
INVESTOR'S RESOURCE GUIDE

Wealth Management and
Investment in The Bahamas

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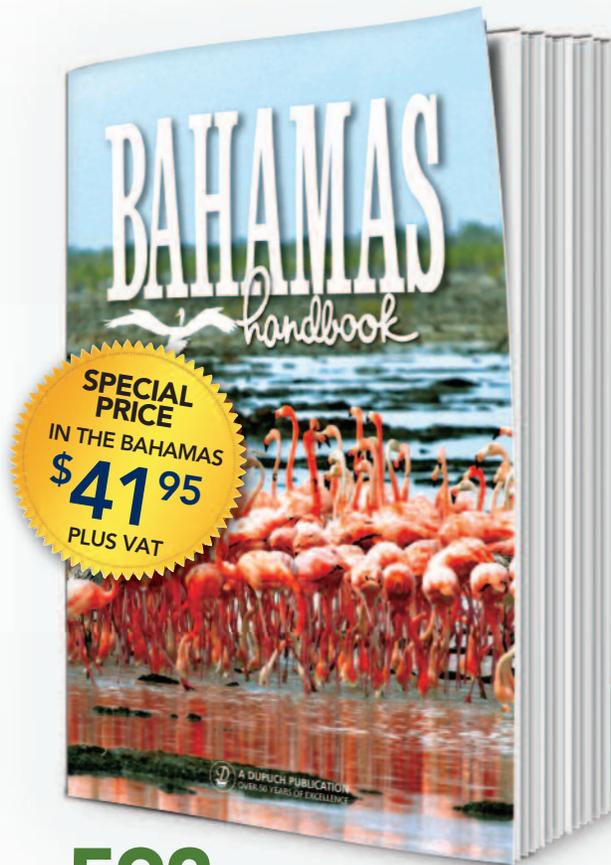
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Everything you need to know
about living, vacationing
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Introduction to private wealth management

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.

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.

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.

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 on the next page.

| Key Highlights of the IBC Act | | | |
|---------------------------------------|---|---|-----|
| Company Law | International Business Companies Act, 2000 with amendments. | | |
| Corporate Legislation Source | English Law | | |
| Types of Company | • 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). | | |
| Classes of Shares | 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. | | |
| Currency for Authorized Share Capital | Any | Minimum Number of Directors | 1 |
| Minimum Share Capital | None Required | Corporate Directors Permitted | Yes |
| Standard Share Capital | US\$5,000 | Corporate Secretary | Yes |
| Shares of No Par Value | Yes | Audit Required by Law | No |
| Minimum Number of Shareholders | 1 | Statutory Filing of Accounts | No |
| Bearer Shares | No | Filing of Annual Return | No |
| Stamp Duty | None | Certificates of Good Standing Available | Yes |
| Usual Incorporation Time | 2-3 Days | Ready Made Companies Available | Yes |
| Liquidation Procedure | Easy | Dissolution Procedure Available | Yes |
| Due Diligence | Yes | | |
| Meetings | 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. | | |
| Company Name | May end in Ltd., Corp., GmbH, Inc. or S.A. either in abbreviated form or in full. | | |
| Reservation of Company Name | \$25 for 28 days; may be extended for two additional 14-day periods at \$30 per period | | |
| Government Fees—Incorporation | Capital up to US\$50,000 - \$400; capital over US\$50,000) - \$1,200 | | |
| Government Fees—Annual | IBC with authorized share capital of US\$0 to US\$50,000 - \$350; IBC with authorized share capital of US\$50,001 & above - \$1,000 | | |
| Details held on public record | • 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). | | |
| Taxation | 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. | | |
| Redomiciliation | 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. | | |
| Liquidation/Dissolution Procedures | Voluntary and Court supervised procedures available. | | |
| Exchange Control | 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. | | |

Segregated Accounts Companies (SACs)

A Segregated Accounts Company (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. It must inform any person with whom it deals that

it is a SAC and 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 and 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.

Requirements

- 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, ie 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 wilfully seeking to defeat an existing or contingent obligation owed to a creditor, of which they had notice.

Settlors 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

Uses and advantages of trusts in The Bahamas

Trusts are extremely versatile, and this accounts for their long-standing use in wealth management. Examples of trusts include asset protection, purpose trusts, pensions trusts, voting trusts and charitable trusts. They provide the following advantages:

- Flexibility in the distribution of the client’s assets following his or her death;
- Wealth preservation for the next generation;
- Separation of income benefits from capital;
- Avoidance of lengthy and complicated probate court procedures;

- Retention of shares for employees;
- Confidentiality;
- Maintenance of property for those who cannot hold it for themselves, eg, minors;
- Avoidance of disputes among heirs and beneficiaries by securing the services of an impartial person to administer assets; and
- Protection of property and assets from legal and political actions that may be taken against the settlor and beneficiaries by transferring legal ownership to the trustee.

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

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.

