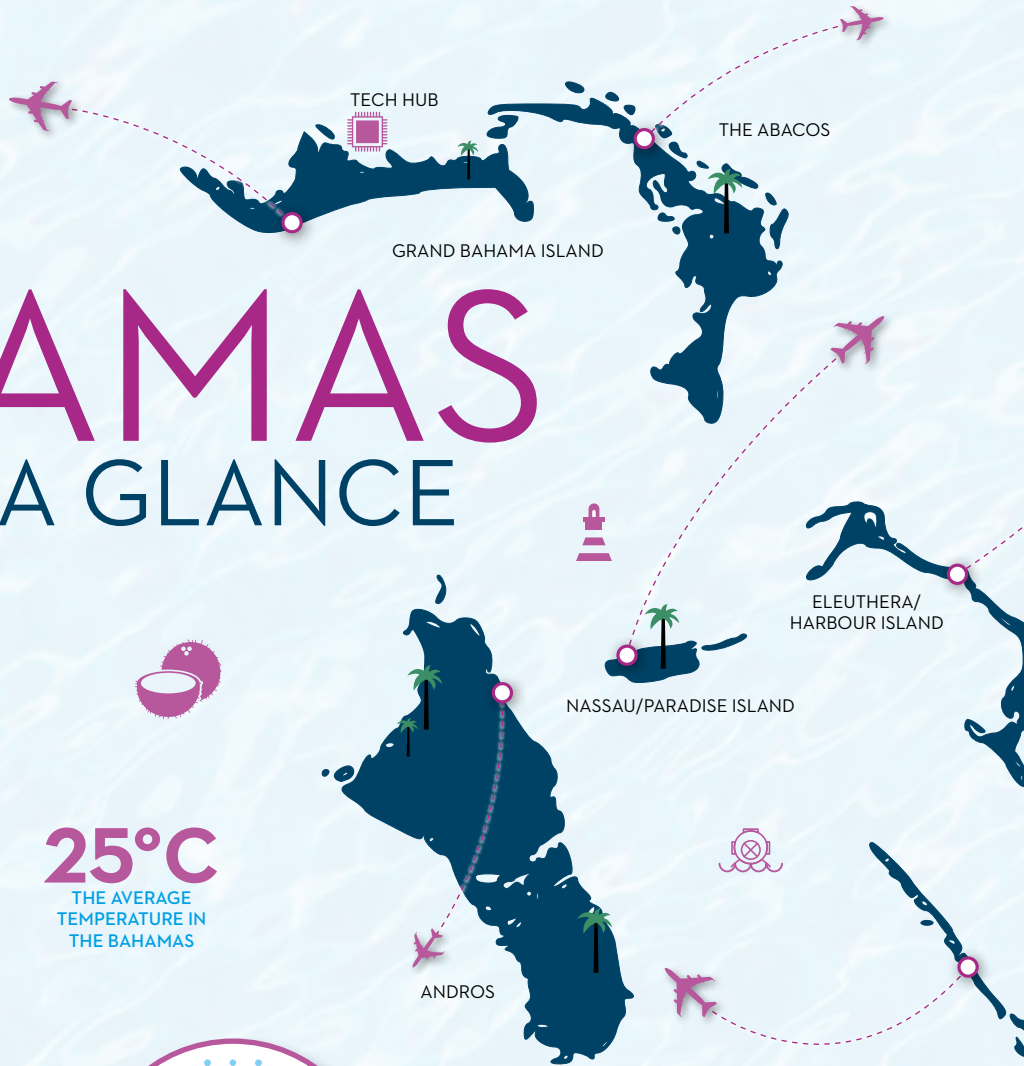
The geography also offers an idyllic climate, further enhancing the location's appeal for real property ownership, residency, and the operation of corporate businesses and offices. In the early years of the country's financial services industry, the value proposition heralded by then industry leaders was to 'move with your money'.

CONCLUSION


So why The Bahamas? Because, in The Bahamas, we aspire to become the jurisdiction of choice for international private banking and wealth management in the western hemisphere. We offer an environment that accelerates our path to achieving this goal. The jurisdiction's financial services industry does not merely offer business and regulatory conditions, and standards of practice and industry excellence, that would be expected anywhere – it offers more. ■

THE BAHAMAS LIES
65 MILES
 OFF THE EAST COAST
 OF FLORIDA

THE BAHAMAS AT A GLANCE




\$27 TRILLION*
 THE WEALTH HELD BY THE
 WORLD'S 226,450 ULTRA-
 HIGH-NET-WORTH INDIVIDUALS
 (UHNWIs) GLOBALLY


25°C
 THE AVERAGE
 TEMPERATURE IN
 THE BAHAMAS

700
 ISLANDS
 FORM THE BAHAMAS


INNOVATIVE STRUCTURES
 The Bahamas prides itself on developing market-responsive, compliant and innovative products, such as:

FOLLOW YOUR MONEY

The Bahamas has a liberal process for granting 'economic permanent residency'. Once granted, there is no requirement to be present for a minimum or maximum number of days

\$500,000
 An accelerated permanent residence application is available for those who spend at least \$500,000 on a residence

\$1.5 MILLION
 The applications of those who invest \$1.5 million or more in a residence will be reviewed within 21 days

\$10,000
 Spouses and children can be endorsed on the residence permit for a one-time government fee of \$10,000

THE INVESTMENT CONDOMINIUM (ICON):
 An alternative legal structure for investment funds, aimed at Latin American investment managers

SMART FUNDS:
 A flexible collective investment vehicle, benefiting from risk-based regulatory supervision

