INVESTOR’S RESOURCE GUIDE
Wealth Management and Investment in The Bahamas

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The Bahamas Investor • The Bahamas Financial Services Board • The Bahamas Handbook

SPECIAL SUPPLEMENT TO THE BAHAMAS INVESTOR
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Strategic planning for business cycles is an essential element for any successful business. In The Bahamas we believe this principle is equally important for individuals and families.

At each stage of your financial development, various products, services and techniques are available, many of which have complementary characteristics to assist in the organization of your financial affairs. The Bahamas offers a comprehensive range of private wealth management options, which may be usefully regarded as a Bahamas tool kit, and is available to design effective individual solutions.

In The Bahamas, we are committed to adding value to the personal financial plans of clients through dedicated service as well as the appropriate application of financial planning tools. For the purpose of this guide, these professional services are termed private wealth management.

Individuals who have an effective wealth management strategy are better positioned to manage the impact of events such as changing market conditions, family transitions or planning for the future.

In The Bahamas, we do not believe that private wealth management should focus merely on the structuring of financial affairs to reduce or defer tax. While the ability to accrue profits within a tax-neutral environment such as The Bahamas should be recognized as a valuable advantage, we believe the greater priority is the formation of a relationship fashioned on maximizing the efficiency of your financial assets. Whether this is accomplished by increasing the return, safeguarding against loss or ensuring efficient distribution, it is clearly a business relationship that may span generations. The integrity and continuity offered by institutions located in The Bahamas should be important factors when considering a wealth management plan.

The financial services industry in The Bahamas is staffed and managed by a large pool of experienced professionals. With personnel committed to the local community, the client may be confident that continuity of service, which lies at the heart of the successful professional relationship, will be more predictable than in locations largely dependent upon imported skills. Moreover, respect for personal confidentiality lies at the heart of private wealth management, and the Bahamian government has long recognized and valued the right of the individual to confidentiality in financial matters. Clients may be assured that their affairs will be handled in a discreet, professional manner.

Modern legislation enables The Bahamas to remain at the forefront of the industry. The legislative environment is constantly monitored to ensure the jurisdiction retains its competitive advantage. To this end, the ability of an independent nation to set its own legislative agenda is an important consideration when deciding the location for personal financial services.

This guide aims to highlight products that have a variety of uses and that inevitably overlap. It may be useful to remember that as wealth increases, the structuring alternatives available similarly increase and, as such, the tool kit expands. It should become clear, however, that successful wealth management is a whole life process that is most effective when started early and managed to achieve agreed long-term goals. A trust or company structure that may be valuable for protecting assets during life can be equally effective at managing their distribution following death. Indeed, the earlier a wealth management strategy is embraced, the greater the potential benefits.

The Bahamas offers an ideal domicile for the management of personal wealth. The tradition of quality personal service coupled with an investor-friendly, tax-neutral environment yields a unique set of benefits. As you read this guide and explore some of the wealth management facilities offered from within The Bahamas, we hope you are encouraged to find out more.
Corporate structures

The Bahamas provides individuals and institutions the ability to establish customized corporate structures tailored to the specific demands of their international business transactions, asset management and estate planning. These range from the flexibility of the International Business Company (IBC) to the sophisticated Segregated Accounts Company (SAC).

Types of structures
The IBC is a staple tool in creating structures to preserve and accumulate wealth. Its ability to adapt to the needs of the client is enhanced by the jurisdiction’s tax-neutral platform and the judicious corporate governance requirements.

Legislation in The Bahamas also enables the creation of Limited Duration Companies (LDCs). An LDC is restricted to an existence of 30 years or less, to serve a clearly defined purpose. It could be structured as a partnership for tax purposes, allowing profits and losses to be attributed proportionally to individual members rather than to the company itself.

Both the IBC and LDC benefit from tax exemptions for a period of years from normal fiscal measures in The Bahamas, such as business licence fees and stamp duty. As with all entities and individuals in The Bahamas, they are not subject to income tax, capital gains, gift, estate, inheritance or succession taxes.

While companies established under the Companies Act are used by both international and Bahamian investors, the IBC is the preferred vehicle. The IBC and LDC may transact business in The Bahamas or internationally.

Depending on the nature of the product and market, the corporate structure could be enhanced by the use of a Segregated Accounts Company, an LDC or one Limited by Guarantee.

In an increasingly global economy, entities that transact business in multiple jurisdictions value the importance of properly structured corporate affairs to take advantage of regional and multilateral trade opportunities, tax incentives and mitigation, transfer pricing and double taxation treaty enhancements.

Consequently, creation of a permanent establishment in a tax-neutral jurisdiction such as The Bahamas is an integral part of strategic planning.

Such planning may also extend to companies wishing to access international financing for operations in different parts of the world. The use of international corporate structures to coordinate debt and equity financing and bond issues has proven advantageous to both companies and investors when combined with trust settlements as part of a broader estate planning strategy.

It is vitally important to the successful outcome of transactions involving international business and trade, financial and tax planning, estate planning, wealth management, and private trust or family offices that the correct corporate structure is created in an accommodating and well-regulated jurisdiction, such as The Bahamas.

A comprehensive, Internet-based registration process has been introduced, making it fast and convenient to incorporate in The Bahamas.

Bahamas regulatory framework
Companies are required to maintain a registered office and appoint a registered agent in The Bahamas. These service providers must be licensed as financial and corporate service providers.

Bahamian IBCs have many practical applications
The flexibility and attractive cost of the IBC have resulted in the predominant use of this vehicle in wealth management, with a wide variety of applications:

• Holding company. In many instances the IBC is used as a holding company for assets such as property, securities investments or personal luxuries.

• Investment fund. In the investment funds industry, the structuring of a fund that is simply a customized corporate or partnership entity allows access to specialized investment services and improved efficiencies in the delivery of investment management and administration services. The IBC is the vehicle of choice for such structures. The Bahamas Investment Funds Act provides a regulated environment at the cutting edge of modern investment fund administration.

• Shipping company. The IBC is an ideal structure to hold title to a ship. The Bahamas Ship Registry is ranked as the third largest in the world, and is the number one choice for the world’s leading cruise operators.

• Captive insurance company. Captive insurance companies are used to insure and reinsure the risks of subsidiaries and affiliated companies. Captives also provide access to reinsurance markets and, when established in a tax-neutral environment such as The Bahamas, benefit the accumulation of premium and investment income.

• Private trust company. The IBC, as a private trust company, assumes the role as trustee for one or more family-related trust settlements. It does not engage in any third-party business. Such a structure enables the settlor to select the management of the trust company and retain more control over the operations than would be allowed under normal corporate trustee arrangements.

• Family office. The family office concept uses the private trust company structure as a platform for the broader-based services to be provided for the family.

• Other applications. IBCs can include joint venture, patent and e-businesses.
International Business Companies (IBCs)

The International Business Company (IBC) Act provides a modern simple and cost effective corporate vehicle designed to suit in most flexible terms the needs of international business persons. The IBC, although incorporated and domiciled in The Bahamas, is designed to facilitate the undertaking of legitimate business anywhere in the world whether in its role as a holding company, trading company, a private investment vehicle, insurance company for non-domestic business, or other uses, including its ability to form part of a more sophisticated structure involving a combination of trust, foundation or other specialized corporate elements.

Of particular importance, the IBC operates in a responsible environment for both due diligence and corporate governance requirements. As a part of the global effort to combat money laundering and all other illegal activities, a Bahamian IBC must have a registered agent which is a licensed entity under the Banks and Trust Companies Regulations Act of the Financial and Corporate Service Providers Act. Such agents are under regulatory control of The Bahamas which requires that full compliance is maintained with established Know Your Customer standards. This information, although mandatory, is kept in confidential files of the registered agent.

Further, every IBC is required to maintain a registered office in The Bahamas. The directors may decide where the corporate records of the company are to be maintained and what they should consist of but copies of the Articles and Memorandum of Association, the register of directors and officers and the Share Register must be kept at the registered office. A copy of the register of directors and officers must be filed with the Registrar General’s office. There is no public filing of the register of shareholders. Other key highlights of the IBC are provided below:

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Corporate Legislation Source</td>
<td>English Law</td>
</tr>
<tr>
<td>Types of Company</td>
<td>• A company limited by shares and/or guarantee. An unlimited company. A limited duration company. A segregated accounts company (protected cell in some other jurisdictions).</td>
</tr>
<tr>
<td>Classes of Shares</td>
<td>In addition to being designated as issued “without par value”, shares may have rights attached as voting, non-voting, preferred, redeemable, redeemable preference shares or shares entitled to participation only in certain assets of the company, and may include options, warrants or instruments of a certain nature.</td>
</tr>
<tr>
<td>Currency for Authorized Share Capital</td>
<td>Any</td>
</tr>
<tr>
<td>Minimum Share Capital</td>
<td>None Required</td>
</tr>
<tr>
<td>Standard Share Capital</td>
<td>US$5,000</td>
</tr>
<tr>
<td>Shares of No Par Value</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Number of Shareholders</td>
<td>1</td>
</tr>
<tr>
<td>Bearer Shares</td>
<td>No</td>
</tr>
<tr>
<td>Stamp Duty</td>
<td>None</td>
</tr>
<tr>
<td>Usual Incorporation Time</td>
<td>2-3 Days</td>
</tr>
<tr>
<td>Liquidation Procedure</td>
<td>Easy</td>
</tr>
<tr>
<td>Due Diligence</td>
<td>Yes</td>
</tr>
<tr>
<td>Meetings</td>
<td>Annual General meetings (AGMs) are not required. AGMs may be held anywhere inside or outside of The Bahamas and can take place by telephone. Directors meetings are discretionary. Directors entitled to vote on resolutions at a duly constituted meeting need not formally attend but must pass such resolutions by unanimous written consent signed by all of the directors (provided that there is no restriction thereon in the Articles). Directors may attend meetings by telephone or video conference.</td>
</tr>
<tr>
<td>Company Name</td>
<td>May end in Ltd., Corp., GmbH, Inc. or S.A. either in abbreviated form or in full.</td>
</tr>
<tr>
<td>Reservation of Company Names</td>
<td>Yes (may be reserved free of charge for 90 days).</td>
</tr>
<tr>
<td>Government Fees</td>
<td>Registration fee for registration of original Memorandum and Articles of Association with the Registrar of Companies - US$330</td>
</tr>
<tr>
<td>Government Fees- Annual</td>
<td>IBC with authorized share capital of US$0 to US$50,000 - US$350; IBC with authorized share capital of US$50,001 &amp; above - $1,000</td>
</tr>
<tr>
<td>Details held on public record</td>
<td>• Name of Company • Date of Incorporation • Memorandum and Articles of Association • Registered office and agent address • Directors and Officers • Authorized share capital and number of shares • Registered number Register of Charges (optional at election of company).</td>
</tr>
<tr>
<td>Taxation</td>
<td>An IBC and its shareholders are not subject to any income tax, corporate tax, business license fees or stamp duty on transactions concerning in IBC, except that stamp duty is payable in relation to real property situate in The Bahamas which it owns, or is owned by any company in which it holds shares or for which it holds a lease. Statutory exemption valid for 20 years from date of incorporation.</td>
</tr>
<tr>
<td>Redomiciliation</td>
<td>By way of continuation in and outside the jurisdiction in accordance with the laws of The Bahamas and the laws of the jurisdiction from or to which IBC is being continued.</td>
</tr>
<tr>
<td>Liquidation/Dissolution Procedures</td>
<td>Voluntary and Court supervised procedures available.</td>
</tr>
<tr>
<td>Exchange Control</td>
<td>No - unless an IBC does business with a person resident in The Bahamas or where a person who is deemed to be resident of The Bahamas for exchange control purposes desires to purchase shares, debts of securities in the IBC.</td>
</tr>
</tbody>
</table>
Segregated Accounts Companies (SACs)

**Snapshot**
A SAC is a company which is registered under the Segregated Accounts Companies Act, 2004. The SAC may create separate accounts with assets and liabilities which are segregated from the assets and liabilities attributable to every other account and also from the company’s general assets and liabilities.