A charter may reserve powers to the founder, including the power to amend or revoke same. Charters may appoint other officers in addition to the secretary, whose duties will be mainly administrative. It 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 is required, but confidentiality with regard to foundation information must be maintained.

Foundations are exempt from Bahamian taxes and business license fees, stamp duties (excepting Bahamian real estate taxes) and exchange controls. They 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

A registration statement contains the 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.

The only additional filing required is a statement containing particulars of any amendments to the 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 a 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

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. It 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

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 named in the prescribed designating instrument pursuant to the regulations.

Designated person. Is an individual named in the designating instrument.

If more than 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:
 - settlor and any person providing funds or assets subject to trust(s) administered by the PTC
 - designated person(s)
 - protector of trust(s) of which the PTC is trustee
 - 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. 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 from 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 2017 edition of the **Bahamas Handbook**

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

All local insurance operations (as distinct from international or captive insurance) are covered by the Insurance Act, Chapter 347. Registered insurers writing local business pay a premium tax of 3% of gross premiums. As of July 1, 2015 general and health insurance premiums incurred a 7.5% VAT charge.

As of Dec 2015, there were 28 active domestic insurers and one association of underwriters licensed to write local business. In support of this activity, there were 56 agents and brokers, 26 sub-agents, 686 sales persons and five adjusters. Domestic insurance companies are members of the Bahamas Insurance Association. Domestic agents and brokers are members of the Bahamas Insurance Brokers Association.

In addition to a well established domestic insurance market, The Bahamas has a recognized presence in the international insurance market. At Dec 31, 2015, The Bahamas had 146 captive entities licensed under the External Insurance Act, Chapter 348. This included 14 stand-alone captives, six segregated account companies, 126 captive cells and nine insurance managers licensed under the External Act. Further, there were three non-captive insurers.

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

External insurance and captives

An external insurance company is licensed and regulated under the External Insurance Act, Chapter 348. Its insurers are incorporated in The Bahamas and manages its business

from within The Bahamas but only insures risks located outside The Bahamas. Under the External Act, captive insurance companies are classified as “restricted external insurers” and mainly underwrite the risks of related entities.

Captives are a form of self insurance and are typically used as a risk transfer tool in a company’s or group’s overall risk management programme. Captive insurance companies are alternative providers of protection against insurable losses, particularly for those companies with a better loss history than the industry average. They minimize the cost of risk management and may substantially reduce other expenses such as administration and settlement of claims, loss control expenses, brokerage commissions and other acquisition costs and consulting fees.

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

All external 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 international 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;
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 requires companies to be established

with, and maintain a level of capital commensurate with, the size and risks of the operations.

Interested parties are required to meet with the ICB prior to applying. Insurance managers can provide assistance with the licensing applications, ongoing management services and regulatory requirements. A list of licensed managers can be found on ICB’s website.

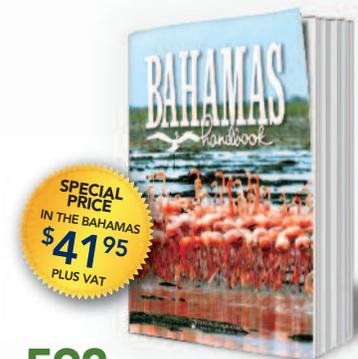
Annual fees payable under the External Insurance Act, Chapter 348:

| | |
|-------------------------------|---------|
| Unrestricted external insurer | \$3,500 |
| Restricted external insurer | \$2,500 |
| Insurance manager | \$1,000 |

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

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Tax planning for Canadians

By Charles C Gagnon Reprinted from the 2017 edition of the *Bahamas Handbook*

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, 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. 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.

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, trust or partnership or which otherwise do not deal at arm's length with the payor, are not always entirely deductible in computing income in Canada. They will be disallowed if the ratio of the payor'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.

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. 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 not be employed merely to hide or artificially minimize truly Canadian income. In this field, the area of manoeuvre is narrowing, so a conservative and realistic approach should be taken.



Charles C Gagnon

is a Canadian tax lawyer in the Montreal and Barbados offices of BCF LLP. His main areas of expertise include:

tax planning for private businesses, structuring of inbound and outbound investments, tax issues relating to immigration and emigration, captive insurance, life insurance, international tax planning, and wills and trusts. In addition to being a guest speaker at tax conferences and author of several reports and publications, Gagnon is a member of the Canadian Tax Foundation, the International Fiscal Association and the Society of Trust and Estate Practitioners (STEP). He was educated at McGill University (BCL, LLB 1993), Canadian Securities Institute (CIFIC 1991), College Jean-de-Brebeuf (IB 1989) and Canadian Securities Institute (CSC 1988). He was admitted to the Barreau du Quebec in 1995 and the Law Society of British Columbia in 1994. He is listed in the latest edition of the *Best Lawyers in Canada* and *Who's Who Legal*.