THE BAHAMAS EXECUTIVE ENTITY (BEE):
 The BEE can perform governance, office-holding and fiduciary functions, but has limited liability

FOUNDATIONS:
 In 2004, The Bahamas became the first leading common-law jurisdiction to introduce foundations legislation

TRUSTS:
 Trust law is regularly updated to meet client needs - e.g. the rule against perpetuities was abolished in 2011

TAX NEUTRALITY

0%
 No income, capital gains, gift, inheritance or estate tax applies to those who conduct business or reside in The Bahamas

10%
 The stamp tax on the purchase of a new home

2%
 Real property taxes are 2 per cent of the property value

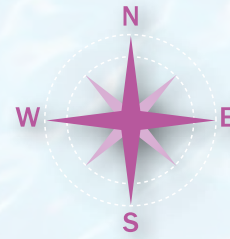
12%
 The VAT payable on most goods and services imported into The Bahamas or purchased locally

21 INTERNATIONAL AIRPORTS ARE SITUATED THROUGHOUT THE ARCHIPELAGO



\$945 BILLION

THE WEALTH HELD BY THE 6,850 UHNWIS LIVING IN THE CARIBBEAN AND LATAM REGION



GATEWAY TO THE AMERICAS

VENERABLE LEGAL SYSTEM

English common law remains the basis for the legal system of The Bahamas, which, as a former British colony, gained independence in 1973

The UK Privy Council remains The Bahamas' final court of appeal



THERE ARE COUNTLESS PORTS OF ENTRY, AND MARINAS THAT CAN ACCOMMODATE THE LARGEST YACHTS



IN THE SAME TIME ZONE AS NEW YORK, THE BAHAMAS IS AN IDEAL HUB FOR INVESTMENT IN NORTH AND SOUTH AMERICA

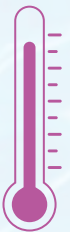
The Bahamas is home to over 270 LICENSED BANKS AND TRUST COMPANIES...

THE BAHAMAS IS 5 HOURS BEHIND LONDON



26°C

THE AVERAGE TEMPERATURE OF THE BAHAMAS' WATERS, YEAR ROUND, WITH THE ISLANDS' BEACHES REGULARLY VOTED AMONG THE WORLD'S BEST



IMPRESSIVE INFRASTRUCTURE

... more than 9,000 FINANCIAL PROFESSIONALS...

... and around 1,000 LAWYERS



\$10 BILLION

THE WEALTH HELD BY THE 45 UHNWIS LIVING IN THE BAHAMAS

TRANSPARENT...

The Bahamas was deemed 'largely compliant' by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes in April 2018

The Bahamas has signed 33 tax information exchange agreements

The Bahamas will implement the OECD's Common Reporting Standard in 2018

The Bahamas signed an intergovernmental agreement with the US under the Foreign Account Tax Compliance Act (FATCA) in 2014

The Bahamas committed to the OECD's base erosion and profit shifting (BEPS) initiative and passed the Multinational Entities Act 2018



MAYAGUANA

ACKLINS/CROOKED ISLAND



INAGUA



... BUT RESPECTFUL OF PRIVACY

Trustees are obliged to perform due diligence on settlors, beneficiaries and other parties, but trust deeds in The Bahamas are not publicly registered

Under FATCA, trustees in The Bahamas are required to report in respect of trusts with US beneficiaries only

Under Bahamian trust law, disclosure to contingent beneficiaries is limited

* ALL MONETARY SUMS ARE GIVEN IN US DOLLARS, WITH WHICH THE BAHAMIAN DOLLAR IS ON A PAR



BRING THE FAMILY

Wealthy families around the world are looking for a consolidated base from which to manage their affairs. Here's how The Bahamas has made itself a world centre for such families

By Emily Perryman

The Bahamas has never been one to shout about the benefits it can offer family offices. Yet the archipelagic state has still witnessed major growth in the number of families and family trusts that wish to relocate there.

In part, the growth reflects a wider global trend for families to set up central entities that manage their private wealth and affairs. EY estimates that there are at least 10,000 single family offices in existence globally; around half of these were set up in the last 15 years. The increase is being fuelled by higher levels of family and individual wealth, with the number of billionaires surging by 15 per cent to 2,754 in 2017, according to Wealth-X. Families are increasingly viewing family offices as the ideal way to manage their complex needs.

'In light of international initiatives around reporting, transparency and disclosure, families are increasingly being drawn to a streamlined structure in one jurisdiction,' says Katie Booth, Managing

Director of private wealth consultancy Amber Trust Ltd. By establishing a single family office, she says, families can manage the increasing burden of compliance and make sure they have a consolidated picture of their affairs.

UNIQUE APPEAL

So what is The Bahamas' competitive advantage? Some of its appeal is practical in nature. The Bahamas is favourably positioned geographically – only 35 minutes from Miami, and with direct flights across the US East Coast and Canada and into Europe. It's also in the

same time zone as Toronto and New York, and only one hour behind São Paulo.

'This means families don't have to wait five hours for the office to open before they can speak to someone, nor pay staff overtime,' says Linda Beidler-D'Aguilar, Partner at legal services firm Glinton Sweeting O'Brien.

The islands are home to many high-quality office facilities. At the Albany Financial Center, for example, families have access to the same business infrastructure – high-speed internet, concierge services, etc – as they would in New York and London. ➤➤



'In light of international initiatives, families are increasingly being drawn to a streamlined structure in one jurisdiction'

Katie Booth, Amber Trust Ltd



‘It isn’t difficult to get people to agree to a stint in The Bahamas, because of the quality of life they will have’

Andrew Law, IPG Family Office

Telecommunications is a trump card. ‘The government and the private sector have invested heavily in state-of-the-art telecoms infrastructure, understanding that high-net-worth individuals expect high-quality, real-time communications,’ says Beidler-D’Aguilar.