- A segregated account is not a legal person distinct from the SAC.
- A SAC must inform any person with whom it deals that it is a SAC.
- A SAC must identify the segregated account which is connected to a particular transaction.
- All assets linked by a SAC to a segregated account shall be held by the company as a separate fund which will not be part of the general account of the company but held exclusively for the benefit of the account owners of the particular segregated account. Those assets will be available to meet the rights of the account holders and satisfy the liabilities connected to the particular segregated account.
- The SAC will record what assets are in its general account and such assets shall be the only assets of a SAC available to meet the general liabilities of the SAC. Assets in the general account will not be available to satisfy liability which is linked to a segregated account.
- The rights and obligations of account owners in a segregated account are contained in a governing instrument. The governing instrument may provide for conditions which must be complied with in order for a person to become a segregated account holder. The governing instrument may also provide for management of the segregated account, appointments of one or more managers, and the orderly winding up of the affairs and termination of the segregated account.
- The governing instrument must be governed by the laws of The Bahamas and the parties to it must submit to the jurisdiction of the courts of The Bahamas.
- The rights and obligations of counterparties dealing with the SAC are evidenced in the form of contracts.

**Structures**
A company registered as SAC must be governed by the Companies Act or the International Business Companies Act and that company

i. must be engaged in the business of
   a. investment funds
   b. issuing securities or
   c. insurance, or
ii. is a subsidiary of a Bank or Trust Company (and not licensed by the Central Bank), or
iii. is engaged in a business where the Minister responsible for companies has prescribed a primary regulator.

No company licensed under the Banks and Trust Companies Regulation Act may register as a SAC.

**Registration**
A SAC must file a request with the Registrar to be registered as a SAC containing the prescribed information and accompanied by the consent of the primary regulator of the relevant business. Where the company has conducted business prior to the application for registration, a statutory declaration containing prescribed information must also be filed with the primary regulator along with evidence of the consent of 75% of the intended account holders and 75% of the would-be creditors of the SAC. The Registrar will issue a certificate of registration on completion of registration.

**Requirement**
- A SAC representative who monitors and reports on the activity of the SAC may be required where the primary regulator is especially prescribed by the Minister responsible for companies.
- A SAC must maintain a private register of account owners.
- A SAC must file an annual declaration stating that the company is in compliance with the Segregated Accounts Companies Act.
- A SAC must maintain records in accordance with generally accepted accounting principles. Records must be made available at least once a year to each account owner, unless waived by the account owner.
- A SAC must pay prescribed fees based on the number of accounts.
Bahamian trusts

The trust is a unique relationship that allows an individual or a legal entity (the settlor) to transfer assets—which may be of almost any type— to a third party (the trustee) to be administered for the benefit of those chosen by the settlor (the beneficiaries) in accordance with the provisions of a document (the Trust Deed). The concept is based on the separation of legal ownership of the trust assets (which rests with the trustees) from the beneficial ownership (which rests with the beneficiaries).

The Bahamas advantage
Bahamian law recognizes trusts, and the Supreme Court has a long history of upholding the principles of equity.

Many of the world’s largest and most prestigious financial institutions have branches or subsidiary operations in The Bahamas, taking advantage of the country’s stable political and economic system.

In establishing a Bahamian trust, planners do not need to take local taxes into consideration, as there are no income, capital or estate taxes in the jurisdiction.

Developments in trust legislation have strengthened The Bahamas’ position as an international financial centre. These developments include:

The Trustee Act, 1998 (amended 2011)
This modern and standard-setting statute places The Bahamas in the forefront of international jurisdictions in terms of premier trust legislation. Today, it remains as one of the foremost international financial centres and trust jurisdictions in the world. Key aspects of the Act include:

Discretionary powers. The Act enables a settlor to retain certain discretionary powers without compromising the validity of the trust. The most important includes the power to revoke the trust or trust instrument; or any powers granted by the trust or trust instrument; to withdraw property from the trust; to add or remove trustees, protectors or beneficiaries; and to give directions to trustees. As a result, the settlor is able to ensure that the trust is properly administered.

Investment of trust assets. Trustees have been vested with wide discretionary powers of investment and of dealing with the trust property. In this regard, trustees have the full powers of investment and of changing investments as those possessed by individual beneficial owners absolutely. Trustees may appoint agents such as investment advisors, who, on their behalf and in accordance with the trust instrument, may properly invest the trust funds and give investment advice. Since Dec 30, 2011, trustees are afforded greater protection where the trust instrument stipulates that the power of investment shall only be exercised upon a direction by the power holder. In such cases, when acting pursuant to a direction, the trustee is not liable for any loss arising as a result of following the direction, acting only pursuant to the direction or failing to act in the absence of a direction.

Managing trustee/protector. The trust may provide for a managing trustee, and a protector may be appointed with wide discretionary powers, ensuring the wishes and intention of the settlor are carried out in accordance with the trust instrument. The Act formally recognizes the role of the protector.

Court advice. The Act allows a process whereby a trustee may seek advice and directions from a judge in chambers of the court without the necessity of filing an action. This could facilitate quick resolution of questions relating to the management or administration of a trust property, involving only such interested persons as the judge may find expedient, and saving costs.

Maintenance and advancement. The powers of maintenance and advancement can be applied in respect to any minor who has an interest in the income of a trust property.

Access. The Act creates certainty as to who may be able to have access to the trust documents.

Income accumulation. Income may be accumulated within the period allowed by the rule against perpetuity. In The Bahamas, the perpetuity period rule adopts a “wait and see” approach to “lives in being,” or it may be a fixed period of 150 years.

Risk. The Act provides for appropriate flight clauses so that if there is any political upheaval, or any serious activity that would place the trust at risk, the trust and its administration would be transferred immediately and automatically to another country.

Registration. Trust instruments and subsequent documents do not have to be registered (except for conveyances of Bahamian real property or personal property) under the Registration of Records Act.

Trust legislation also provides for protection of assets against potential creditors, avoidance of forced heirship laws and indemnities for trustees, as highlighted below.

The Trusts (Choice of Governing Law) Act, 1989
This law provides that assets held in a Bahamian trust may be protected from forced heirship claims or the enforcement of other foreign law rules, which are adverse to the free disposition of property.

The Perpetuities (Amendment) Act, 2004
The Amendment Act of 2004 extended the perpetuity period from 80 to 150 years, enabling families to plan for five generations.

The Perpetuities (Abolition) Amendment Act, 2011
This Act abolishes the rule against perpetuities for all trusts made after commencement of the Act, i.e. after Dec 30, 2011. For existing trusts, trustees may...
apply to the court to disapply the rule against perpetuities.

**Fraudulent Dispositions Act, 1991**
This provides creditor protection to trust settlors. Trust assets are generally protected from all litigation in respect of existing claims started more than two years after assets are placed into the trust. Trust assets are immediately protected from any claims arising after such assets are placed in the trust.

In crafting this legislation, parliament was careful to ensure that the Act exists for the benefit of “solvent” settlors seeking to safeguard their property from possible future claims. The Act does not provide assistance to proposed settlors wishfully seeking to defeat an existing or contingent obligation owed to a creditor, of which they had notice.

Settlers seeking to use the provisions of the Act should take steps to ensure that, under their relevant bankruptcy laws, a transfer into a Bahamian asset protection trust is lawful and acceptable with regard to their particular considerations and circumstances that may exist at the time.

**Purpose trusts**
While a focus on any of the various types of trusts would be worthwhile, one of the most recent additions to The Bahamas tool kit of products within the trust sector, the Purpose Trust Act 2004, (amended 2011) is worth highlighting.

Traditionally, private trusts have named beneficiaries or classes of beneficiaries. Purpose trusts do not fit this mould and are often compared to charitable trusts. A significant difference, however, is that, with limited exceptions, trusts will only be considered charitable if they are for the relief of poverty, the advancement of religion, the advancement of education or some other purpose beneficial to the community. Like many other international jurisdictions, The Bahamas has recently introduced legislation that recognizes trusts for non-charitable purposes.

**The Purpose Trust Act, 2004** *(amended 2011).* The law dealing with purpose trusts in The Bahamas is contained in the Purpose Trust Act, 2004 *(amended 2011).* Authorized purpose trusts must satisfy the following requirements:
- The purpose must be possible and sufficiently certain to allow the trust to be carried out;
- The purpose must not be contrary to public policy or unlawful.

**Authorized applicants.** The Act provides for authorized applicants—persons appointed as such under the trust instrument or the settlor of the trust or court-appointed person. These authorized applicants have rights to make certain applications to the court including administrative proceedings, proceedings for breach of trust and also rights to information (unless excluded by the settlor).

An authorized purpose trust may create trusts for one or more authorized purposes and one or more individuals, corporations or charitable purposes. While individuals may benefit indirectly from the authorized purpose trust, they do not necessarily have the status of an authorized applicant.

**Rule against perpetuities.** This does not apply to authorized purpose trusts.

**Uses of a purpose trust**
The most interesting feature of purpose trusts is the fact that beneficial ownership is not vested in the trustee as the trust is not for his/her benefit and there is no one else in whom beneficial entitlement in the trust property is vested. Accordingly, an authorized purpose trust has many estate planning and commercial uses, including:
- Holding shares of a private company, expressly authorized by the Act. In this structure, the settlor, members of the family and advisors may be appointed directors of the private trust company and assume some responsibility for the management of the trust. This is useful when assets are of an unusual nature.  
- A trust that has both philanthropic and charitable purposes.
- Asset purchase or financing transactions to provide security for an entity that finances the purchase or to keep the asset and corresponding liability from appearing on a purchaser’s balance sheet.
- Separate voting from economic control.

**Regulatory framework**
The supervisory and regulatory regime for banks and trust companies as administered by The Central Bank of The Bahamas includes corporate governance, guidance on internal controls and accounting standards, capital adequacy, risk management standards, controls on large financial exposures and self-dealing, safeguards against abuses of conflicts of interest and know-your-customer (KYC) requirements.

The Central Bank Act and the Banks and Trust Companies Regulations Act collectively address these issues, as well as cross-border supervision and cooperation by the Central Bank with its international counterparts.
Foundations

Summary
A foundation is a distinct legal entity registered under the Foundations Act 2004. Once registered, a foundation is deemed to be resident and domiciled in The Bahamas. Foundations may be established for private, commercial or charitable purposes provided same are lawful and include the management of its assets. Foundations are created by the will of the founder or by the founder executing a charter which may, but need not, be filed in the registry of foundations.

Foundations may be used for most purposes for which trusts and companies are presently used: estate planning, tax planning, preserving family wealth, segregating assets, perpetuating corporate governance philosophy, subordinating debts, separating voting and economic benefits, investing in private companies with a poor economic performance, owning private trust companies and establishing charities. Foundations may also be used where anti-forced heirship and creditor protection are important.

Features
- The founder of the foundation may be a natural or legal person and a nominee founder may be used.
- A foundation must appoint either or both a secretary or foundation agent to conduct the necessary due diligence, provide the registered office, undertake duties relating to anti-money laundering and counter-terrorism regulations and ensure that the foundation complies with statutory requirements. The secretary or foundation agent must either be a licensed trust company under the Banks and Trust Companies Regulation Act or a duly licensed financial and corporate service provider under the Financial and Corporate Services Providers Act. If a foundation has a foundation agent and a secretary, but the latter does not perform any of the statutory duties, such a secretary need not be a licensed financial and corporate service provider or trust company.
- Where there are no officers appointed, the foundation charter shall provide for the appointment of a foundation council, which may consist of:
  i. two more natural persons
  ii. a legal person and one or more natural persons, or
  iii. a legal person by itself.
- The foundation council’s members need not be located in The Bahamas and its functions include:
  i. ensuring that the foundation and the officers comply with the charter and articles and
  ii. supervising the officers and their management of the foundation.
- The Council is entitled to:
  i. access to the books and records of the foundation
  ii. be informed of all meetings of the officers
  iii. attend and be heard but not vote at such meetings
  iv. be included in the circulation of foundation documents and
  v. be informed of any delegation of powers to an officer.
- Fiduciary and other responsibilities are usually vested in a foundation council or similar governing body and the foundation may also have a protector or committee of protectors.
- Charter may reserve powers to the founder, including the power to amend or revoke same.
- Charter may appoint other officers in addition to the secretary, whose duties will be mainly administrative.
- Charter may include terrorem provisions.
- The procedures for appointing beneficiaries may be included in the charter rather than the names of the beneficiaries.
- A beneficiary with a vested interest in the assets of the foundation has the right to be notified of interests, request the charter, articles, any audit report, and any minutes of any meeting of the officers of the council or other supervisory body.
- A beneficiary has the right to confidentiality and the officers of the foundation council shall take all reasonable steps to secure such confidentiality.
- Due diligence in respect of founder and beneficiaries required, but confidentiality with regard to foundation information must be maintained.
- Foundations are exempt from Bahamian taxes and business license fees, stamp duties (excluding Bahamian real estate taxes) and exchange controls.
- Foundations may redomicile to or from The Bahamas.
- Articles are optional. If no articles, the Act applies.
- A foundation need only keep such financial statement accounts and records as the officers consider necessary or desirable to reflect the financial position of the foundation.
- Foundations may be established for a fixed or indefinite period.
- Foundations may be formally liquidated or revoked.
- Instruments of disposition may include restrictions against alienation.