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Tax planning for Americans

By Steven L Cantor and Sarah B Jacobson

Reprinted from the 2017 edition of the *Bahamas Handbook*

Companies formed in the United States (“domestic” companies) and individuals who are either citizens or residents of the US for US income tax purposes are subject to US income tax on their worldwide income. Individual US income 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 in the case of a domestic company (using the current top marginal US corporate income tax rate of 35%) or potentially less in the case of an individual (based upon the current top marginal rate of 39.6% on ordinary income).

Controlled foreign corporation (CFC)

If a Bahamian company is more than 50% (by vote or value) owned (directly, indirectly or constructively) 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 income tax each year on his or her proportionate share of certain kinds of income of the CFC regardless of whether dividends are distributed.

Some of the more common types of foreign-source income of a CFC which are currently taxable to its US shareholders (referred to as “Subpart F income”) include.

1. 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.
2. Income of the sale of inventory where the goods are either purchased from, or sold to, a “related person.”
3. Income from services if rendered to a “related person.”

The IRC provides specific rules for determining when someone is a related person as to a CFC. Even so, because of certain exceptions and exclusions to the Subpart F income rules, the US Shareholders of a Bahamian CFC may still be able to obtain US income tax deferral with respect to their shares of stock until dividends are distributed to them.

Investment opportunities for US shareholders of a Bahamian CFC

The types of CFCs particularly suitable for operations in The Bahamas are those that generate income which qualifies for an exception to the Subpart F income rules such as the following:

1. Sales of manufactured products.

Income from the sale of products or goods manufactured, produced, grown or extracted in The Bahamas generally is not subject to current US income tax even though purchases and sales may involve related persons. Likewise, income from certain incidental services rendered by a related person which are directly related to a sale by the Bahamian CFC of such products or goods and which are performed in advance of the sale may not be currently taxable in the US.

2. Sales of other inventory.

If a related person is not involved in any way, then income from the sale of inventory by a Bahamian CFC will escape current US income tax. Even if a related person is involved, the profits of a Bahamian CFC from the purchase and sale of personal property (on behalf of a related person) will not be considered Subpart F income of the products or goods sold are for use of, consumption or disposition in the Bahamas. Certain presumptions apply in making this determination which can vary depending upon the type of person purchasing the products or goods from the Bahamian CFC and their relationship to the Bahamian CFC as well as the type of products or goods sold.

3. Insurance income. A Bahamian insurance company can be considered a CFC if more than 25% of the voting power or value of its stock is owned by US shareholders if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of “insurance or annuity contracts” exceeds 75% of the gross amount of all premiums or other consideration in the respect of all risks. The US tax laws regarding offshore insurance companies are quite complex and have changed many times over the years. Because different sets of rules may apply depending upon the nature of the insurance business and the source of its profits, the advice of US tax counsel specializing in this area is recommended in each case

4. Services income. This potentially broad category may cover many different types of Bahamian companies that render technical, managerial, engineering, architectural, scientific, skilled, industrial or commercial services to consumers. Many types of companies in The Bahamas fall into this category. A partial list would include engineering, sales promotion, sales engineering, merchandising and consulting firms. Income from services of this nature which are rendered in The Bahamas either for or on behalf of a related person may be exempt from current US taxation.

5. Rents and royalties. Rent derived by a CFC in the active conduct of a trade or business in The Bahamas from persons not related to the CFC will not be subject to current US taxation under the Subpart F rules. Rent, even when received from a related person to the CFC, also may meet the exception to Subpart F income if it is paid for use of property located in The Bahamas, subject to certain limitations. Similar rules apply in the case of income generated by the CFC which is properly classified as royalty income for US tax purposes.

6. Dividends and interest. Dividend and interest income received by a Bahamian CFC from a related Corporation which is formed in The Bahamas and which uses a substantial part of its assets in its business in The Bahamas may qualify for US income tax deferral.

Passive foreign investment company (PFIC)

A Bahamian company is a PFIC if 75% or more of its gross income is “passive” in nature (ie subpart F type income), or 50% or more of its assets produce, or are held for the production of passive income. Most offshore mutual funds are classified as PFICs for US tax purposes. Interestingly, even an active business with a significant amount of cash and securities on hand could be a PFIC for US tax purposes.

US taxpayers who own (or are considered to own) shares of stock in a Bahamian company that is classified as a PFIC for US tax purposes are subject to US income tax under the excess distribution rules unless certain elections are made. The “excess distribution” rules impose an interest charge and US income tax on certain distributions from PFICs to their US owners (referred to as excess distributions). All gain recognized on the actual or deemed disposition of PFIC stock (such as a sale, gift, exchange, liquidation, pledge, etc) is also treated as an excess distribution (ie, long-term capital gains tax treatment is lost if it otherwise would have applied and the gain is taxed as ordinary income). A US owner of a PFIC may avoid this result by making one of the following two elections:

1. A US owner of a PFIC may be able to elect to be taxed currently on his pro rata share of the PFIC’s earnings and profits, classified as either ordinary income and capital gains, which will be treated as “previously taxed income” when distributed in a subsequent tax year, known as a “qualified electing fund” or (QEF) election.
2. Alternatively, a US owner of a PFIC may be able to mark-to-market his stock on an annual basis if such stock is “marketable.” PFIC stock is “marketable” for this purpose if it is:
 - a. stock regularly traded on a registered securities exchange;

- b. stock that trades like an open-end mutual fund; or
- c. stock of a fund (open-end or closed-end) that publishes its net asset value at least annually. The mark-to-market election is less favourable than the QEF election, however, because all inclusions are taxed as ordinary income.