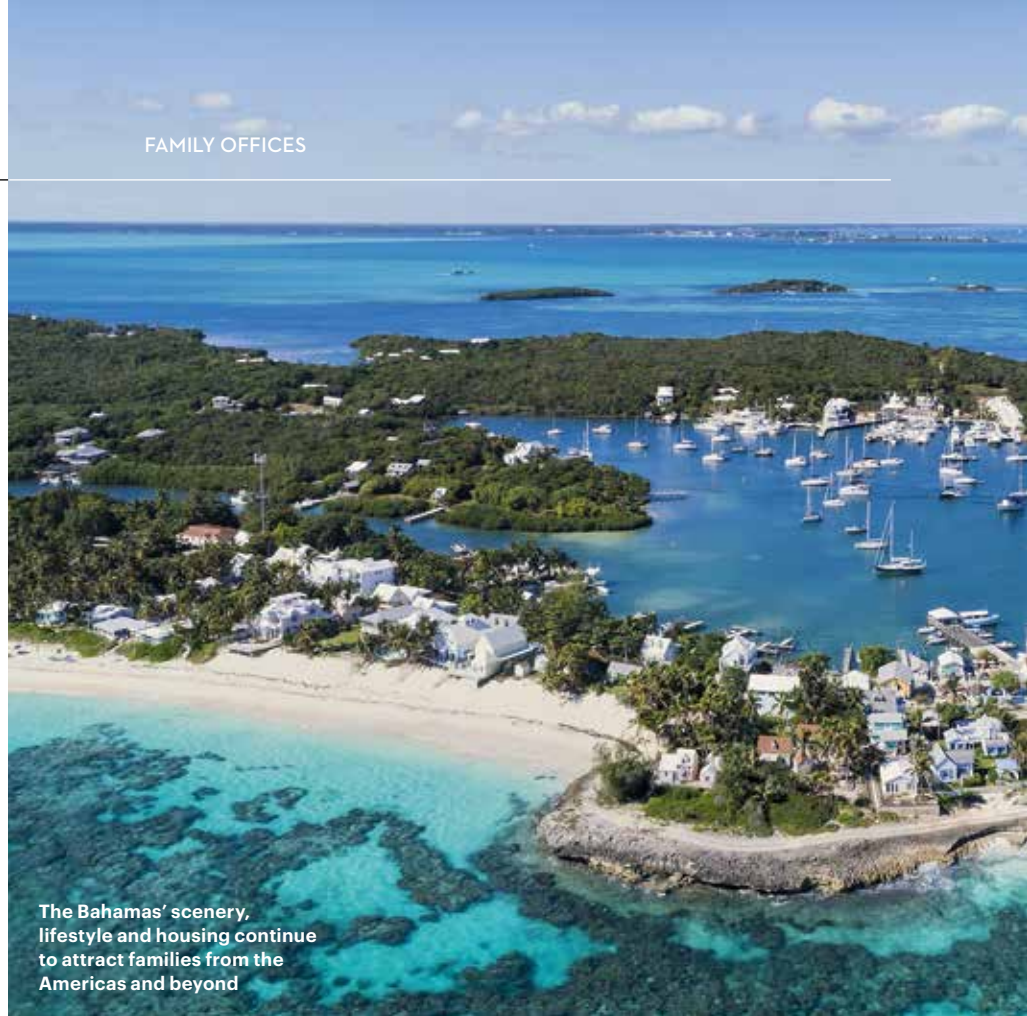
The government has also recognised that, although many families are willing to make local hires when setting up a family office, they often want to relocate their own people. There are swift processes for documentation such as work permits.

When you combine this with The Bahamas’ stunning scenery, glorious lifestyle and housing, you can see why families, and the personnel they need to relocate, are happy to set up base there.

‘It isn’t difficult to get people to agree to a two- to three-year stint in The Bahamas, because the quality of life they will have will be amazing,’ says Andrew Law, Chief Executive of IPG Family Office, an estate and inheritance planning consultancy. ‘Wealthy families can find everything they want – staggeringly good housing, the best boating, fantastic sports facilities, beautiful islands and a trendy city vibe. For people looking for a third home – a “sun property” – The Bahamas is very attractive.’

REGULATORY ENVIRONMENT

Family offices will look for legal and regulatory stability, so The Bahamas has launched major initiatives over the past five years to make sure family offices have the right regulatory building blocks from which to set up operations. These include developing legislation on establishing a private trust company; creating a flexible structure for family office-style funds, such as those with a small number of investors or illiquid assets; and introducing the Bahamas



The Bahamas’ scenery, lifestyle and housing continue to attract families from the Americas and beyond

executive entity, a limited liability entity with administrative, supervisory and fiduciary powers.

Family offices can also become licensed in The Bahamas. This means they can offer their services to other families and demonstrate to onshore authorities that they are domiciled in a specific location.

‘The Bahamas has a very solid approach to the development of new laws and regulations,’ says Law. ‘The approach cannot be described as sexy, but the government has a very realistic system to develop or revise our statutes. We’re a credible jurisdiction doing sustainable business. We typically do not raise our head above the parapet – we are quite low-key, so we’re not a constant target for the OECD or similar organisations; we’ve arrived at the point where we’re a strong survivor in the international financial services industry.’

New legislation is the result of a close collaboration between the public and

private sectors, a process that makes sure laws are fit for purpose. In Parliament, there is a dedicated Minister of Financial Services who is developing initiatives to encourage family office growth.