Registration formalities
- Registration statement contains name of foundation, date of charter, purposes and objects, date of articles (if any), details of founder (could be nominee), secretary and foundation council or other governing body or supervisory person, address of registered office, period for which established and value of initial assets.
Only additional filing required is statement containing particulars of any amendments to initial registration statement.

- Foundations must have initial assets of $10,000 which must be maintained. (Assets of a foundation need not be transferred until after registration although there will be a commitment in the charter by the founder to transfer the assets).
- Foundations must have registered office and secretary or foundation agent in The Bahamas.

Fees per calendar year
- $500 if registered in 1st quarter
- $375 if registered in 2nd quarter
- $250 if registered in the 3rd quarter
- $125 if registered in the 4th quarter
- Annual fee $500

Executive Entity

Introduction
The Executive Entity (EE) is a legal entity registered under the Executive Entities Act, 2011 to perform executive functions—these are powers and duties of an executive administrative, supervisory, fiduciary and office holding nature. The EE institutionalizes the governance of wealth structures and other entities in an entity with limited liability that is specifically designed for this purpose. The EE therefore is an ideal solution in the matter of identifying a protector or enforcer of a trust or a director or shareholder of a private trust company.

Highlights and requirements
Charter
- There is no requirement that the charter be filed or registered in a public registry.
- The charter must contain the name of the founder and other pertinent information such as the purpose of the EE and mechanisms for appointing and removing officers and/or council members.
- The charter may provide for the reservation of rights to the founder and may specify higher or lower levels of exonerations and indemnifications than contained in the Act.

Agent, officers & council members
An Executive Entity agent must be appointed which is either licensed under the Financial and Corporate Service Providers Act, or a trust company under the Banks and Trust Companies Regulation Act.

The charter must provide for the appointment of an officer or a council. It may provide for the appointment of both officers and a council. The officers are charged with administering the EE in furtherance of its purpose and in accordance with the charter, articles and Act.

The council, if appointed, is charged with generally supervising the administration of the EE and ensuring compliance by the EE and the officers with the provisions of the Act.

Registration
- An EE is established by a charter which is signed by the founder of the EE.
- The EE attains the status of a legal entity upon registration.
- To register an EE, submit the required fee along with a statutory declaration of compliance and statement signed by the EE agent or an attorney engaged in the formation of the EE containing the following:
  i. the date of the charter and the date of any amendments made to the charter
  ii. the purpose of the EE
  iii. a statement that the EE is an Executive Entity
  iv. the date of the articles (if any) and the date of any amendments made to the articles (if any)
  v. the name and address of the EE agent
  vi. the period for which the EE is established—definite or indefinite
  vii. other particulars the agent or attorney may wish to include
  viii. certificate of registration will be issued by the Registrar General with the name of the EE and the date of registration.

Distinguishing features of an EE
- Flexible capital structure. There is no specific minimum capital that an EE is required to maintain; it must, however, maintain assets necessary to carry out its executive functions.
- An EE may hold shares, securities or other ownership interests in a legal person whose business is to carry out executive functions.
- The executive functions of an EE may be performed only in relation to entities, trusts or other arrangements that are domiciled in or regulated by the laws of The Bahamas or a jurisdiction specified in the first schedule to the Financial Transactions Reporting Act.
- The Act contains similar anti-forced heirship provisions as are contained in the Trustee Act and Foundations Act.

Fees
- Registration fee $550 (prorated)
- Annual fee $500 (late fees apply)
See EE regulations for a complete listing of fees.
Private trust companies and family office

**Snapshot:** The Private Trust Company (PTC) is a company incorporated under the Laws of The Bahamas to provide trusteeship to a defined class of trusts. The Central Bank acts as a regulator of the PTC. Legislative changes have exempted the PTC from certain licensing requirements. PTCs are governed by the Banks and Trust Companies Regulation (Amendment) Act, 2010 and Banks and Trust Companies (Private Trust Companies) Regulations, 2007.

**Highlights and requirements of PTC Incorporation:**
- A PTC can be incorporated under either the Companies Act, 1992 or the International Business Companies Act, 2000.
- The Memorandum and Articles of Association must provide for the PTC to act as trustee only for a trust or trusts created by a designated person names in the prescribed designating instrument pursuant to the regulations.

**Designated person:**
- Is an individual named in the designating instrument.
- If more that one designated person is named, then each designated person must be a blood relative of or related by some other family relationship to the other designated person(s). Can be deceased and his trust established by testamentary disposition.

**Designating instrument:**
- Names the designated person(s) and is kept at the office of the registered representative.

**Form of acknowledgement is required whereby the prescribed settlor acknowledges awareness that PTCs do not require:**
- directors to possess expertise in trust administration
- capital exceeding $5,000
- a fidelity bond
- an annual audit

**Registered representative must:**
- be a separate legal entity
- be either a licensee of The Central Bank of The Bahamas or a financial and corporate service provider approved by the Central Bank
- be resident in The Bahamas
- provide the services of a secretary, director, or Bahamas agent
- ensure that the PTC is established for lawful purpose and that it operates as a PTC
- have minimum share capital of $50,000
- retain copies of certain documents in relation to the PTC
- require verification and maintenance in The Bahamas of records relating to the identities of the following:
  i. settlor and any person providing funds or assets subject to trust(s) administered by the PTC
  ii. designated person(s)
  iii. protector of trust(s) of which the PTC is trustee
- iv. any person with a vested interest under trust(s) of which the PTC is trustee.
- report suspicious transactions to the Financial Intelligence Unit

**Special director is:**
- a person (who need not necessarily be resident in The Bahamas) of good reputation who must possess at least five years of experience in a discipline relevant to trust administration (law, finance, commerce, investment management, or accountancy)

**Distinguishing features of PTC:**
- PTCs are distinguished from public, restricted and nominee trust companies as they are unique vehicles operating under the regulatory regime prescribed in the 2007 Banks and Trust Companies (Private Trust Companies) Regulations.
- They are restricted from carrying out any other business other than that of a trusteeship to a trust or group of trusts created by the designated person(s).
- The PTC must not amend its Memorandum and Articles of Association of the company, is not allowed to solicit trust business and must comply with yearly compliance regulations and fees.
- If the PTC fails to comply with directions from the Central Bank or engages in illegal conduct, the PTC or its registered representative will be liable to a fine up to $5,000 and can face an order form the Supreme Court compelling compliance or further sanctions. PTCs can transfer or dispose of their shares provided that the registered representative maintains a current share register of all its shareholders.

**Family office**

The family office helps families achieve their goals while dealing with regulations and complex issues of taxation, distribution planning and charitable giving. The trust is a tool used by the family office to facilitate the smooth transition from one generation to the next. Other essential services include: evaluating life insurance needs; active coordination of legal/tax/accounting matters of business interests; financial reporting and audits coordinating the purchase of non-financial assets; and corporate governance reporting.
Insurance products

Adapted from the 2014 edition of the Bahamas Handbook

Responsibility for the regulation of insurance activity in or through The Bahamas rests with the Insurance Commission of The Bahamas (ICB). It is responsible for the ongoing supervision and regulation of insurers, agents, brokers, salespersons and external insurers and intermediaries.

All local insurance operations (as distinct from offshore, or captive, insurance) are covered by the Insurance Act, Chapter 347, which was amended in 2009. Registered insurers writing local business pay a premium tax of 3% of gross premiums collected each quarter.

As of Dec 2012, there were 24 active domestic insurers and one association of underwriters licensed to write local business. In support of this activity, there were 49 agents and brokers, 37 sub-agents and six brokers.

Domestic insurance companies, agents and brokers are members of the Bahamas Insurance Brokers Association.

The ICB is a member of the International Association of Insurance Supervisors (IAIS) and endorses supervisory and regulatory requirements of the IAIS Insurance Core Principles. The ICB also maintains membership of other regional and international bodies including the Caribbean Assoc with Insurance Regulators (CAIR) and Offshore Group of Insurance Supervisors (OGIS).

Offshore insurance and captives

An offshore insurer is an insurance company licensed and regulated under the External Insurance Act, Chapter 348. It is incorporated in The Bahamas and manages its business from within The Bahamas but only insures risks located outside The Bahamas. As of Dec 2012, there were 15 insurance companies, five insurance managers and three brokers registered under this Act.

Under the Act, captive insurance companies are classified as “restricted external insurers” and mainly underwrite the risks of related entities.

The Bahamas offers a convenient and professionally administered location for captive insurance companies. There is a well-equipped and capable regulator in the ICB and a professional infrastructure to support such business.

All offshore insurers licensed in The Bahamas are required to appoint a resident representative, who is often one of the licensed insurance managers and maintain books and records in The Bahamas. Before an offshore company may be licensed, the ICB must be satisfied:

1. the company is managed, owned and controlled by persons who are fit and proper;
2. its business plan is acceptable to the ICB;
3. adequate books and records will be maintained in The Bahamas;
4. there will be adequate management and control of operations; and
5. there will be adequate capital to support the business.

Once licensed, the insurer is required to meet annual reporting and audit requirements.

The minimum capital requirement for a licence is $100,000 for general business and $200,000 for long-term business. However, the ICB will require companies to maintain a level of capital commensurate with the size and risks of the operations. Other provisions of the Act include a confidentiality clause to protect the policy holder and tax exemptions for a period of 15 years from the date of first registration.

Interested parties are encouraged to arrange a meeting with the ICB prior to applying. Insurance managers can provide assistance with the licensing applications, ongoing management services and regulatory requirements. There are currently five licensed insurance managers.

Captive insurance companies are alternative providers of protection against the risk of damage or loss and third-party liabilities. They differ from traditional firms in the nature of risks they underwrite or reinsure. They minimize the cost of risk management and may substantially reduce, or even avoid, other expenses such as administration and settlement of claims, loss control expenses, brokerage commissions and other acquisition costs and consulting fees.

Captives also allow self-insurance of a company with a better loss history than its industry average, plus centralization and tailoring of a company’s risk management programmes to improve loss control efficiency. Captives also offer cash flow benefits; access to the reinsurance market; wider coverage than the conventional market—such as providing coverage for a new or potentially hazardous product—and the chance to diversify into open-market insurance services and generate profits from outside or unrelated business.

Annual fees payable under the External Insurance Act Chapter 348:

- Unrestricted external insurer ..........$3,500
- Restricted external insurer ..........$2,500
- External insurance broker ..............$1,000
- Underwriting manager ....................1,000

For more information, contact the Insurance Commission of The Bahamas, Charlotte House, Charlotte and Shirley Sts, PO Box N-4844, Nassau, tel (242) 397-4183, fax (242) 397-1070, e-mail info@icb.gov.bs or visit www.icb.gov.bs.

Source: The Bahamas Handbook © 2013

WEALTH MANAGEMENT TOOL KIT
**Tax planning for Canadians**

**By Charles C Gagnon**  

**Despite restrictions** imposed by Canadian income tax law on the use of tax havens, there are many circumstances in which The Bahamas retains its attractiveness for Canadians. The islands continue to prove a sound and durable base from which to invest in Canada or the outside world or from which to conduct offshore operations for the benefit of Canadians.

In fact, increased investment outside Canada, exports by Canadian firms and the growing number of multinational families have increased the scope for The Bahamas as a centre for international activity.

**Residence**
In Canada, residence remains the foundation of direct taxation for individuals. This benefits Canadians wishing to take advantage of The Bahamas, especially as compared to the US, which taxes on a citizenship basis.

Under the Canadian federal income tax system, individuals resident in Canada are taxed on their worldwide income whereas non-resident individuals are taxed only through the withholding tax regime on certain investment income (discussed later), with respect to income from employment in Canada, a business carried on in Canada and from gains realized on the disposition of taxable Canadian property (also discussed later). They are not taxed with any reference to the fact that they are or are not Canadian citizens. A corporation not resident in Canada is subject to Canadian federal or provincial tax only through the withholding tax regime on certain investment income, on income from its business carried on in Canada and from gains realized on the disposition of taxable Canadian property. Like individuals, resident corporations are taxed on their worldwide income.