Coordination rules also prevent a foreign corporation from being classified as a PFIC as to any US owner during any period in which such foreign corporation is classified as a CFC of which such US owner is considered a US Shareholder.

Employment of US citizens living abroad

US income tax benefits may be available to US citizens employed abroad who establish a “tax home” in a foreign country 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 for

wages or salary for services performed outside the US an amount adjusted annually for inflation (US\$101,300 for 2016). For any taxable year that a US citizen is employed abroad, he or she may also exclude from gross income a portion of the housing expenses paid for by an employer, or, if such expenses are not paid for by an employer, deduct such expenses (subject to certain limitations).



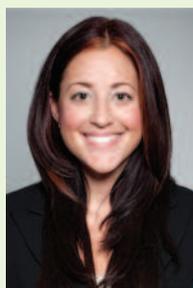
Steven L. Cantor

is the managing partner of the Miami-based law firm The Cantor Group. He represents 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 US, pre-residency planning and structuring of foreign investment in US real property. Cantor is a member of the London-based Society of Trust and Estate Practitioners (STEP) and founded the STEP Miami branch.

He also helped establish the STEP Caribbean Conference and is the recipient of the STEP Founder's Award for Outstanding Achievement.

Cantor is an author 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, 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.



Sarah B. Jacobson

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administration, advising international trust companies on US matters, and cross-border real estate transactions for international families.

Born and raised in Boca Raton, FL, Jacobson 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.

Mechanisms for information sharing

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:

- to enable/assist the Central Bank Governor in functions conferred by Bahamian law; and
- for the institution of
 - criminal proceedings in The Bahamas; or
 - 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."

The Bahamas is FATCA compliant

On Nov 3, 2014, The Bahamas and the US signed their Agreement to Improve

Tax Information Exchange Agreements

TIEAs have been signed with the following jurisdictions as of Dec 2016:

- | | | | |
|------------------|--------------------------------------|---------------|-------------------|
| • Argentina | • Finland | • Indonesia | • San Marino |
| • Aruba | • France | • Ireland | • South Africa |
| • Australia | • Germany | • Japan | • South Korea |
| • Belgium | • Great Britain and Northern Ireland | • Malta | • Spain |
| • Canada | • Greenland | • Mexico | • Sweden |
| • China | • Guernsey | • Monaco | • The Netherlands |
| • Czech Republic | • Iceland | • New Zealand | • United States |
| • Denmark | • India | • Norway | |
| • Faroe Islands | | • Poland | |

International Tax Compliance (the Agreement) and to implement FATCA based on the Model I IGA. To accommodate the non-direct tax system in The Bahamas, the IGA is a model IB (non-reciprocal) IGA. As an IGA partner jurisdiction, Bahamas-based financial institutions will not be subject to a 30 per cent withholding tax on US source income, unless they fail to meet the requirements set out in the IGA and in Bahamas domestic implementing legislation.

Under the terms of the Agreement, Bahamas financial institutions will provide The Bahamas Competent Authority (BCA) with the required information. The BCA which will forward that information to the Competent Authority in the US. The Agreement is an international instrument for exchange of information for tax purposes between The Bahamas and the US.

Commitment to the Automatic Exchange of Information (AEOI)/ Common Reporting Standard (CRS)

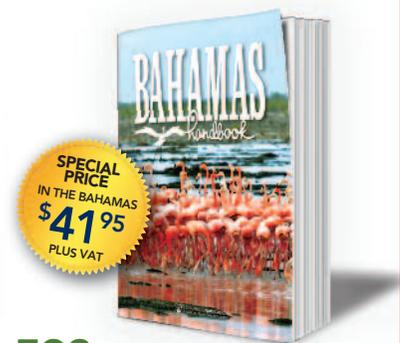
The government has restated commitment to the bilateral approach. Industry and government are collaborating on the implementation strategy. Both the multilateral (OECD Convention) and bilateral or country-by-country basis (AEOI/CRS) approaches have been endorsed by the OECD. The bilateral approach allows The Bahamas to negotiate with countries where satisfied that those countries will safeguard the confidentiality and security of the data exchanged. The Bahamas already has the

foundation for a bilateral approach, namely its existing TIEAs and is committed to being a responsible international player in this regard.

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.

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Funds industry overview

The Investment Funds Act, 2003

(amended 2011) positions The Bahamas at the cutting edge of modern investment fund administration. The Act updates the general legislative and supervisory environment and introduces an additional style of collective investment vehicle—The Bahamas SMART Fund—officially known as the Specific Mandate Alternative Regulatory Test fund.