‘There is strong collaboration between the Bahamas Financial Services Board [BFSB] and the government,’ says Booth. ‘The government provides a large degree of support to, and consults with, the BFSB on legislation such as the Common Reporting Standard, and other global trends that impact the sector.’

The government recently created the Ease of Doing Business Committee, whose ambitions include modernising company registry and making the regulatory environment covered by the Security Commission more efficient.

In addition to the BFSB, there are small private-sector groups which assist the government with technical initiatives, says Ryan Pinder, Partner at law firm Graham Thompson: ‘This really is one of the strengths of The Bahamas. For the past 40 years, we’ve had a very open dialogue on matters relating to the financial services industry.

It is a significant asset for the country and a facilitator of the industry’s stability.’





'Families like that we don't seek a lot of headlines.

The Bahamas' approach is to be compliant and quiet'

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

INGRAINED EXPERTISE

The state has been supporting high-net-worth individuals for decades. This is comforting to families who choose to set up an office in The Bahamas. The jurisdiction has a mature advisory network and offers all the services family offices need.

'The Bahamas is not just a banking jurisdiction. We have industry-leading fund and trust administration, legal services and broker dealers,' says Pinder. 'So where we are seeing consolidation in other jurisdictions, The Bahamas is unique in that it has the full scale of services to support family offices. With that comes the

expertise of its people – if a family wants to use local personnel, they can feel confident the talent is here.'

The Bahamas has managed to remain the first choice for family offices despite rising competition from other jurisdictions around the world; some of these have been more vocal about the benefits they offer. Beidler-D'Aguilar thinks The Bahamas' quiet approach is more desirable to the wealthy.

'Families like the notion that we don't seek a lot of headlines in terms of what we do for our clients,' she says. 'The Bahamas' approach is to be compliant and quiet.'

WHERE IS THE MONEY COMING FROM?

The Bahamas reflects new global wealth trends. Some of the money arriving in the country is 'old' wealth relocating from another jurisdiction; 'new' money has also been entering the country in recent years.

'We're seeing a lot of interest from the Americas, where first- or second-generation entrepreneurs have realised it makes a lot of sense to establish a family office to drive best practice,' says Beidler-D'Aguilar.

Such people, she says, may be at an earlier stage in the development of their business and family holdings. In the context of international developments and reporting requirements, they are realising that it makes sense to consolidate their family operations. 'It is a really functional decision.'

Families from Latin America are particularly attracted by The Bahamas' SMART funds regime (see page 25), which enables them to be compliant from a domestic perspective. They also like the fact that lots of people in The Bahamas speak Spanish and Portuguese, adds Booth.

More recently, families from Asia, particularly China, have been investing in The Bahamas. The Baha Mar Resort, a luxury hotel and casino development, was bought by Hong Kong investors.

'The emerging trend of Asians investing in the jurisdiction may well continue in the future,' Booth predicts.

FUTURE OPPORTUNITIES

The growth of family offices in The Bahamas is expected to continue for the foreseeable future, as long as the country remains up to speed with the latest developments.

One challenge is ensuring there are enough qualified local people who can provide the ancillary services that family offices require. A promising development in this area was the transition of the College of The Bahamas into the University of The Bahamas in November 2016. By improving education among its citizens, The Bahamas looks set to have a constant stream of well-educated and qualified people who can support the complex needs of family offices.

Booth suggests more could be done in this area. 'I'd like to see training in family governance advisory services, such as dispute resolution. It's important that we continue to have specialists in the establishment and administration of family offices, so they have everything they need from an operational perspective. Having a consolidated reporting system is a big priority for many families.'

Technology will be a factor. 'It won't be long before we have to upgrade our infrastructure to accommodate 4G or 5G networks – and that isn't an inexpensive exercise,' says Beidler-D'Aguilar. 'So far, we have kept pace and, if we continue to get it right by staying abreast of technological change, our clients will be happy.'

The Bahamas is constantly challenging itself to think about what type of legislation it will need in five or more years to ensure it remains a top family office destination. In today's competitive environment, The Bahamas must remember that it isn't the only jurisdiction that is attractive to the wealthy.

'We need to continue to make it easy for family offices to do business here,' says Pinder. 'On a day-to-day basis, we still need to work on improving our efficiencies and removing any bureaucracy that remains.'

Maintaining an open dialogue between the government and the private sector is thought to be a major facilitator of family office growth in the years to come.

'The BFSB is an enormously useful tool in this regard because it gives us a chance to sit down with the public sector and say, "here's what we need and this is how to achieve it",' says Beidler-D'Aguilar.

The future for The Bahamas will be very bright as long as it remains so proactive. ■

Emily Perryman is a freelance journalist specialising in investments, pensions, tax, insurance, property and employee benefits

ISLANDS WITH



WHAT ARE THE MAIN STRENGTHS OF THE BAHAMAS' FINANCIAL SERVICES OFFERING?

Abel Francisco Mejía-Cosenza:

The Bahamas has a well-deserved reputation as one of the world's premier financial centres. Its sophistication, professionalism and one-of-a-kind hospitality put it at the forefront of the exclusive financial services industry catering to elite business people and investors. The jurisdiction's robust and transparent legislation makes it a very attractive location for clients who wish to situate their financial assets somewhere safe and tax-compliant.

Caroline Graham: The Bahamas offers a full range of bespoke legislation that

meets the needs of international families looking to set up their headquarters in an offshore financial jurisdiction. It has first-class professional service providers and is a very pleasant place to live – somewhere families can build long-term friendships.