Canadian companies incorporated after April 26, 1965, are automatically deemed residents of Canada unless they are continued under the laws of another jurisdiction. Corporate continuance is treated as re-incorporation for tax purposes. Consequently, a company’s residence for Canadian income tax purposes may be affected by a change in its corporate status.

The Canadian government has enacted an incentive to lure international shipping companies to Canada. If a company deriving all or substantially all (ie 90%) of its revenue from an international shipping business is incorporated outside of Canada, (eg in The Bahamas) it can establish its place of central management and control in Canada and yet be deemed a non-resident of Canada. In this way, it avoids Canadian tax on its income.

**Canadian withholding tax**
The basic Canadian withholding tax is 25%. This applies to investment income, certain pensions, dividends, non-arm’s-length interest, rent, certain types of royalties, income from a trust and certain other forms of revenue paid by Canadian residents to persons abroad. This tax must be withheld from the gross payment by the payer unless the recipient of the income resides in a country with which Canada has a tax treaty. In that event, the withholding tax may be reduced to 15% or less, depending on the terms of the treaty. The Bahamas and Canada do not have a tax treaty.

Old-age security payments under the Canada or Quebec Pension Plans are subject to withholding tax.

**Special exemption from withholding tax**
Interest paid by a Canadian resident corporation to arm’s-length non-resident creditors is exempt from Canadian withholding tax. The exemption is granted regardless of the currency of the loan or interest. The interest must not be contingent upon the use of, or production from, property in Canada.

Also, interest which depends in whole or in part on revenue, profit, cash flow or other similar criteria, or on dividends paid or payable on shares of a corporation, does not qualify for the exemption. Interestingly, there is no restriction preventing the guarantee of the debt by a non-resident who is not at arm’s length with the borrower. Thus, Bahamians may lend to Canadians against the security of a guarantee by someone outside of Canada not at arm’s length with the borrower, upon terms which may exempt the interest paid from Canadian withholding tax (the arrangement must, however, remain in law a guarantee and avoid being characterized as an agency between the guarantor and the lender).

**Thin capitalization provisions**
The “thin capitalization” provisions contained in subsections 18(4), and following, of the Income Tax Act relate to the deductibility of interest paid on money borrowed from abroad by Canadian resident corporations and trusts.

Interest payments made to non-residents who hold a substantial interest (ie 25% of the voting or equity shares) in a Canadian company or which do not deal at arm’s length with such a shareholder, are not always entirely deductible in computing income in Canada. They will be disallowed if the ratio of the company’s equity capital to the debt due to such non-resident shareholders or non-arm’s-length persons is less than 1.5:1.

**Bahamas benefits**
Despite the restrictive and wide-ranging
nature of the Canadian fiscal law, The Bahamas continues to play an important part in Canadian tax planning. In particular, the use of testamentary trusts and certain inter vivos trusts can yield rewards.

There are not many tax havens that offer benefits comparable to The Bahamas in terms of flexibility of corporate structure, top-quality accounting and legal services, readily available first-class financial and banking services, proximity to major world markets and good docking and harbour facilities.

The modernization and liberalization of the Bahamian company and trust law and the introduction of foundation law now provide a flexibility previously unavailable in The Bahamas.

The Bahamas can offer a variety of corporate and settlement structures and procedures that are equal to those in any other jurisdiction. A number of Canadians look to The Bahamas to conduct some of their business. Some achieve this by becoming non-residents of Canada and setting up their homes in The Bahamas. Once they do this, they suffer no income tax in Canada, except on income from employment in Canada, the profits from business done there, gains from taxable Canadian property or the 25% withholding tax on certain kinds of investment income derived from Canada.

**Capital gains tax on non-residents**

Non-resident individuals pay income tax to Canada at applicable personal rates on 50% of the capital gains realized by them on the disposition of “taxable Canadian property.”

Taxable Canadian property is defined in subsection 248(1) of the Income Tax Act and includes Canadian real estate and resource properties. Certain other types of property are also considered taxable Canadian property. In particular, the definition of taxable Canadian property includes shares of corporations and interests in trusts which derive their value principally from Canadian real estate and resource properties.

Liability to Canadian tax could be triggered by the death of an individual who happens to own shares of a non-resident corporation with Canadian assets.

All non-residents must report dispositions of taxable Canadian property to the Canadian fisc, indicate the name of the person to whom the property is sold and pay an amount on account of Canadian tax or furnish acceptable security (this special requirement is not applicable to the disposition of listed shares in a Canadian public corporation).

Upon payment of a tax instalment, a “certificate” is issued to the non-resident which protects a purchaser of the asset from having to pay some of the tax that might not have been paid by the non-resident.

**Becoming a non-resident of Canada**

In order to become a non-resident of Canada, an individual must generally give up his home and most attachments within Canada such as employment, provincial medicare coverage, clubs, bank accounts, credit cards and the like and acquire a residence in another jurisdiction by purchasing a home or renting an apartment in which he lives as his central family headquarters.

Nevertheless, once a former Canadian resident has become a non-resident, he may return to Canada each year for temporary visits without being taxed.

Thus, because The Bahamas imposes no income tax of any kind, a non-resident Canadian citizen may reside there with the advantage of paying to Canada only 25% on certain kinds of investment income derived from Canadian sources and no withholding tax on certain kinds of interest.

Royalties and similar payments on or in respect of a copyright related to the production or reproduction of any literary, dramatic, musical or artistic work are exempt from Canadian withholding tax. The Bahamas is, therefore, appealing to Canadian writers, musicians, singers and artists as a place of residence. The same individual, if he wishes to continue his business activities in Canada, may do so as a non-resident and pay tax at the personal graduated rates in Canada on the profit from the business there.

**The exit tax**

A problem that faces Canadians who consider taking up residence in The Bahamas is the exit tax imposed by Canada upon capital gains deemed to arise from the notional realization of certain capital property at the time they give up Canadian residence.

Corporations leaving Canada are also subject to exit rules. In particular, a corporation is treated as having disposed of all of its property at fair market value and to have notionally distributed its net equity. This fictitious distribution is assimilated to a liquidating dividend and subjected to a special tax in lieu of withholding tax.

**Succession duty and estate tax advantages**

There are no estate and gift taxes in Canada. However, individuals are deemed to dispose of their property at fair market value at the time of their death. Thus, a non-resident individual may be liable to tax on capital gains at the time of his death if he holds taxable Canadian property directly.

If he resides in The Bahamas and holds no such property, then he would not suffer any Canadian tax at the time of his death.

**Corporate uses of The Bahamas by Canadians**

Under Canadian tax law, a foreign company is resident where its seat of management and control is found (subject to restrictions on companies incorporated or continued into Canada set out previously). This is usually held to be the place where the directors meet or from which the day-to-day management instructions emanate or are carried out.

In order to prevent a company from being legally resident in Canada and thereby paying tax, management and control must be exercised, bona fide and in fact, outside Canada.

A non-resident company may perform...
useful functions of an extraterritorial nature such as world advertising, worldwide selling, the financing and organizing of sales abroad, the management and servicing of the facilities needed to maintain the products sold abroad and the operation of ships or certain group insurance activities. In each case, it is important to determine whether the income of the Bahamian subsidiary is foreign accrual property income (commonly referred to as FAPI). The FAPI of a “controlled foreign affiliate” of a Canadian resident is attributed to and taxed in the hands of its Canadian resident shareholders on an annual basis.

There have also been cases before the Canadian courts in which attacks made by the Canada Revenue Agency (CRA) on offshore subsidiaries of Canadian corporations have been tested. The income of the subsidiaries has been added, sometimes, to the income of the Canadian parent on the footing that the subsidiary was itself a sham or an instrumentality. Transfer pricing is another line of attack increasingly favoured by CRA. These cases stand on their own facts and need not pose a threat to normal activities carried on bona fide in The Bahamas, provided management and control of the Bahamian corporation are not in Canada.

Foreign affiliates
The foreign affiliate rules affect any foreign corporation in which a Canadian resident has a significant interest. A foreign affiliate is defined to include any non-resident corporation in which a Canadian resident holds at least 10% of the shares of any class. A non-resident corporation will also be considered a foreign affiliate of a Canadian resident who holds 1% of the shares of any class where the equity interest of the Canadian resident together with related persons is at least 10%.

When a foreign corporation qualifies as a foreign affiliate, the dividends that pass upstream to a Canadian corporate shareholder are tax free when paid out of “exempt surplus.” Exempt surplus is income derived by a company resident and carrying on business in a country with which Canada has a tax treaty or tax information exchange agreement (TIEA).

The Bahamas has a TIEA with Canada and as a result active business income earned by the Bahamian affiliates of Canadian companies benefit from exempt surplus treatment.

Passive income is treated quite differently from active business income. The concept of FAPI is meant to tax the passive earnings of foreign affiliates controlled by Canadian taxpayers. In many ways it is not unlike its American counterpart, “Subpart F” of the Internal Revenue Code. FAPI is essentially income from property or from a business other than an active business. Each year an appropriate share of the FAPI of a controlled foreign affiliate (and certain trusts), if it exceeds $5,000, is included in the income of Canadian taxpayers controlling the foreign affiliate in the taxation year in which the foreign affiliate’s taxation year has terminated.

FAPI does not include interaffiliate dividends, active business income, and certain amounts received from other affiliates. It similarly does not include capital gains from the disposition of “excluded property” (property used principally in an active business and shares of foreign affiliates, most of whose property is used in an active business).

Non-resident trusts
A non-resident of Canada who has not resided in Canada during the 60-month period preceding the end of a taxation year can establish, by will or gift, a Bahamian resident discretionary trust (NRT) for the benefit of Canadian resident family members, which will escape the application of the income attribution rules governing offshore discretionary trusts. Distributions of capital (which can include accumulated income) received by Canadian resident beneficiaries from an NRT funded solely by a non-resident should not be taxable.

Before, a Canadian resident could also establish an NRT for beneficiaries who did not reside in Canada. Income of such a trust was not subject to Canadian tax provided a person resident in Canada who is related to the settlor was not “beneficially interested” in the trust. Recent legislative attempts were made to extend the reach of the Canadian fisc in this area by taxing the undistributed income of an NRT to which a Canadian resident has loaned or transferred property irrespective of whether a person related to the settlor is beneficially interested in the trust.

It is still possible for an NRT established by an immigrant or temporary resident to avoid tax for the first five years of residency in Canada. Bahamian trusts are particularly well-suited for this purpose.

Of course it is important that a trust established outside of Canada not be considered resident in Canada under the normal rules regarding the residency of trusts. This requires that central management and control of the trust be located outside Canada. Expert professional advice in this area is essential, but use of Bahamian trusts can pay substantial dividends.

Current attitudes towards tax planning
The Canadian law contains a number of technical provisions that narrow the field of manoeuvre for the taxpayer. Moreover, Section 245 of the Income Tax Act contains a general anti-avoidance rule (GAAR). The GAAR comes into play whenever a taxpayer engages in a transaction or series of transactions that results directly or indirectly in a “tax benefit” (as broadly defined in that provision) unless the transaction does not result in an abuse or misuse of the provisions of the Income Tax Act. Thus, the uses made by Canadians of Bahamian corporations must be limited to commercially defensible activities and should not be employed merely to hide or artificially minimize truly Canadian income.

In this whole field, the area of manoeuvre is narrowing, so a conservative and realistic approach should be taken.
Tax planning for Americans

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Companies formed in the United States and individuals who are either citizens or residents of the US for US federal income tax purposes are subject to US federal income tax on their worldwide income. US taxpayers and domestic companies can, in some instances, start international operations with relatively small amounts of capital and then expand with tax-free or low-taxed accumulations of earnings instead of net-tax dollars earned in the US. Expansion abroad can be more rapidly accomplished with 100-cent tax-free dollars, instead of 65-cent dollars (which is net after the 35% US federal corporate tax). For individuals, the top marginal rate of US federal income tax rate is currently 39.6% and 20% for long-term capital gains and qualified dividends (plus an additional 3.8% surtax on certain types of “net investment income.”) With careful tax planning, US investors can achieve the tax advantages of income tax deferral in The Bahamas.