Providing financial services to a sophisticated international clientele requires a sophisticated legislative approach. In drafting the new Act, the Securities Commission of The Bahamas was mindful of the need for flexibility to adequately cater to the evolving needs of the global marketplace.

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.

Standard funds

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.

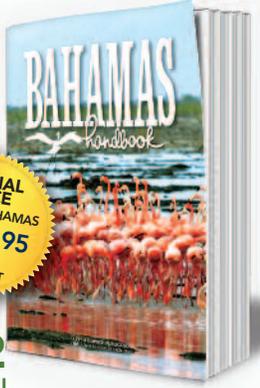
Requirements

- 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.

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Professional funds

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 an 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 an investment fund.

Licenser

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.

SOURCE: BAHAMAS FINANCIAL SERVICES BOARD © 2012

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.



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SMART funds

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 (SFM)

- **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.

Licensor

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

SOURCE: BAHAMAS FINANCIAL SERVICES BOARD © 2012

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:

- a. 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;
- b. it is licensed or registered in a jurisdiction prescribed by the SCB by notice in The Gazette and not suspended from operation; or
- c. it is incorporated or established and is in good standing in a jurisdiction prescribed by the Commission by notice in The Gazette.

Licensors

- 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.

Investment Condominium

An investment condominium

is established under the Investment Condominium Act, 2014. It is a contractual relationship between one or more participants who have pooled assets for the purposes of operating as an investment fund, and an investment condominium must be licensed as an investment fund under the Investment Funds Act. It may be formed to operate as an open-ended fund (in which participants can call for redemption of their interests) or a closed ended fund (in which they may not).

The ICON has no legal personality but, when represented by its administrator, is able to hold assets in its own name, enter into agreements and sue or be sued in its own name.

What are the governing regulations?

The governing regulations set out the terms under which the investment condominium will operate. There are specific contents prescribed by law, which include the following:

- Its name;
- The name and address of its administrator;
- Its duration (which may be limited or unlimited);
- The number of participation interests it can issue and the currency in which the interests will be issued;

- Whether it will issue classes or series of participation interests, who is authorized to determine the number of classes/series and what the powers, rights and preferences of such interests are;
- How the administrator will handle its administration and whether it will have a governing administrator and a general administrator;
- Audit provisions (which are subject to the Investment Funds Act);
- How the governing regulations may be ended;
- The liability of the participants in the investment condominium, including how it is limited (if at all);
- Provisions for valuation of the investment condominium's assets;
- Provisions for termination of the investment condominium; and
- Any other provisions required under the Investment Funds Act.

The governing regulations are not required to be filed with the Registrar General, and therefore are not a public document.

How does the ICON act?

An investment condominium, having no legal personality, is represented by its administrator. The administrator, acting on its behalf, executes all letters, contracts, agreements, deeds and documents for the investment condominium. The administrator

also has the power to do all other acts and things which are necessary or conducive to the investment condominium's activities. As a general rule, the administrator's acts bind the investment condominium.

What are the obligations of an ICON's administrator?

The administrator's obligations depend on the role it fills for the investment condominium. An investment condominium is required to have a general administrator and an operating administrator, and these roles may be filled by a single entity or by two separate entities.

A governing administrator is deemed to be the investment condominium's operator for purposes of the Investment Funds Act, and has all the powers and duties of an operator for this purpose. A governing administrator must be either:

1. an administrator licensed by the Securities Commission (restricted or unrestricted);
2. a licensee under the Financial and Corporate Service Providers Act;
3. a licensee under the Securities Industry Act;
4. a bank or trust company licensed by the Central Bank; or
5. a foreign entity licensed by or registered with a regulatory body with functions and powers equivalent to the Securities Commission or Central Bank.

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The governing administrator is therefore akin to a general partner, director or trustee of the equivalent entity licensed as an investment fund. The general administrator, by contrast, must be an administrator licensed by the Securities Commission (restricted or unrestricted) and acts as the investment condominium's administrator for purposes of the Investment Funds Act.

If the administrator incurs any debts or obligations in conducting the investment condominium's business, they are obligations or debts of the investment condominium and not the administrator personally.

How does an ICON operate?

An investment condominium may have an unlimited number of participants, but the minimum number is one.

Participation interests may, but need not, carry voting rights, and such rights are as specified in the governing regulations. Participation interests are personal property, and enforceable by the participants as a chose in action.

Books and records must be kept by the administrator, and include a register of participation interests as well as reliable accounting records retained for a minimum five-year period.

Annual meetings of the participants must be called by the investment condominium's administrator, and such meetings may be held in The Bahamas or elsewhere.

Publicly available information on an investment condominium is generally limited to the information contained in its

certificate of establishment, which sets out its name, the name of its administrator(s), the date of establishment, a statement that it shall be licensed as a fund and the address in The Bahamas at which the investment condominium can be served.

Can an ICON make distributions?

An investment condominium may not make or declare dividends or other distributions to its participants. Participants therefore recoup their investment only upon redemption of their participation interests, which may take place in whole or in part on the terms set out in the governing regulations.