Stephen Solomon: First, reputation. The Bahamas is widely regarded as a jurisdiction with top-tier financial services. The quality of the banks and the wide variety of financial services offered are evidence of this. World-renowned banks and The Bahamas' history as a world-class provider of financial services

have brought the world's wealthiest investors to its shores.

Its second main strength is stability. The Bahamas has experienced tremendous economic and political stability, which distinguishes it from its eastern-hemisphere competitors.

And, finally, there is The Bahamas' outstanding client service. I have had many exchanges with financial services representatives at numerous financial institutions in The Bahamas. The client service I have personally experienced undeniably surpasses that of competing jurisdictions, including Switzerland, Hong Kong and Israel.

OUT PARALLEL

What makes The Bahamas stand out? We asked three leading service providers from outside The Bahamas

OUR EXPERTS



ABEL FRANCISCO MEJÍA-COSENZA
Partner at Sánchez Devanny, Mexico



CAROLINE GARNHAM
CEO at Garnham Family Office Services, UK



STEPHEN SOLOMON
Partner at De Grandpré Chait, Canada

IN WHICH SECTORS DOES THE BAHAMAS PARTICULARLY EXCEL IN YOUR EXPERIENCE?

AFMC: In my view, The Bahamas excels in all areas of private wealth services, including family offices, private banking, investment advisory services, investment funds and corporate trusteeship. We have worked with multiple participants in all of these

sectors and have always received high-quality, attentive service. The Bahamas private wealth services industry, led by the Bahamas Financial Services Board, is constantly striving to be at the forefront of this competitive sector and to continuously improve.



CG: The key focus of The Bahamas is its desire to be the jurisdiction where families build their international headquarters, which requires strong trust and banking services – and The Bahamas excels in these areas.

SS: Historically, I would have to say trusts. However, times have moved on. Even during this era of tremendous change, The Bahamas continues to excel in the banking sector, attracting significant wealth from all around the world.

WHAT CAN CLIENTS EXPECT WHEN THEY CHOOSE THE BAHAMAS FOR FINANCIAL SERVICES?

AFMC: We particularly enjoy working with this jurisdiction because the government actively supports and encourages the private wealth industry and its related sectors. When doing business in The Bahamas, clients can expect a stable and friendly business environment, spearheaded by professionals who are fully committed to meeting their clients' needs.

Moreover, The Bahamas has been taking constant and significant steps to comply with worldwide standards of compliance and transparency. This effort has ensured the continuous growth and forward evolution of The Bahamas' financial industry, as well as generating trust among the tax-administration agencies in charge of reviewing the compliance of their taxpayers' offshore investments. For example, the fact that The Bahamas recently signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* clearly reflects that it is a jurisdiction committed to implementing the best international practices in the private wealth industry.

CG: Clients can expect a jurisdiction that is geared up at the government level to provide a location where international families can make their home, and base their family office and their trust for the succession of their international wealth to the next generation.

SS: Clients can expect top-tier customer service, expertise and professionalism, a variety of financial institutions and

products, and a financial services community committed to growth and development in the face of a rapidly changing landscape (e.g. cybersecurity, blockchain, artificial intelligence, etc).

WHAT TYPE OF CLIENT WOULD BENEFIT MOST FROM THE PRODUCTS AND SERVICES OFFERED IN THE BAHAMAS?

AFMC: High-net-worth and ultra-high-net-worth clients, as well as the family offices and financial advisors that serve them, can clearly benefit from the sophisticated financial services offering found in The Bahamas. The nation is one of the few international jurisdictions that have, in the same location, a comprehensive offering of all the services required in the private wealth sector.

CG: Private international clients with assets and interests on a global scale who are looking for a jurisdiction focused on their needs and concerns will find what they are looking for in The Bahamas.

SS: The world's wealthiest investors who seek a properly diversified portfolio would benefit from banking in The Bahamas. They would benefit from not only the variety of financial products offered there, but also the geographic diversification it offers. These investors typically have assets all over the world to mitigate the impact of negative macro trends affecting different regions. With regard to the Americas, The Bahamas is an ideal

banking destination for global investors who seek a stable jurisdiction in this part of the world, which is more sheltered from the economic trends of Europe and Asia.

WHAT DISTINGUISHES THE BAHAMAS' PRODUCT OFFERING?

AFMC: The Bahamas' high-value, sophisticated and innovative approach to private wealth services clearly distinguishes its offering from other jurisdictions'. Its professionalism, and the personal care and attention provided, as well as the proactivity of its regulatory authorities, make it a unique destination for discerning clients.

CG: The Bahamas has decades of experience in looking after wealthy international families and providing them with a safe and secure place to live. There are many jurisdictions that may have similar legislation now, but none can match The Bahamas' unparalleled history.

SS: The variety of products offered, The Bahamas' unparalleled customer service and its competitive fee structure. ■



AT THE CUTTING EDGE

How Bahamian trust law continues to keep pace with international developments

By **Sharmon Y Ingraham TEP**, Senior Associate, Higgs & Johnson

The Bahamas has a long, deep-rooted trust law history originating in its colonial past as part of the British Empire. While recognising its heritage, The Bahamas' financial services industry continues to develop, modernise and implement initiatives consistent with best practice and the needs of clients. In addition to trust law products, the jurisdiction has implemented legislation to enable the creation of private law foundations and private trust companies, the latter of which are subject to light-touch regulation by the Central Bank of The Bahamas.

The primary focus of this article, however, is recent amendments to Bahamian trust legislation.