The US federal income tax advantages are available by reason of certain exceptions to the anti-deferral provisions of the Internal Revenue Code (IRC), which set forth conditions under which the US will not tax certain items of foreign-source income on a current basis so that US federal income tax on such foreign-source income is deferred until distributions are made.

To be eligible for the US income tax advantages, Bahamian business ventures must be operated by a Bahamian company. If a Bahamian or other foreign company (except a passive foreign investment company or PFIC) is not engaged in a US “trade or business,” and at least 50% of the voting power and value is owned by non-US persons (insurance companies are an exception), US shareholders of such company may not be subject to US federal income tax on such company’s foreign source income on a current basis unless and until dividends are paid, assets of the company are distributed or shares are sold.

If a Bahamian or other foreign company is more than 50% (by vote or value) owned (directly or indirectly) by US shareholders it is known under US tax laws as a “controlled foreign corporation” (CFC). A US shareholder is a US person who owns directly or indirectly (or constructively) 10% or more of the total combined voting power of a CFC. A US shareholder is subject to US federal income tax each year on their proportionate share of certain kinds of income of the CFC regardless of whether there is a distribution to such person.

The kinds of income currently taxable are, generally:

1. Income from the insurance or reinsurance of risks.
2. Passive income such as dividends, rents, interest, gains from the sale of property which itself produced passive income, capital gains from the sale of stocks and securities, gains on commodities and foreign currency transactions, royalties, etc.
3. Sales income where the goods are either purchased from, or sold to, a related person.
4. Income from services if rendered to a related person.
5. Increases in investments in US property.
6. Income attributable to international boycotts.
7. Income attributable to the bribery of foreign government officials.
8. Income that is foreign oil or gas-related.

Even so, there are many exceptions and exclusions to the above. In other words, even if the Bahamian company is US-controlled, its US shareholders may not be required to include foreign-source income of the CFC in their annual taxable income if an exception applies.
Seven vehicles for investing in The Bahamas

The types of CFCs particularly suitable for operations in The Bahamas are those which earn income which qualifies for deferral in the hands of a US shareholder including, among others, the following:

1. **Manufacturing production.**
   Income from the sale of products or goods manufactured or produced in The Bahamas generally is not subject to US taxation even though purchases and sales involve the parent corporation or other related persons.
   The same applies to rental income where such products or goods are leased to an unrelated party instead of sold, provided certain “active-business” tests are met. In addition, rental income from the lease of such products or goods to a related party generally is not subject to US taxation provided that the products or goods are used in The Bahamas. Likewise, income from certain incidental services rendered before a sale or in connection with an effort to sell such products or goods is not currently taxable.

2. **Sales of products and goods.**
   If the parent corporation or other related person is not involved in the purchase or sale of products or goods, then income from such sales is not subject to current US taxation, no matter where, or by whom, the products or goods were manufactured, where the sales are made or where such products or goods are used or consumed.
   Even if a related person is involved, the sales income is free of current tax if the products or goods are manufactured, produced, grown or extracted in The Bahamas, or if they are for use, consumption or disposition in The Bahamas.

3. **Insurance.**
   A Bahamian insurance company is considered a CFC if more than 25% of the voting power or value of its stock is owned by US 10% shareholders. Income earned by a Bahamian insurance or reinsurance company, which is a CFC, is taxable only to a US 10% shareholder.
   In addition, unless certain exceptions are met, if a Bahamian insurance company is at least 25% US-owned, all US shareholders (even if such shareholders own less than 10%) must include in income their pro rata share of the company’s “related person insurance income” (premium or investment income on insurance policies where the person insured, directly or indirectly, is a US shareholder or related person). Related person insurance income also includes income from reinsurance if the ceding company or its insured is a US shareholder in the Bahamian insurer.
   A Bahamian insurance company that is a CFC can elect to be treated as a US corporation for all US tax purposes. If this election is made, US shareholders will not be taxed on the company’s income until distributed as dividends. The charge for electing is 0.75% of capital and surplus as of Dec 31, 1987, up to a max charge of US $1.5 million.
   The Bahamas government provides advantages and incentives for insurance companies insuring and reinsuring non-Bahamian risks.

4. **Banks and finance companies.**
   Passive income of a Bahamian bank or finance company that is a CFC that is “predominantly engaged in the active conduct of a banking, financing or similar business” (as defined in the IRC) and conducts substantial activity with respect to such business is not subject to current US taxation. Interest earned by a Bahamian bank that is a CFC in connection with export financing for related US persons, with certain exceptions, is not subject to US tax.

5. **Service companies.**
   This is a broad category and includes any Bahamian corporation rendering services that are technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial or the like.
   Many types of companies in The Bahamas fall into this category. A partial list would include engineering, sales promotion, sales engineering, merchandising, consulting, etc. With reference to such companies, income from such services, rendered outside the US and performed for persons who are not related without substantial assistance of related US persons, is exempt from current US taxation.
   Income from services rendered within The Bahamas is also exempt even though such services are rendered for, or on behalf of, a related person. Income from services rendered by a foreign company in The Bahamas before a sale or in connection with an effort to sell products or goods manufactured, produced, grown or extracted by it are also exempt from current US tax even though such income is received from a related person.

6. **Leasing and royalties.**
   Rents derived in the active conduct of a trade or business in The Bahamas and received from persons not related are not subject to current US taxation. Rents are also so exempt even when received from a related person if such rents are for use of property located in The Bahamas.
   Royalties—eg payments in connection with patents, copyrights, inventions, models, designs, secret formulas or processes—are currently exempt from US taxation when derived in the active conduct of a trade or business in The Bahamas and received from persons who are not related. Royalties are also exempt, even when received from a related person, if such royalties are for the use of property or property rights within The Bahamas.

7. **Certain investment income.**
   Dividend and interest income received from a related foreign corporation generally is exempt from
current tax if both payer and payee are incorporated in The Bahamas and the payer has a substantial part of its assets used in the business in The Bahamas.

Passive foreign investment company (PFICs)
A Bahamian company is a PFIC if 75% or more of its gross income is “passive” income (dividends, interest, etc), or 50% or more of its assets are held to produce passive income. Thus, a mutual fund, and even a manufacturing company with significant cash on hand or securities, could be a PFIC.

US shareholders in a Bahamian PFIC may be subject to additional taxes (plus interest) on certain PFIC distributions or on a disposition of PFIC stock. A US shareholder of a PFIC may avoid this result by making one of the following two elections. First, a PFIC shareholder can elect to be taxed currently on his pro rata share of PFIC ordinary income and capital gains, which then can be distributed tax free. If a US shareholder of a PFIC makes this election, he also can elect to defer the current tax but must pay interest on the deferred taxes. Second, a US shareholder of a PFIC may elect to mark-to-market his stock on an annual basis if such stock is marketable (regularly traded on a national securities exchange registered with the SEC). The mark-to-market election is less favourable because all inclusions are taxed as ordinary income. Coordination rules also prevent US shareholders of a CFC from being taxed twice on the same item of income with respect to such CFC stock in cases where the CFC also qualifies as a PFIC.

Employment of US citizens abroad
Tax benefits are available to US citizens employed abroad who establish a tax home in a foreign country (the foreign country is the taxpayer’s principal place of business) and who meet certain other tests prescribed by the IRC (either a physical presence or residency test with respect to the foreign country). Although a US citizen generally is subject to US income tax on his worldwide income, a US citizen employed abroad who satisfies the IRC tests described above may exclude from gross income for any taxable year foreign-source earned income (wages or salary for services performed outside the US) an amount equal to the product of $80,000 and the inflation factor determined under section 1(f)(3) of the IRC; US$97,600 for the 2013 tax year. For any taxable year that a US citizen is employed abroad they may also:
1. Exclude from gross income a portion of the housing expenses paid for by his employer, or
2. In the event such expenses are not paid for by his employer, deduct such expenses (subject to certain limitations).

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She has participated at meetings of STEP (Miami) and has also taken a leadership role with Geneva Group International (GGI), a network of well-established law firms committed to providing clients with specialist solutions for their international business requirements.

Born and raised in Boca Raton, FL, Sindledecker was educated at Florida State University (BS, summa cum laude, 2005) and the University of Miami School of Law (JD, 2008; LLM, 2011). She was admitted to the Florida Bar in 2008.

Steven L Cantor is the managing partner of Miami-based law firm Cantor & Webb PA. His practice focuses on representing international private clients and high-net-worth families predominantly from Latin America, the Caribbean and Europe in the areas of international tax and estate planning, foreign trusts with assets and/or beneficiaries in the United States, pre-residency planning and structuring of foreign investment in US real property.

He was one of the earliest professionals from the US asked to join the London-based Society of Trust and Estate Practitioners (STEP) in 1994 and founded and served as chairman of the STEP Miami branch. He also helped establish the STEP Caribbean Conference and served on its Steering Committee. In 2011, he received the STEP Founder’s Award for Outstanding Achievement.

Cantor is a frequent author in diverse publications and has lectured internationally on behalf of the Bahamas Financial Services Board, the Cayman Islands Bankers Association, Panama Bankers Association, the Private Client Forum and over 20 STEP branches in Europe, the Caribbean, Latin America and Canada.

He has been recognized as one of the world’s leading international private client attorneys by Chambers Global and Chambers USA and as one of the top 50 foreign lawyers for Latin America by the Latin Business Chronicle. Cantor is listed in Citywealth magazine’s Leaders List, Legal Week’s International Trusts & Private Client Elite List and has been quoted by The Wall Street Journal.
Mechanisms for information sharing

Summary
As a well-regulated and responsible international financial centre, there exists mechanisms or gateways pursuant to various statutory measures by which financial information in The Bahamas may be accessed by foreign judicial and/or regulatory authorities, subject to appropriate safeguards.

Judicial gateways

- **Evidence (Proceedings in Other Jurisdictions Act, 2000 (EPOJA))**: Under the EPOJA, an application from a foreign court may be facilitated by the Supreme Court of The Bahamas to obtain evidence in The Bahamas for purposes of foreign civil proceedings which either have been instituted or is contemplated to be instituted (and for which investigations have already commenced) before the requesting foreign court. The EPOJA contains provisions to prevent wide-ranging discovery.

- **Criminal Justice (International Co-operation) Act, 2000 (CJICA)**: Under the CJICA, an application from a foreign court may be facilitated by the Supreme Court of The Bahamas to obtain evidence in The Bahamas for purposes of foreign criminal proceedings and investigations. In each case, the Attorney General of The Bahamas shall make applications on behalf of the requesting foreign court. Where the Supreme Court is satisfied that the request is an appropriate one, it may make an order for the relevant evidence to be produced to or taken in deposition by the Supreme Court. The evidence obtained by the court would thereafter be provided to the Attorney General of The Bahamas for transmission to the requesting court.

- **Mutual Legal Assistance in Criminal Matters Act, 1988 (MLA)**: Pursuant to the MLA, The Bahamas has treaty arrangements with the United States of America, Canada and the United Kingdom of Great Britain, “the requesting countries,” respectively, by which The Bahamas will facilitate requests of the requesting countries to obtain and to provide evidence in/from The Bahamas for use in criminal proceedings. Fiscal offenses are outside of the scope of the MLA.

Regulatory administrative gateways

**Banks & Trust Companies**

- **Central Bank of The Bahamas Act, 2000 (CBA)**; and
- **Banks & Trust Companies Regulations Act, 2000 (BTCRA)**

The CBA and the BTCRA enable The Central Bank of The Bahamas and respecting Bahamian banks and trust companies with information gathering powers and authorizes the Central Bank to disclose information in specified circumstances.

Per the CBA, the Central Bank may require the production of specified information or documents from entities it regulates and their officers, employees and agents for its own regulatory purposes or to facilitate a request of an overseas regulatory authority. An overseas regulatory authority means an authority in a foreign country that exercises powers in that foreign country corresponding to that exercised by the Central Bank within The Bahamas. As a pre-requisite to disclosing information to an overseas regulatory authority, the Central Bank must: be satisfied as to the confidentiality and restrictions on further disclosure by the overseas regulatory authority; have received an undertaking against further disclosure without the Central Bank’s consent; be satisfied that disclosure is required for a regulatory function (including civil or administrative investigations or proceedings) to enforce laws administered by the overseas regulatory authority; and be satisfied that the information will not be used for criminal proceedings against the person providing the information.