Is an ICON liable for local taxes?

An investment condominium is not liable for estate, inheritance, succession, gift or stamp taxes, provided that its participation interests are held (directly or indirectly) only by persons deemed non-resident for exchange control purposes and that the investment condominium does not own (directly or indirectly) real property situate in The Bahamas. It is intended that investment condominiums meeting these conditions will also be exempted from VAT.

Can an existing entity be converted to an ICON?

Existing entities may become ICON Funds, and the conversion can be achieved without a termination event triggering a capital gain or other adverse tax consequence. Bahamian entities as well as entities presently established under the laws of other

jurisdictions are able to convert into an investment condominium and be licensed as an investment fund. Therefore, it is possible:

- to convert a Bahamian trust, exempted limited partnership or company to an investment condominium;
- to accommodate the redomiciliation of an investment fund established elsewhere to The Bahamas and to permit its conversion to a condominium once successfully redomiciled; and
- to allow for unbroken continuity of the fund, while changing the character of the legal structure that underpins it.

Note that equivalent entities established under the laws of another jurisdiction must take advantage of existing continuation procedures in the International Business Companies Act or the Exempted Limited Partnership Act, or utilize the power to change governing law contained in the trust instrument.

How is an ICON wound up?

An investment condominium may be dissolved either voluntarily on the terms contained in the governing regulations, or compulsorily by the court. Voluntary dissolution is permitted where the investment condominium is solvent; involuntary dissolution is required where the investment condominium is insolvent, the participants so request or the regulator so petitions, or where the court believes it just and equitable that it be so dissolved.

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BAHAMAS FINANCIAL SERVICES BOARD

Securities Industry Act

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:

- i. dealings in securities
- ii. arranging deals in securities
- iii. managing securities and
- iv. 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, ie 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 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, ie 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.

Continuing obligations of public issuers

The 2011 Act has tightened obligations to ensure public issuers inform the public of any material changes, filing annual and interim financial statements, annual reports and on proxy solicitation. It also introduces the requirement that public issuers send financial statements and annual reports to their security holders.

Furthermore, the 2011 Act has modified the definition of public issuers to no longer include funds.

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.

Estate planning: probate & administration

The Probate and Administration of Estates Act, 2011 governs the distribution of estate assets and immovables 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:

- 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.
- An investor can declare in the will that they are domiciled in The Bahamas. The Court will issue a grant of probate.
- If residing as a permanent resident in The Bahamas, the will can be administered under Bahamas law. The Court will issue a grant of probate.
- 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.

- 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.

SOURCE: BAHAMAS FINANCIAL SERVICES BOARD © 2012



Investment environment and incentives

Adapted from the 2017 edition of the Bahamas Handbook

In 1994, the government introduced a National Investment Policy (NIP) to support an investment-friendly climate and foster the economic growth and development of The Bahamas. 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). 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;
4. a stable macroeconomic environment bolstered by prudent fiscal management, a stable exchange rate, flexible exchange control rules and free trade;
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 public services, an adequately equipped police constabulary; modern health and education facilities, and other social services;
7. dependable public utilities; and
8. essential public infrastructure such as roads, ports and airports.

With specific regard to the financial services sector, the government is committed to enhancing the image of The Bahamas as an international financial centre. To this end, the government will use international best practices as it:

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 of corporation and beneficial owner 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 dates and places of birth, copies of passports or social security numbers, annual reports or audited financial statements, description of investor's business;
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; and
12. concessions sought/investment incentives if applying under a particular Act or programme.
13. local representative: attorney, accountant or agent.

* 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.

SOURCE: THE BAHAMAS HANDBOOK © 2016

1. maintains The Bahamas as a leading financial centre;
2. monitors developments in international financial markets and amend rules, regulations or legislation to preserve and enhance competitiveness;
3. ensures the operation of a clean financial centre with rules and regulations to prevent laundering of criminally derived assets;
4. supports The Central Bank of The Bahamas in its commitment to bank supervision and promoting high standards of conduct and sound banking practices; and
5. supports the self-regulatory measures of the Association of International Bank and Trust Companies (AIBT), particularly, the established code of conduct for bank and trust companies.

Investment incentives

Investment incentives under the following Acts include: exemption from the payment of customs duties on certain construction materials, related equipment and approved raw materials; and real property taxes for periods of up to 20 years.

- Export Manufacturing Industries (Encouragement Act)
- Industries Encouragement Act

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

Areas targeted for foreign investors

Following is a list of investment areas targeted for international investors. 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. International business centres
4. Marinas
5. Information/data processing.
6. Assembly industries
7. High-tech services
8. Ship registration, repair and other ship services
9. Light manufacturing for export
10. Agro-industries
11. Food processing

12. Mariculture
13. Banking and other financial services
14. Captive insurance
15. E-commerce
16. Aircraft services
17. Pharmaceutical manufacture
18. Offshore medical centres

Areas reserved for Bahamians

1. Wholesale* and retail operations
2. Commission agencies engaged in the import/export trade
3. Real estate and domestic property management agencies
4. Domestic newspapers and magazines.
5. Domestic advertising and public relations firms
6. Nightclubs and restaurants except speciality gourmet and ethnic estaurants; restaurants operating in hotel, resort complex or tourist attractions
7. Security services
8. Domestic distribution of building supplies.
9. Construction companies, except for special structures for which international expertise is required
10. Personal cosmetic/beauty establishments
11. Commercial fishing
12. Auto and appliance service operations
13. Public transportation

* International investors may engage in the wholesale distribution of any product they produce locally.