In keeping with its objective to adhere to best practice, The Bahamas incorporated the OECD's Common Reporting Standard (CRS) via the *Automatic Exchange of Financial Account Information Act, 2016*. This Act became enforceable on 1 January 2017 and is supplemented by regulations, which also became effective in 2017. The CRS regime impacts Bahamian law trusts where there are ties to participating CRS jurisdictions.

PERIODIC UPDATES

Bahamian trust legislation is modified periodically to meet the evolving needs of the industry. The *Trustee Act, 1998*, a cornerstone of the industry, was recently amended. One important amendment was a provision concerning the Rule in *Hastings-Bass*, derived from the English Court of Appeal decision in *Re Hastings-Bass* [1975] Ch 25.

After the UK Supreme Court decision in *Pitt v HMRC, Futter v HMRC* [2013] UKSC 26, concerns arose on the



application of the Rule. The new s.91C of the *Trustee Act* seeks to reinstate the Rule in Bahamian law as it had been applied in The Bahamas prior to the *Pitt* and *Futter* decision. The provision grants the court the discretion to set aside an exercise of fiduciary power on an application commenced by a beneficiary, trustee, protector, authorised applicant, power holder, the Attorney General or any other person with the leave of the court. The court may also deem an exercise of fiduciary power to be voidable under the section, which further empowers the court to adapt its order to the particular circumstances before it.

Other recent amendments to the *Trustee Act* include: (i) clarification of the scope of a release that an outgoing trustee could obtain; and (ii) an extension of the protection under a trust instrument concerning the alienation of trust property. While the statutory provision originally restricted the indemnity that could be obtained by a departing trustee, it did not also restrict the release granted to such trustee. With the amendment, the

provisions on indemnities and releases to trustees are now uniform in that a trustee is unable to obtain an indemnity or release in respect of liabilities arising from a breach of trust or circumstances where the trustee would otherwise not be entitled to a release or indemnity.

NO SIGNS OF SLOWING

The *Trustee Act* now enables a settlor or donor of a trust to be protected under provisions regarding the inalienability of trust assets. Accordingly, in the event that a settlor or donor becomes bankrupt, such provisions can limit recourse to the assets of the trust through the insolvent settlor or donor to meet creditors' claims. While offering further protection to settlors and donors who are also beneficiaries, this provision is subject to the *Fraudulent Dispositions Act, 1991*. Accordingly, a creditor is not precluded by the amended *Trustee Act* provisions from pursuing legitimate claims under the *Fraudulent Dispositions Act*.

Finally, the *Trusts (Choice of Governing Law) Act, 1989* has also recently been amended. The amendment extends the scope of the Bahamian firewall provisions. Consequently, foreign orders obtained against a beneficiary as a result of a personal relationship are unenforceable against a Bahamian trust.

All of these recent amendments ensure Bahamian trust law continues to keep pace with modern developments. Other measures are being considered, including

legislation regarding valid and effective execution by a trustee acting for both sides, and the use of seals, which would continue the quest to adapt to and address industry changes. ■



OPEN FOR BUSINESS

Cutting-edge businesses can now profit from The Bahamas' expedited work-permit regime

By **Ryan Pinder**, Partner, and **Samuel Campbell**, Attorney-at-Law, Graham Thompson

The government of The Bahamas sought, as a policy priority, to establish a legislative framework to encourage cutting-edge business ventures to establish themselves in The Bahamas. The aim was to expand the economic footprint of The Bahamas and develop expertise. The result, the *Commercial Enterprises Act, 2017* incentivises foreign and domestic investment in specified commercial enterprises. In short, the Act seeks 'to liberalise the granting of work permits to an enterprise that wishes to establish itself in the Bahamas, and requires work permits for its management team and key personnel'.

The Bahamian government also announced the relaxation of exchange controls on capital transactions, namely on capital (investment) and current account (trade) transactions.

The changes came into effect as of 1 February 2018. Below is a summary of certain key provisions of the Act.

WHAT IS A 'SPECIFIED COMMERCIAL ENTERPRISE'?

A specified commercial enterprise can be established with an investment of not less than US\$250,000, or a joint venture or partnership between a Bahamian and a non-Bahamian. This enterprise may conduct business from any location in The Bahamas subject to zoning ordinances. The Minister responsible for financial services may prescribe any island or part of any island as a 'specified commercial enterprise zone' for the purposes of rationalising infrastructural investment, efficient land use or the encouragement of clusters of commercial development.

The enterprise must carry on the following business undertakings or



services specified in the Act: captive insurance; reinsurance; mutual fund administration; arbitration; wealth management; international trade; international arbitrage; computer programing; software design and writing; bioinformatics and analytics; maritime trade; nanotechnology; biomedical industries; boutique health facilities; data storage or warehousing; aviation approved maintenance operations; aviation registration; call centres; or manufacturing or assembly manufactures.

Any person seeking to establish a commercial enterprise under this Act is subject to approval by the Bahamas Investment Authority.

THE APPLICATION PROCESS

A commercial enterprise undertaking an investment in The Bahamas must obtain work permits for employees to work from within The Bahamas. In respect of its senior management or in-house professionals, the company may apply to the Investment Board for a specified commercial enterprise certificate.

The application, via a prescribed form, must be accompanied by a

business plan that specifically indicates the nature of the proposed commercial enterprise and its staffing needs, including the number of work permits. Generally, the applicant should also detail any training and capacity-building opportunities to be afforded to Bahamians.

THE CERTIFICATE

Once the applicant satisfies the government that it is of a type listed in the Act, and the work permits requested are required for an executive or manager or individual with specialised knowledge relating to the operations, the Investment Board will issue a certificate to the enterprise. This will entitle the enterprise to a specified number of work permits for specified posts and expedited, transparent consideration of those permits.