The BTCRA also facilitates cross-border supervision by foreign banking regulators of branches or subsidiaries in The Bahamas of entities that are regulated by that foreign regulator. Except in special circumstances authorized by the Bahamian inspector of Banks & Trust Companies, the foreign regulator may not access information relating to assets under management or deposit operations of individual customers. The BTCRA permits disclosure, “exceptions to a duty of confidentiality,” of banking information in the following circumstances:

i. to enable/assist the Central Bank Governor in functions conferred by Bahamian law; and

ii. for the institution of

- a. criminal proceedings in The Bahamas; or
- b. disciplinary proceedings in The Bahamas or abroad relative to a lawyer, auditor, accountant, valuer or actuary or public officer or employee of the Central Bank.

**Securities Industry**

- **Securities Industry Act, 2011 (SIA)**: Per the SIA, the Securities Commission of The Bahamas has authority (similar to that granted under the CBA to the Central Bank) to disclose information in the course of facilitating a request of an overseas regulatory authority. Under the SIA, an overseas regulatory authority means an authority in a foreign country that exercises powers in that foreign country corresponding to...
that exercised in The Bahamas by the Securities Commission of The Bahamas.

- Investment Funds Act, 2003 (IFA): In relation to investment funds, the IFA provides exceptions to a duty of confidentiality comparable to that provided under the BTCRA relative to banks and trust companies.

Financial Intelligence

- Financial Intelligence Unit Act, 2000 (FIUA): The FIUA established a Bahamian financial intelligence unit (FIU). The FIU is a central agency to receive, analyse and disseminate to competent authorities disclosures of financial information concerning the proceeds of crime respecting offenses under the Proceeds of Crime Act, 2000.

In addition to receiving financial intelligence originating from suspicious transaction reports made to the FIU by financial institutions and other persons, the FIU is empowered to issue, administratively, an order for the production of information by persons. Information in the possession of the FIU is subject to a duty of confidentiality, however, the FIU is authorized to disclose such information to the Commissioner of Police or to a foreign FIU, subject to conditions as may be imposed by the director of the FIU.

Tax Information

The above-mentioned gateways to Bahamian information are not used for purposes of international cooperation in tax matters. The Bahamas would facilitate the provision of information for purposes of foreign revenue laws where a tax treaty has been entered between The Bahamas and the relevant foreign jurisdiction.

In compliance with the Organisation for Economic Co-operation and Development (OECD) standard for transparency and cooperation in tax matters, The Bahamas has a number of these treaties, called a Tax Information Exchange Agreement (TIEA). The Bahamas has long sought a level playing field on tax information exchange. Its decision to endorse and meet the OECD standard when a level playing field was achieved reinforces The Bahamas’ unwavering commitment to be a trusted jurisdiction for clients and to be a responsible member of the international community.

All of the agreements signed by The Bahamas are in accordance with the OECD model TIEA and Double Taxation Agreement. As such, the basis on which The Bahamas will cooperate with countries is the same as all countries that adopt Article 26. In particular, through the agreements, The Bahamas commits to cooperate only upon requests where specific information is provided. This requirement for specific information is critical in furtherance to The Bahamas’ stated position to prevent so called “fishing expeditions.”

Conclusion

The Bahamas remains strongly committed to the principle that persons have a right to privacy with respect to the conduct of their affairs. Moreover, respect for the rule of law always has been fundamental to the success and strength of the financial services industry in The Bahamas. As such, clients can be assured that The Bahamas will only exchange information on agreed and transparent protocols.

Tax Information Exchange Agreements

TIEAs have been signed with the following jurisdictions as of Dec 2012:

- Argentina
- Aruba
- Australia
- Belgium
- Canada
- China
- Denmark
- Faroe Islands
- Finland
- France
- Germany
- Great Britain
- Northern Ireland
- Greenland
- Guernsey
- Iceland
- India
- Japan
- Korea
- Mexico
- Monaco
- New Zealand
- Norway
- San Marino
- South Africa
- Spain
- Sweden
- The Netherlands
- United States
The Act recognizes four classes of fund:

1. **The Standard Fund.** Anticipates an offering to the general public, and is a highly regulated, modern investment vehicle designed to operate as a traditional collective investment scheme.

2. **The Professional Fund.** A class designed for sophisticated investors, and may be licensed by an authorized administrator (in addition to the Securities Commission), thereby enabling faster time to launch.

3. **The SMART Fund.** A specific mandate alternative regulatory test fund suitable for innovative structuring of investment funds.

4. **The Recognized Foreign Fund.** An investment fund licensed or registered in a prescribed jurisdiction and not suspended from operation.

These four classes of funds, coupled with a progressive approach to regulation and a reputation for quality administration, place The Bahamas at the forefront of the funds industry.

**Regulatory strength**
The Bahamas is an active member of established international regulatory and policy-making bodies and devotes considerable resources to its participation in these bodies and adherence to international best practices.

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**Standard funds**

**Snapshot**
A recognized legal structure in The Bahamas that issues or has equity interests in the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding management of disposal of investments. This type of fund does not fit the definition of a Professional Fund, a SMART Fund or a Recognized Foreign Fund.

**Equity interest**
- Equity interest held only by investor
- No minimum investment by the investor.
- A share, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the issuer and is redeemable or subject to be repurchased at the option of the investor.
- Does not include closed-end issuers.
- Close-end issuers may elect to be licensed as an investment fund.

**Licensor**
A Standard Fund must be licensed by the Commission. The licensing process should take 6-8 weeks after submitting a completed application.

**Structures**
Company (incl Segregated Accounts Company), Limited Partnership, Unit Trust.

**Requirements**
- Bahamian administrator—delegation to foreign sub-administrator is acceptable.
- Accounts prepared in accordance with international accepted accounting standards (or other recognized GAAP).
- Prescribed disclosure requirements in the offering memorandum. These are in line with the best industry practices.

**Open architecture**
- No local auditor requirement.
- No local custodian requirement.
- No restrictions on investments or investment style.
- No restrictions on leverage.
- No direct taxation. Therefore no tax on income, capital gains, dividends earned by the fund or the investor.
- No stamp duty on transactions.
- No public disclosure of investors or the accounts.
- No exchange controls.
Professional funds

Snapshot
A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments.

Equity interest
- Equity interest held only by eligible investor
- No minimum investment by the eligible investor
- A share, trust unit or partnership interest that carries entitlement to participate in the profits or gains of the issuer and is redeemable or subject to be purchased at the option of the investor.
- Does not include closed-end issuers
- Closed-end issuers may elect to be licensed as and investment fund.

Licensor
A Professional Fund must be licensed by one of:
- Unrestricted Fund Administrator: Same day once all documents approved by relevant parties (sponsors, lawyers, administrators) and due diligence is complete
- Securities Commission of The Bahamas: Within 72 hours of a complete application and letter from the Bahamas administrator or legal counsel indicating the Investment Fund is in compliance with Bahamian Law

Eligible investors
- A bank or trust company licensed in The Bahamas or licensed pursuant to the laws or another jurisdiction
- A securities firm registered in The Bahamas or registered pursuant to the laws of another jurisdiction
- A Bahamian investment fund or investment fund regulated pursuant to the laws of another jurisdiction
- An insurance company licensed in The Bahamas or pursuant to the laws of another jurisdiction
- Natural person (jointly w/ spouse) with a net worth of $1,000,000
- Natural person who had minimum income of $200,000 for the last 2 years ($300,000 w/ spouse) and has reasonable expectation of same for current year
- A trust with minimum $5,000,000 in assets
- An entity owned by any one of the above
- An entity with net assets in excess of $5,000,000

Structures
Company (including Segregated Accounts Company), Limited Partnership, Unit Trust.

Requirements
- Bahamian administrator - delegation to foreign sub-administrator is acceptable.
- Accounts prepared in accordance with international accepted accounting standards (or other recognized GAAP).
- Prescribed disclosure requirements in the offering memorandum. These are in line with best industry practices.

Open architecture
- No local auditor requirement
- No local custodian requirement
- No restrictions on investments or investment style
- No restrictions on leverage
- No direct taxation. Therefore no tax on income, capital gains, dividends earned by the fund or investor
- No stamp duty on transactions
- No public disclosure of investors or the accounts
- No exchange controls.

SMART funds

Snapshot:
A recognized legal fund structure in The Bahamas that issues equity interests the purpose or effect of which is the pooling of investor capital with the aim of spreading various risks and achieving profits or gains from the acquisition, holding, management or disposal of investments. Similar to other licensed fund structures, SMART funds can generate economies of scale and other efficiencies for investment structures. Furthermore, SMART funds offer the ability to achieve cost-based structuring by scaling the complexity of the fund structure to meet the requirements of its promoter and investors.

In order for an investment fund, as defined in the Investment Funds Act, to be licensed as a SMART Fund, it must satisfy the parameters and requirements of a specific set of rules that are approved and published by the Securities Commission.
Equity interest and investment

Equity interests in this context are held by fund investors and represent a share, trust unit or partnership interest that carries an entitlement to participate in the profits or losses of the issuing fund. Such equity interests are redeemable or subject to be repurchased by the fund at the option of the investor.

SMART Fund Models (SFMds)

- **SFM001**: An investment fund where the promoter is a financial institution and the investors in the investment fund are also customers of the financial institution and party to a Discretionary Management Agreement with the financial institution.
- **SFM002**: An investment fund that has no more than ten investors who hold equity interests in the investment fund who meet the criteria of an Eligible Investor in a Professional Fund and the majority of whom have the power to appoint and remove the operators of the investment fund. The fund may be licensed and launched on the same day through an unrestricted fund administrator or have a 72-hour response through the Securities Commission of The Bahamas (the Commission).
- **SFM003**: An investment fund that has no more than 15 investors holding equity interest in the investment fund, the majority of whom have the power to appoint or remove the operators of the investment fund.
- **SFM004**: An investment fund with a maximum of five investors operating as a private investment company. May be used as a credible, licensed holding vehicle.
- **SFM005**: An investment fund with a maximum of five investors holding equity interests and operating as a private investment structure for individuals/families. Each investor must be a person to whom a Professional Fund may be offered, permitting same day launch by an unrestricted fund administrator or 72-hour response through the Commission.
- **SFM006**: A special purpose vehicle designed to hold the illiquid or hard-to-value assets of another Bahamas investment fund which offers a significantly lighter administrative and cost effective environment for the assets whilst respecting the ownership rights of the investors and creditors (if any) of the original fund.
- **SFM007**: An investment fund that may be offered, on a private placement basis, to up to 50 super-qualified investors who must each make a minimum initial subscription of US$500,000. SFM007 has been designed for use mainly by institutional investors, such as pension funds, funds of funds and master-feeder structures; however natural persons and private entities are also eligible investors. Due to the very significant minimum investment amount per investor, this SFM has a reduced structural risk profile and counterparties may benefit from maximum flexibility with respect to appointment and domicile of service providers.

Licensors

A SMART Fund must be licensed by:

- **Unrestricted Fund Administrator**: Same day once all documents approved by relevant parties (sponsors, lawyers, administrators) and due diligence in complete, or Securities Commission of The Bahamas: SFM002, SFM005 and SFM006 SMART Funds within 72 hours of a complete application and letter from the Bahamas administrator or legal counsel indicating the investment fund is in compliance with Bahamian law. SFM001, SFM003 and SFM004 within 6-8 weeks of filing of a complete application.

Structures

Company (incl Segregated Accounts Company), Limited Partnership, Unit Trust.

Requirements

- Bahamian administrator required in most cases—delegation to foreign sub-administrator is acceptable.
- Foreign Administrator—may be appointed for SFM005 or SFM007.
- A SFM005 SMART Fund must appoint an administrator that is a financial institution.
- SFM004, SFM006, and SFM007 do not require an administrator. The operators may administer the fund but this will not be treated as a self administered fund.
- SFM001 and SFM006 are not required to have financial statements audited but the annual unaudited statements and the semi annual performance report must be filed with Securities Commission.
- SFM002, SFM003, SFM004, SFM005 and SFM007 SMART Funds shall be audited annually unless unanimously waived by the investors, and where there is such waiver a performance report shall be filed with the Commission within six months of the waiver and every six months thereafter as long as the waiver exists.

A term sheet is not required for a SFM001, SFM004 or SFM005 SMART Funds; however if a term sheet is prepared it must contain prescribed disclosure requirements. A term sheet or offering memorandum is required for the SFM002, SFM003, SFM006 and SFM007 SMART Funds and must contain the prescribed disclosure requirements.
Recognized foreign funds

Snapshot
A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments.