Business licensing

Adapted from the 2017 edition of the **Bahamas Handbook**

Business licence fee

The Business Licence Act, 2010, made it mandatory for anyone operating a business to obtain a licence.

Annual business licence renewal applications are due on or before Jan 31 and payments are due on or before Mar 31 every year. All business licences expire on Dec 31 (excluding occasional and temporary licences). A licensee who fails to make requisite filings or payments by the due date is liable to pay penalty fees:

1. \$100 for late filing of renewal application and late notification for inactivation or cessation of a business;

2. 10% tax liability for late payment of business licence tax.

For most businesses, taxes are based on gross turnover; and calculated from \$100 for a petty business to 0.50% to 1.50% for businesses with turnovers from \$50,000 to \$50 million and greater. Businesses registered as an insurer under the Insurance Act, in lieu of business licence tax, pay within four weeks of the end of each quarter of a financial year, a sum that is the higher of a fee of 3% of the gross premiums collected in respect of local policies or \$25, whichever is the greater.

Companies designated non-resident under the exchange Control Regulations Act pay an annual fee of \$300.

Application for a new business license is completed online at www.VAT.revenue.gov.bs and must have attached: proof of Bahamian citizenship (copy of valid passport); a copy of the certificate of incorporation (with proof that the company is 100% beneficially Bahamian owned; National Insurance Board (NIB) registration number for the business; NIB card for the applicant; lease or rental agreement for the business location or proof of ownership (copy of conveyance) along with approvals from: Department of Physical Planning (zoning); Ministry of Works/Building Control (inspection); Department of Environmental Health Services (sanitation); and Royal Bahamas

Police Force/Licensing Section (if alcoholic beverages are being sold and/or music and dancing). For a regulated business, grant of approval in writing under the law regulating that business.

The processing time for a business licence (new/renewal) is seven working days provided all requirements are met and tax payment made.

The secretary for revenue shall not grant a licence where there are taxes due and payable under the Real Property Tax Act, Chapter 375 in respect of the property or premises on which a business of the applicant is located and the applicant is the owner of such property or premises.

A non-Bahamian company must first obtain approval from the National Economic

Council (NEC)/Bahamas Investment Authority (BIA), before the application can be processed.

Temporary licence

A temporary business is a business undertaking of a specific contract for a specified period not exceeding three years.

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 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 a foreign person to carry on a business without a temporary licence.

Occasional licence

Occasional licences may be granted for the following purposes:

- a. to carry on a sales business;
- b. to act as a travelling salesman (non-resident individual);
- 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.

Residency and employment

Adapted from the 2017 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 considers citizenship, permanent residency and work permits for non-Bahamians. Accelerated consideration is given to applications for annual or permanent residence by major international investors and to "fit and proper" owners of residences 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 Foreign Affairs for entry requirements, as they vary from country to country.

Visitors entering The Bahamas must fill out an embarkation-disembarkation card. The designated portion is retained and must be surrendered upon departure from the country.

Visitors must be in possession of a return ticket to their homeland or to some other country where they would be accepted.

As a part of the admittance process, visitors may be required to produce evidence that they are able to sustain themselves while in The Bahamas.

Visitors may stay for a maximum of eight months, provided they can show means of financial support for this period. Visitors are not allowed to engage in any form of gainful occupation while in The Bahamas.

Anyone found guilty of the smuggling, or assisting in the smuggling of, or harbouring, illegal immigrants may be fined up to \$10,000 and sentenced to a maximum of five years in prison plus confiscation of any aircraft or boat used in the act.

Obtaining an annual residence permit*

Persons wishing 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;
2. spouse or dependent of a permit holder;
3. independent economic resident; or
4. resident homeowner, including seasonal resident homeowner.

The following are required:

Category 1

- a. First Schedule Form I, questions 1-25 and 30-35, completed and notarized with \$10 in Bahamian postage stamps affixed thereon;

- b. a covering letter from the sponsor stating relationship and accepting financial responsibility for the subject of the application;
- c. birth, marriage and/or any certificate evidencing dependence of the subject of the application;
- d. applicant's birth certificate;
- e. medical certificate dated not more than 30 days prior to submission;
- f. police certificate issued less than six months earlier;
- g. two passport-size photographs; and
- h. a processing fee of \$100.

If an applicant is married to a Bahamian citizen, a resident spouse permit may be issued.

The resident spouse permit is issued for a maximum period of five years.