The certificate will remain valid for a year and may be renewed or extended on application. The recipient and any in-house professional designated by them in writing may freely enter The Bahamas for the purpose of setting up or conducting their specified commercial enterprise.

Any person requiring a work visa must apply for and obtain it prior to entering The Bahamas.

APPLICATION FOR WORK PERMITS

A person entering the Bahamas must apply for a permit within 30 days of entry. If a decision has not been made by the Director of Immigration within 14 days of receiving the application, the work permit will be 'automatically deemed to have

been granted'. The permits issued in accordance with the Act are for a three-year period, and are renewable for a period up to the same duration. ■



AN ELEGANT SOLUTION

The Bahamas continues to afford families and their advisors diverse solutions for their planning requirements

By **Linda Beidler-D'Aguiar**, Partner, Glinton Sweeting O'Brien



As a leading jurisdiction for private wealth management and family offices, The Bahamas offers a range of innovative yet pragmatic planning solutions. These include the executive entity, which addresses a common problem in wealth preservation structures: who will fill the role of protector, enforcer or shareholder of a private trust company?

Absent the executive entity, the current solution is to establish a purpose trust for such a role. However, this practice has created its own issues, as a purpose trust must have a professional trustee, as well as someone to enforce it. The unnecessary addition of layers of administration, expense and complication has meant that, quite paradoxically, private trust companies, originally designed to allow greater involvement of family members and mitigate the constraints on the ability of a commercial trustee to provide services to non-liquid assets of a family, are now more costly and complex than was ever contemplated.

THE 2011 ACT

To address these issues, The Bahamas enacted the *Executive Entities Act, 2011* (the Act). The Act makes provision for the creation and establishment of a legal person to be known as an executive entity. An executive entity must be formed for the purpose of performing specific functions characterised as executive, supervisory or managerial in nature. The term 'executive function' is defined in the Act. It should be noted that, in addition to acting as an enforcer or protector, an executive entity may also act as a trustee or investment advisor.

An executive entity has no shareholders or beneficiaries; rather, it is established



by charter and operated by officers and council members.

While it is envisaged that the executive entity may be used in several different ways, its principal purpose is as an invaluable adjunct to other vehicles currently utilised for estate planning in The Bahamas; namely, the trust, the foundation and the private trust company.

An executive entity is an excellent vehicle to act in any one or more of these executive roles for a number of reasons:

- it is an entity with limited liability;
- it facilitates the incorporation of corporate governance-type provisions to protect against family conflict, which can impair family relationships and drain family wealth; and
- it can be managed by persons best suited to serve as officer or council member without undue interference from beneficiaries or beneficial owners.

LIMITED RISK

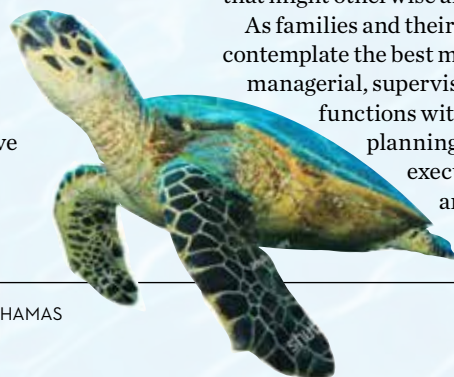
Unlike a trust or foundation, the executive entity is not designed to hold assets, other than such assets as are

reasonably necessary to carry out its functions. Indeed, the Act specifically provides that an executive entity's assets shall comprise solely those required to meet its expenses, and that such assets should be exclusively managed for its purposes. As such, there is limited risk that the executive entity could be used in a manner contrary to the purpose for which it was formed, and no risk that it could be utilised as a tax evasion vehicle.

Rather, the executive entity has been designed to make wealth preservation structures administratively workable and available to handle every variety of family assets (frequently, commercial trustees are typically only willing to hold liquid assets). Executive entities also facilitate governance policies and procedures that reflect the family's values and aspirations. The executive entity is a transparent and compliant vehicle that facilitates long-term family planning and enhances organisational efforts around those plans.

In addition to the foregoing wealth planning uses, families may also consider the use of an executive entity in a commercial context, such as a role in structured lending and project financing/oversight. The advantages of having a supervisory or managerial vehicle undertake the executive and administrative obligations in such contexts is considerable, while also relieving elements of personal liability that might otherwise arise.

As families and their advisors contemplate the best means of addressing managerial, supervisory and executive functions within their wealth planning framework, the executive entity affords an elegant solution to these needs. ■



THE SMART CHOICE

Why private funds are the future of the fund industry in The Bahamas

By **Antoine Bastian**, Managing Director, Genesis Fund Services

Fifteen years ago, the Securities Commission of The Bahamas, along with industry stakeholders, set out to repeal the dated *Mutual Funds Act, 1995* and launch the *Investment Funds Act, 2003* (IFA 2003) and the *Investment Funds Regulations*. The intent was to provide an improved, competitive legislative framework for investment funds in The Bahamas, and to grow the fund industry. The IFA 2003 also sought to bring about better oversight by the Securities Commission and create a tool for industry stakeholders that could compete with neighbouring fund jurisdictions in a compliant, flexible and transparent way.

AN ATTRACTIVE ALTERNATIVE

The most innovative achievement of the IFA 2003 was the introduction of the Specific Mandate Alternative Regulatory Test Fund (SMART fund), which has emerged as the most innovative and important wheel of The Bahamas' investment fund industry. It is a natural fit in the country's private wealth and trust product offering, and an important aspect of the financial services industry.