Where:
- the equity interests are listed on a securities exchange (including an over-the-counter market) prescribed by the Commission by notice in The Gazette and the fund is not licensed in The Bahamas;
- it is licensed or registered in a jurisdiction prescribed by the SCB by notice in The Gazette and not suspended from operation; or
- it is incorporated or established and is in good standing in a jurisdiction prescribed by the Commission by notice in The Gazette.

Licensor
- No licensing requirements.
- The investment fund is to be registered in The Bahamas with the Commission upon filing the required application with the prescribed documents.

Structures
Company (incl Segregated Accounts Company), Limited Partnership, Unit Trust.

Securities Industry Act

Overview
The Securities Industry Act, 2011 repealed the Securities Industry Act, 1999. The 2011 Act modernizes and updates the law governing the regulation of securities in The Bahamas, enhances the powers of the Securities Commission (the Commission) and promotes confidence and efficiency in the capital markets, making them a more attractive prospect to domestic and foreign investors.

Highlights
Definitions
The first schedule of the 2011 Act defines securities and the activities giving rise to the obligation to register. Part 2 of the first schedule sets out four types of activities which would constitute securities business and include:
- dealings in securities
- arranging deals in securities
- managing deals in securities
- advising on securities.

Part 3 of the first schedule exempts a number of activities from registration, eg trading for one’s own account and Part 4 lists exempt persons, eg receivers, executors or lawyers where such activities are incidental to their profession.

Securities Commission
The Commission’s powers remain the same; however, the 2011 Act provides for more comprehensive powers along with greater clarity, independence and accountability.

Assistance to domestic & foreign regulatory authorities
The 2011 Act allows the Commission to provide any information already on file and to obtain information from anyone in the jurisdiction in response to a request from an overseas regulatory body. Information may also be passed on to another person in the overseas authority’s jurisdiction if certain preconditions are met. The powers of the Commission to require a person to provide information are written to overrule the provisions of any other law regarding secrecy and recognize a person’s right not to have compelled statements used against them in criminal matters or the right to claim legal privilege on the appropriate documents.

Investigations & inspections
The 2011 Act substantially expanded the powers of the Commission to investigate a regulated person or firm to determine if the person or firm has, is, or is about to contravene any provision of Bahamian securities laws. An investigation may also be initiated for the administration of Bahamian securities laws or to assist in the administration of securities laws of another jurisdiction.

The Commission is not required to give notice of these inspections nor does the Commission have to suspect a breach of the 2011 Act, however, the regulated person or firm bears the expense of inspection.

Registration of persons carrying on a securities business
The 2011 Act and the Securities Industry Regulations, 2011, entities formed under the International Business Companies Act, 2000 (IBC Act) who conduct securities business are now eligible for registration as broker-dealers (registered firms). The old Act only permitted entities formed under the Companies Act, 1992 to register.
Furthermore, registered firms will no longer be required to be licensed to undertake specific types of securities business as provided for in the previous Act. Registered firms may now carry on one or more categories described in Part 2 of the first schedule of the Act. Registered firms with licenses so classified will now be afforded expanded powers of dealing, i.e., Class I registered firms may now carry on all categories of securities business. Class II may now carry on all categories of securities business except those set out in Section 1b of Part 2 of the first schedule of the 2011 Act, which include buying, selling, subscribing for or underwriting securities as principals. Former securities investment advisors will be also authorized to engage in the managing and advising of securities.

Previously registered firms will not be required to re-register.

The categories of registration for individuals have changed as well; the current categories of broker-dealer, trader, broker, stock-broker and securities investment advisor with overlapping permitted activities have been replaced with a single requirement; any person carrying on securities business must be registered with the Commission. Furthermore, an individual may only be registered to carry on securities activity for which the firm is authorized to undertake and does not contemplate an individual being registered other than in association with a registered firm.

**Distributions & Prospectuses**

The 2011 Act requires an issuer to submit both a preliminary prospectus and a prospectus to the Commission for consideration in connection with the distribution of a security, i.e., a trade in a security of an issuer not previously issued; a trade in a previously issued security of that issuer that has been redeemed, purchased or donated to that issuer; a trade in a previously issued security of an issuer by a control block holder; or a trade within a prescribed class of trades.

Upon issuance of a receipt for the preliminary prospectus, the issuer may distribute and solicit the preliminary prospectus, however, not until a receipt has been issued for the prospectus may a binding agreement be entered into with prospective purchasers for the purchase of the security.

There are several exemptions in the 2011 Act which do not require the submission of both a preliminary prospectus and a prospectus; these include the distributions of: securities issued by the government of The Bahamas; securities issued by a private company; securities of an investment fund registered under the Investment Fund Act, 2003 or exempt from registering under that Act; an issuer of its own securities that are distributed to holders of its securities as a dividend and offerings by approved foreign issuers.

A distribution of securities issued or to be issued by an issuer under the laws of The Bahamas that is made outside The Bahamas shall be made in accordance with the laws of the country in which the distribution is made.

**Takeover bids**

A long-standing gap in the securities industry’s laws has been the lack of legislative control of takeover bids. The new regulations set out a framework of controls and guidelines for the industry, including a road-map for the conduct of takeover bids to ensure all security holders are treated in a fair and equitable manner upon change of control.

Visit us online

for an essential overview of setting up trusts, international business companies and other wealth management structures in The Bahamas, plus information on working and living here.
Estate planning: probate & administration

The Probate and Administration of Estates Act, 2011 governs the distribution of estate assets and immovable properties. Personal properties are distributed according to the law of the place of a person’s domicile at date of death.

Statutory provisions

The Bahamas is a common law jurisdiction and probate and administration of estates legislation is based on the laws of England and Wales. The Supreme Court issues grants of representation for the estates of persons domiciled outside The Bahamas in respect of Bahamian assets upon their demise.

There are several testamentary dispositions by which an investor may deal with Bahamian assets. However, a person can only have one domicile at a time:

i. An investor can make a Bahamian will solely in respect of his Bahamian assets with a provision that the will must be constructed and interpreted with Bahamian laws. The Court will issue a grant of probate.

ii. An investor can declare in the will that they are domiciled in The Bahamas. The Court will issue a grant of probate.

iii. If residing as a permanent resident in The Bahamas, the will can be administered under Bahamian law. The Court will issue a grant of probate.

iv. An investor can settle Bahamian assets in an Inter Vivos Trust which can be incorporated as a part of a last will and testament. The investor should appoint the trustees named in the trust as executors and trustees of the last will and testament. Alternatively, a Trust can be created in the will. The provisions under the Trustees Act apply.

v. Where domiciled outside The Bahamas in different circumstances, there are other provisions under Bahamian law.

According to the Act, the Court has jurisdiction with the eligibility of persons entitled to obtain a grant of representation on the estate of a deceased person and requires that a notice of a proposed grant application be published in the Official Gazette on three consecutive occasions prior to submitting to the Probate Court for processing.

An estate executor/administrator does not have to personally attend the Court to obtain a grant of representation; a local attorney can be appointed by deed of power of attorney to act on behalf of the estate executor/administrator.

Where a local trust company is executor, the trust company can designate two officers to undertake the application.

Where a testator fails to name an executor, any beneficiary or devisee named may apply to the Court for a grant of letter of administration with the will annexed. Upon issue of the grant, the powers and duties similar to an executor enables them to distribute the estate as set out in the will.

Resealed grants of representation

The Court issues a resealed grant in respect of any grant of probate or other testamentary disposition issued by another common law jurisdiction eg the UK, the US, Australia, New Zealand, Canada and any Commonwealth country provided the requisite certified and authenticated copies of such foreign grant, etc are produced to support the application.

The Court also issues a grant of letters of administration with the will annexed where a deceased testator owns Bahamian assets but is not necessary to apply for a grant in respect of the will in the place of domicile.

Where a person dies intestate in a common law jurisdiction, the Court will issue a grant of letters of administration in respect of the estate in the first instance to the surviving spouse or another person approved by the Court and grant the administrator with powers and duties similar to an executor.

Grants issued in a civil law jurisdiction

The Court will not reseal grants issued in a civil law jurisdiction. However, although The Bahamas is a common law jurisdiction, the law provides for administration of estates from civil law jurisdictions such as the European countries (eg Switzerland, Germany, France), South American countries (eg Argentina, Brazil, Chile) and other territories such as the Dutch Antilles and Quebec.

Where a person dies intestate domiciled in a civil law jurisdiction, the Court issues a grant of letters of administration.

An application for a grant in respect of each of the above must be accompanied by the civil law testamentary disposition and supporting documents must be translated into English by a certified, notarized and authenticated translator.

The local attorney will advise the client as to the appropriate grant for which an application should be made and advise the client of the exact civil law documents, certificates, etc required to support the application.

Executors, trustees, devisees and beneficiaries

Full names, current address and occupation of each executor, trustee, devisee and beneficiary must be given to the attorney by the personal representative for each application. It is necessary to obtain due diligence in respect of each executor, trustee, devisee and beneficiary.

Administration of assets

There is no inheritance tax in The Bahamas. Upon issue of a grant of representation the personal representative of the estate must:

i. settle the estate’s debt including payment of real property taxes, if applicable

ii. deal with assets as settled in the trust, if applicable; or distribute the personal assets as set out in the will to local and/or foreign beneficiaries

iii. or in the case of an intestacy, distribute the personal assets under the Inheritance Act, 2002

iv. arrange transfer or settling of corporate shares

v. obtain Exchange Control approval to transfer pecuniary legacies to beneficiaries outside The Bahamas

vi. execute deeds of assent where real property of the deceased will be legally vested in the devisees, apply for the requisite certificate of registration or permit in respect of a non-Bahamian devisees’ acquisition and obtain permission from Exchange Control in respect of the administration and complete the return for filing with the registrar as prescribed by the Act.
In 1994, the government introduced a National Investment Policy to support an investment-friendly climate and foster the economic growth and development of The Bahamas. An edited version of the policy follows:

**Investment environment**

To support the National Investment Policy the government will provide:

1. A politically and economically stable environment conducive to private investment.
2. An atmosphere where investments are safe and the expropriation of investment capital is not considered.
3. A legal environment based on a long tradition of parliamentary democracy, the rule of constitutional and statute laws, and where security of life and personal property are guaranteed.
5. An environment in which freedom from capital gains, inheritance, withholding, profit remittance, corporate, royalty, sales, personal income, dividends, payroll and interest taxes is ensured.
6. Essential and reliable public services, including modern infrastructure services: water, electricity and communications.
7. An educational system designed to meet the needs of foreign and domestic investments.

**Administration of policy**

The National Economic Council (NEC), headed by the Prime Minister, is responsible for executive management of the investment policy. Operational activities are the responsibility of the Bahamas Investment Authority (BIA).

**Investment incentives**

Investment incentives under the following Acts include, among other incentives, exemption from the payment of customs duties on certain construction materials, related equipment and approved raw materials. Additionally, waiver of real property taxes is available for certain investments for periods of up to 20 years.

- Export Manufacturing Industries (Encouragement Act)
- City of Nassau Revitalization Act
- Industries Encouragement Act
- Agricultural Manufactories Act
- Bahamas Vacation Plan and (Time-Sharing Act)
- Tariff Act
- Hotels Encouragement Act
- Spirits and Beer Manufacture Act
- Hawksbill Creek Agreement Act
- Family Island Development (Encouragement Act)
- Free Trade Zone Act

**Areas targeted for foreign investors**

Following is a list of certain investment.

### What’s required in an investment proposal?

An international investor seeking to do business in The Bahamas should submit to the Bahamas Investment Authority a project proposal containing:

1. Name and address, including telephone/fax.
2. Executive summary of project.
3. Type of business—whether share company, partnership, individual or joint venture.
4. Principals—investors, major beneficial shareholders, including their dates and places of birth, as well as passport or social security numbers.
5. Proposed location.
6. Land requirements.
7. Start-up date.
8. Employment projections—number of Bahamian and non-Bahamian employees.
9. Management/personnel requirement—years of experience, training and work permits* for key personnel.
10. Financial arrangements for project, including bank reference.
11. Environmental impact—toxic waste, disposal procedures, toxic input.
12. Total capital investment in project with a breakdown of items and start-up cost.

Minimum investment is $500,000.

* Necessary work permits for key personnel will be granted. Businesses requiring permits for persons other than key personnel are encouraged to consult BIA in advance.
areas especially targeted for international investors. However, the list is not exhaustive, and investors interested in areas not included should consult BIA. Joint ventures with Bahamian partners are encouraged, with the choice of partner being at the discretion of the investor.