After five years an application may be made for permanent residence (at a cost of \$250) or citizenship.

Category 2

- a. items (a) through (h) of category (1) and
- b. a copy of the sponsor's work permit, permit to

reside, certificate of permanent residence or other lawful authority to reside in The Bahamas.

Category 3

- a. items (a) through (h) of category (1), except item (c);
- b. financial reference from a reputable bank verifying economic worth, ie, citing a figure range; and
- c. two written character references.

For an annual residence permit, a head-of-household pays \$1,000 and \$25 for each dependent.

Category 4

Under this category, non-Bahamians who own second homes in The Bahamas may apply to the director of immigration for a homeowner's residence card. This card is renewable annually and entitles the owner, spouse and any minor child/children, endorsed on the owner's card when travelling with the owner, to enter and remain in The Bahamas for the validity of the card. The fee is \$250 per year and is intended to facilitate entry into The Bahamas with minimal formalities by:

1. obviating the need for return tickets;
2. obviating provision of proof of maintenance ability upon entering the country; and
3. entitling the holder to visit for a stay of up to one year.

Requirements for qualifying under this category are:

1. letter of request;
2. two passport-size photographs of applicant;
3. application form;
4. proof of property ownership in The Bahamas;
5. proof of existence of a home (house) on property; and
6. processing fee of \$100.

Successful applicants in any of these categories are not permitted to engage in employment.

*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 by these methods, they may apply to the Dept of Immigration for permission to recruit outside The Bahamas.

The following will then need to be submitted:

1. First Schedule Form 1, all questions to be completed and notarized with \$10 in Bahamian postage stamps affixed;
2. a covering letter from the prospective employer stating reasons for the application, the position, and the period of time needed;
3. two passport-size photographs with signature on reverse of prints;
4. police certificate covering a period of five years' residence immediately preceding the application;
5. medical certificate dated not more than 30 days prior to submission;
6. written references from previous employer(s);
7. copies of certificates of examinations referred to in the application;
8. copies of local newspaper advertisements with replies thereto and results of interviews, if held;
9. certificate from the Ministry of Labour (Employment Exchange) with Notification of Vacancy attached indicating that a Bahamian is not available to fill the position; and
10. a processing fee of \$100.

Normally, an application will not be processed if the prospective employee is already in The Bahamas, having entered as a visitor.

Work permit fees range from \$500 to \$12,500 per year, depending on the category. The Bahamas Immigration Bahamianization Policy, which is critical to the granting of work permits, provides that:

1. Whenever there is a position that a Bahamian is qualified to fill, he 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 his expatriate counterpart.
3. Where the company has a career structure, whether here or abroad, the Bahamian employee must be given the same opportunities for advancement as would be afforded other employees.
4. The Bahamian must be helped

whenever possible to broaden his skills in the individual's chosen field of endeavour by constant exposure to further training at home and abroad.

Where work permits have been granted, each employer will be required to identify a suitable Bahamian to understudy the expatriate so that the Bahamian trainee will fill the expatriate's position within a reasonable time.

Genuine investors usually have little difficulty in complying with these requirements.

Employers may obtain permits for longer periods than the standard one-year period in respect to certain 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, providing the current work permit is still valid.

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.

An employer must inform the Dept of Immigration within 30 days that a non-Bahamian employee is no longer employed or be liable to a fine not exceeding \$150.

A non-Bahamian who ceases to be employed must take his permit to the Dept of Immigration for cancellation within seven days of ceasing to be employed. The permit shall be deemed cancelled with effect from expiration of that seven-day period. An employee failing to comply with this regulation is liable to prosecution and may, if convicted, be liable to a fine not exceeding \$100.

The holder of a permit shall report any change of address to the Director of Immigration within 14 days of such change.

If an applicant is married to a Bahamian citizen, a resident spouse permit may be issued. The resident spouse permit is issued for one to five years at a fee of \$250. This permit allows the applicant to work anywhere in The Bahamas.

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.

Annual travelling 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 a licence 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

Reprinted from the 2017 edition of the *Bahamas Handbook*

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

As of July 1, 2015, stamp duty on property conveyances or realty transfers was set at a uniform rate of 2.5%. VAT of 7.5% is applicable on property transactions valued at \$100,000 or more.

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.

VAT is charged on buyers' and sellers' attorney fees, realtor fees and conveyances. There is no VAT on sales of vacant land but it is applied to professional services rendered in the sale.

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.

Fee schedule is as follows:

| | |
|---|-------|
| Application for registration | \$25 |
| Application for permit | \$25 |
| Permit | \$500 |
| Certification of Registration | \$250 |
| a. \$50,000 and under | \$50 |
| b. \$50,000.01-up to \$101,000 | \$75 |
| c. \$101,000 and over | \$100 |
| Annual homeowner's residence card | \$500 |

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:



Bahamas Financial Services Board
Phone: 242.393.7001
info@bfsb-bahamas.com
www.bfsb-bahamas.com

Bahamas Handbook & 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 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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