After the 2008 financial crisis and Madoff scandal, there was a shift from managed accounts to SMART funds with as few as one investor. The latter became a much more attractive alternative to traditional professional funds or simple international business companies. Private wealth and family offices established regulated SMART fund structures to provide oversight, transparency and control to oversee their own trading activities, demand better transparency from third party funds and managers, and ultimately control their



investment decisions. By 2009, SMART funds had become the fastest-growing type of fund licensed in The Bahamas, and surpassed professional funds as the largest category of funds domiciled here. At Genesis, since 2009, we have experienced this first-hand with an overwhelming shift in client requests away from professional and recognised foreign funds – which represented the majority of our business and our primary product offering in 2008 – and towards SMART funds.

Flexibility is perhaps the single most important reason behind SMART funds' success. The value of having a regulated structure to establish investment accounts cannot be understated. SMART funds can be established to hold illiquid securities and other non-bankable assets like art, private equities and real estate, where finding banking relationships is arduous or near impossible without a regulated entity. Further, the ability to have a fund operate similarly to a professional fund, with or without the addition of an audit, makes the SMART fund very attractive. Moreover, SMART funds were established as cost-effective structures that allow emerging

managers and others to establish funds at a low cost and/or with little assets if necessary. Consequently, they still operate in a way whereby managers enjoy all the benefits of a professional fund without it being cost prohibitive.

COMPLIANT AND HIGH QUALITY

Notwithstanding their flexibility, SMART funds have never been void of regulatory compliance, transparency and good governance. Despite having a wide array of investment objectives, they have remained relatively tightly controlled structures, with little room for fraud or rogue managers. Generally, these structures have been tax compliant, well governed by seasoned professionals, and serviced by a well-trained and highly educated pool of Bahamian professionals. As such, our talent base is key to providing compliant, transparent, high-quality fund administration and corporate services, no matter the complexity of the structure. The expectation of service levels in the industry is akin to what financial services professionals, family offices and wealth managers would have received from their private banks and trusts institutions.

The future of the fund industry in The Bahamas will be private funds – SMART funds. Our focus has been on establishing funds on the private wealth side and providing strong client servicing and solutions through SMART funds. Our technology allows us to compete in providing fund accounting and administration to all types of SMART funds and professional funds.

Finally, we believe that the ability to create new SMART fund models enhances our ability to respond to global changes, initiatives and opportunities, and makes SMART funds the product of the future. ■

ONE STEP AHEAD

The Bahamas is transforming its financial services to respond to global change and remain a world leader

By **The Honourable Brent T Symonette**, Minister of Financial Services, Trade and Industry, and Immigration

Changes in the global regulatory environment mean the financial services sector is always evolving. The Bahamas is proactively managing the change process. In fact, we have formulated a comprehensive strategic plan to ensure the viability and unbounded success of the industry. It covers seven categories:

- Passage of major commercial and financial-sector legislation to support the development of a sound and market-driven financial sector.
- Expanding participation in multilateral agreements and strengthening international collaboration to effectively manage risks and challenges from external shocks that affect the industry.
- Upgrading digital infrastructure and improving the way business is done.
- Strengthening the sector's intellectual capital with specialised skills to enhance our presence and representation internationally.
- Managing the jurisdiction's reputation and revamping our international profile through strategic marketing.
- Promoting innovation through new products and services.
- Actively engaging with stakeholders.

Our plan is being implemented with full industry stakeholder participation. All stakeholders, including those in the private sector, know they too have a responsibility to ensure we remain competitive. That means looking for new opportunities in emerging sectors like fintech, and expanding into niche markets.

The government is confident that The Bahamas has the expertise in financial services to meet our clients' needs. We also possess the capacity and motivation to adapt to the evolution taking place



globally in the sector in order to remain a competitive, integrated and efficient financial services provider. We must respond with a transformative agenda.

The transformation of our financial services sector includes accelerating the pace of human capital development in the country by establishing a 'Centre for Excellence' for professional skills in financial services and strengthening financial services education at all school levels in The Bahamas.

Our commitment to education as the means for transformation is exemplified by the fact that, as of September 2019, all full-time Bahamian students who meet certain entry criteria for the University of The Bahamas will receive free tuition.

The government is also providing support to the Central Bank of The Bahamas in moving to a digital form of Bahamian currency, as well as supporting the efforts of the Bank and commercial banking sector in moving towards a cashless society, which is needed for the continued growth of the financial services industry. Our ambition is to make The Bahamas a stronger regional leader and, ultimately, a world

leader in digital technology. This will create opportunities for all Bahamians.

Last year, The Bahamas signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* and the *Multilateral Competent Authority Agreement*, for the implementation of the OECD's Common Reporting Standard. The first exchanges of information commenced in September of this year. The Bahamas also became a member of the *Inclusive Framework on Base Erosion and Profit Shifting (BEPS)* and has passed the *Multinational Entities Financial Reporting Act, 2018*, which creates the legal framework to facilitate country-by-country reporting. The Bahamas is on track to meet its commitment to BEPS implementation by December 2018, having also drafted the *Register of Beneficial Ownership Bill, 2018* and the *Commercial Entities Financial Reporting (Substance Requirements) Bill, 2018*.

The Bahamas is committed to adhering to the international standards that govern responsible and competitive international financial centres, and to ensuring our financial services industry remains the clear choice through promotion, innovation and service excellence.

The government is resolute in its mandate to strengthen its partnerships with stakeholders and to invent tools that exceed expectations. The government believes in the work of STEP and has seen its growth and positive impact on the global trust and estate planning market. We urge you to continue your great work, just as we remain committed to supporting STEP's efforts to supporting STEP's efforts in all you do for the sector. ■