1. Touristic resorts.
2. Upscale condominium, timeshare and second home development.
3. Marinas.
4. Information/data processing.
5. Assembly industries.
6. High-tech services.
7. Ship registration, repair and other ship services.
8. Light manufacturing for export.
10. Food processing.
12. Aircraft services.
13. Captive insurance.
15. Pharmaceutical manufacture.

### Areas reserved for Bahamians

- Wholesale and retail operations.
- Commission agencies engaged in the import/export trade.
- Real estate and domestic property management agencies.
- Domestic newspapers and magazines.
- Domestic advertising and public relations firms.
- Nightclubs and restaurants, except speciality, gourmet and ethnic restaurants and restaurants operating in a hotel, resort complex or tourist attraction.
- Security services.
- Distribution of building supplies.
- Construction companies, except for special structures for which international expertise is required.
- Cosmetic/beauty establishments.
- Shallow-water scale fish, crustacea, mollusc and sponge-fishing operations.
- Auto and appliance service operations.
- Public transportation.

### Business licensing

**Adapted from the 2014 edition of the Bahamas Handbook**

#### Business licence fee

The Business Licence Act, 2010, made it mandatory for anyone operating a business aimed at obtaining a turnover to apply for and obtain a licence.

Annual licence renewal applications and payments are due March 31 every year. Fees are based, for most businesses, on their annual gross receipts less the direct cost of producing the turnover. They range from $100 for a petty business to 1.75% of turnover for businesses with turnover greater than $100 million. Authorized banks are taxed at 3% of turnover, while registered insurers are taxed 3% of gross premiums.

Companies licensed under the Banks and Trust Companies Regulation Act, 2000 (which imposes separate fees), do not pay for a business licence.

The Act’s definition of business includes all types of manufacturing and commercial undertakings and covers professions such as law, accounting and medicine. Where a business consists of separate and distinct undertakings, a separate licence must be obtained for each.

A non-Bahamian or a company not 100% Bahamian-owned must first obtain approval from the BIA and then wait for the licence application to be approved. Renewal licenses are granted once the necessary approvals are obtained and the payment of renewal taxes are made. The secretary for revenue has the power to have the books of a licensee audited at least once a year. Books are to be maintained for at least two years.

#### Temporary licence

In the Business Licence Act, 2010, a new type of licence, known as a temporary licence, was introduced for a temporary business. According to the Act, non-Bahamians who contract to carry out a business must apply for a temporary licence and pay a tax of 1.5% of the value of the business contract. Temporary licences, issued by the secretary for revenue, are not granted unless all outstanding licence fees under previous licences are paid and the application is approved by the Minister of Finance. It is an offence for non-Bahamians to carry on a business without a temporary licence.

#### Occasional licence

Occasional licences are granted at the discretion of the secretary for revenue to an applicant:

- a. to carry on a sales business;
- b. to act as a travelling salesman;
- c. to stage a business event at any place or premises of public dancing, singing, music or other such public entertainment;
- d. to stage a trade show or expo;
- e. to vend at a regatta, farmer’s market or other national or community event.

Occasional licences are taxed at $25 and granted for any period not exceeding seven days up to four times a year.

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The most in-depth resource guide on The Bahamas

Residency and employment

Adapted from the 2014 edition of the Bahamas Handbook

The government's immigration policy is aimed at ensuring the reasonable security, well-being and economic progress of The Bahamas and its people.

The government gives consideration to citizenship, permanent residency and work permits for non-Bahamians provided there is compliance with the immigration laws of The Bahamas and policies of the government. Accelerated consideration is given to applications for annual or permanent residence by major international investors and to “fit and proper” owners of residences may apply with purchase of a home valued at $500,000, but accelerated consideration is given to buyers of homes valued in excess of $1.5 million.

As The Bahamas is a major tourist destination, every effort is made to keep visitors’ immigration formalities to a minimum. Non-Commonwealth citizens should inquire at the Ministry of Tourism and Foreign Affairs for entry requirements, as they vary from country to country.

Visitors must have a return ticket to their homeland or to some other country where they would be accepted. Visits can be for up to eight months, if they can show means of financial support; they are not allowed to engage in any form of gainful occupation while in The Bahamas.

Obtaining an annual residence permit*

Persons who wish to reside in The Bahamas on an annual basis may qualify under one of four categories:

1. Spouse or dependent of a citizen of The Bahamas. If an applicant is married to a Bahamian citizen, a resident spouse permit may be issued, provided the marriage is subsisting. The resident spouse permit is issued up to a max period of five years. The fee is $250. An application can be made for permanent residence or citizenship after five years or more of marriage provided the marriage is subsisting.

2. Spouse or dependent of a permit holder. A copy of the sponsor’s work permit, permit to reside or certificate of permanent residence must be included.

3. Independent economic resident. A financial reference from a reputable bank verifying economic worth, and two written character references are required. For an annual residence permit, a head-of-household pays $1,000 and each dependent, $25.

4. Resident homeowner, or seasonal resident homeowner. Non-Bahamians who own second homes in The Bahamas may apply for an annual homeowner’s residence card. Renewable annually it entitles the owner, spouse and any minor dependents endorsed on the card when travelling with the owner, to enter and remain in The Bahamas for the validity of the card (up to one year). The fee is $250 and facilitates entry with minimal formalities by obviating need for return tickets or proof maintenance ability.

*Applicants in any of these categories are not permitted to engage in employment.

Procedures for obtaining a work permit

An inflexible principle of The Bahamas government is that no expatriate may be offered a position that a suitably qualified Bahamian is available to fill.

Employers with vacant posts are required to advertise locally and consult the Bahamas Employment Exchange. If unsuccessful in fulfilling their requirements they may recruit from outside The Bahamas. Normally a work permit application will not be processed if the prospective employee is already in the country, having entered as a visitor.

Work permit fees range from $500 to $12,500 per year. Immigration Policy, which is critical to the granting of work permits, provides that:

1. A Bahamian who is qualified to fill a position should be given the position in preference to anyone else.

2. The Bahamian must be given that job on the same terms and conditions as any expatriate counterpart.

3. Where the company has a career structure, here or abroad, the Bahamian employee must be given the same opportunities as afforded to other employees.

4. The Bahamian must be assisted to broaden skills in the individual’s chosen field of endeavour by further training at home or abroad. Where work permits have been granted, employers will be required to identify a Bahamian to understudy the expatriate so that the trainee will fill the expatriate’s position in a reasonable time.

Employers may obtain permits for longer than the standard one-year period in respect to key personnel on contract. Such contracts should indicate their renewal would be subject to obtaining the necessary immigration permission, and they may be endorsed to the effect that the employee is expected to train or be replaced by a suitable Bahamian within a stipulated period.

Each permit issued by the Immigration Board relates to a specific post. Permits are not altered by the director of immigration to reflect change of employment or residence. However, a person holding a work permit may make application for a new one (his new employer having been unsuccessful in recruiting a qualified Bahamian to fill the post) without having to leave the islands.

The renewal of a permit on expiration
is not automatic. Generally, no expatriate may be continually employed in the country in any capacity for more than five years. However, there are likely to be cases where hardship will be caused by rigid implementation of this policy; according to government, this factor will be kept in mind in applying the regulations.

Bonding
A bond is required for each person granted a work permit, if necessary, to repatriate the employee and his dependents and to pay any public charges, including medical expenses, incurred by the employee.

Sales representative permit
Travelling sales representatives planning to do business in The Bahamas must obtain work permits from the Dept of Immigration as well as from the Licensing Authority.

Permanent residence
Applicants for this status of residency must be of good character and prepared to show evidence of financial support. Such an applicant must also state that he intends to reside permanently in The Bahamas.

Persons may apply for permanent residence in any of the following categories provided they satisfy statutory requirements of The Bahamas:
1. As the spouse of a citizen of The Bahamas, and in the case of a male, he must have been married for not less than five years. Women married to Bahamians may apply at any time after marriage.
2. As an economic applicant, that is, one who seeks to permanently reside in The Bahamas because of:
   - investment/business or home, or
   - established roots through family ties.

People who held valid certificates of permanent residence prior to the Immigration Act, 1975, continue to hold such status automatically.

Property transactions

In New Providence, real estate agents charge a 10% commission on the sale of undeveloped property; 6% on developed property, whether residential or commercial; and 10% for Family Island property, whether land, home or commercial.

Stamp duty on property conveyances or realty transfers is as follows:
- Up to $20,000 ................................4%
- $20,001-$50,000 ..........................6%
- $50,001-$100,000 ........................8%
- Over $100,000 ..............................10%

In property sales, the vendor and purchaser each pay half the stamp duty unless otherwise agreed. Sellers generally pay commission, stamp duty and legal fees. Sometimes property owners list a net sales figure, in which case the agent adds those charges to the price quoted to prospective buyers.

Stamp duty on mortgages is payable at a rate of 1% on the amount borrowed.

The Bahamas Bar Assoc follows a minimum scale fee for conveyances and mortgage transactions at 2.5% of the sale price plus out-of-pocket expenses.

International Persons
Landholding Act, 1993
Amended in 2007, The International Persons Landholding Act made it easier for non-Bahamians and companies under their control to own property:
1. A non-Bahamian or permanent resident who purchases or acquires an interest in a condominium or property to be used by him as an owner-occupied property, or for construction of premises to be used as an owner-occupied property, must apply to the secretary to the Investments Board (IB) to register the purchase. Application for Certificate of Registration Form I must be filed with the Bahamas Investment Authority (BIA), Office of the Prime Minister. Contact BIA for a complete list of the required documentation that must accompany the application along with the original receipt from the Public Treasury showing payment of the requisite fee of $250.
2. Upon receipt of the above, the acquisition is registered and a certificate of registration issued.
3. A permit to acquire property is required if the property is undeveloped land and the purchaser would become the owner of two or more contiguous acres. A permit is also required if the non-Bahamian intends to acquire land or an interest therein by way of freehold or leasehold, when the acquisition is not in accordance with item 1.
4. Non-Bahamians who own homes in The Bahamas may apply for an annual homeowner’s residence card. This card entitles the owner, spouse and dependent children to enter and remain in The Bahamas for the duration of the validity of the card (one year). This facilitates entry—it does not confer resident status in The Bahamas.

All applications for permits, Form 3, are to be submitted to BIA for consideration by the IB. If approved, a letter is issued and payment of the requisite fee of $500 is paid at the Public Treasury and the original receipt returned to BIA. The permit is then issued by the Secretary to the Board. Certificate of registration or permit (with acquisition documents) must be recorded in the Registrar General’s Dept.

Fee schedule
Certification of Registration ..............$250
Permit ...........................................$500
Annual homeowner’s residence card .........................$250
ABOUT THE BAHAMAS FINANCIAL SERVICES BOARD
A broadly based and highly skilled private sector creates a dynamic mix of banking, trust, fund administration, investment advisory and insurance services in The Bahamas. Augmented by professional advisors from legal, accounting, realty, information and communication technology firms, The Bahamas is a complete international centre. The Bahamas Financial Services Board (BFSB) represents an innovative commitment by the financial services industry and the government of The Bahamas to promote a greater awareness of The Bahamas’ strengths as an international financial centre. BFSB, a private-sector-led body, and its member firms enjoy a strong partnership with The Bahamas government. This partnership is focused on ensuring that the country’s regulatory and business environment is suitable for both clients and the international stature of The Bahamas as a member of the community of nations.

For further information contact:
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www.bfsb-bahamas.com

ABOUT THE BAHAMAS HANDBOOK AND THE BAHAMAS INVESTOR
Since 1960, the Bahamas Handbook has documented the development of a nation by recording and analysing significant events and providing a snapshot of culture, art, business, history and politics in The Bahamas. This richly illustrated annual publication has grown to more than 600 pages, earning a reputation as the most comprehensive source of information on living and doing business in The Bahamas. See highlights of the latest edition at: www.bahamashandbook.com

The Bahamas Investor was introduced as an international supplement to the Bahamas Handbook in 2006 to serve the needs of investors and wealth management professionals conducting business in the evolving offshore financial marketplace. The magazine focuses on wealth management strategies, opportunities for direct investment and the lifestyle advantages of doing business in The Bahamas—a practical resource designed for financial planners and other advisors to share with their own clients. Order your own subscription online at www.thebahamasinvestor.com

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