



Liberalization of Exchange Control on Residential Property Transactions

Effective date: 1st October ,2019

Categories covered:

- 1) Purchases or sales of residential real estate by, from or to non-residents
- 2) Conversion of, and remittance of Bahamian dollar proceeds from real estate sales by non-residents to residents, under delegated authority to commercial banks

Summary Proposal

As of 1st October 2019, the Central Bank of The Bahamas (CBOB) proposes to liberalize Exchange Controls (EC) on residential property transactions (both purchases and sales) involving non-residents. This would apply regardless of whether the transactions take place in the name of an entity or vehicle ultimately owned by such non-resident; or directly by the non-resident. Concurrently, the Bank proposes to delegate the authority to commercial banks (authorized dealers) to sell foreign currency for repatriation of residential real estate proceeds, on evidence that the beneficial owner of the sold property is non-resident.

Commercial real estate investments will still require EC approval, but only at the development stage. Subsequent sales of subdivided residential units or constructed dwellings (whether attached or detached) would not need EC approval.

Under existing policies, non-resident entities must be designated as “resident” to be eligible to hold real estate in The Bahamas. The Bank will designate this status automatically during the conveyance process, along with “approved investment status”.¹ This would not confer any entitlement beyond ownership of the property. While non-residents would continue to be able to open and operate Bahamian dollar deposit facilities, to cover property maintenance expenses, they would continue to be prohibited from financing acquisitions of property with Bahamian dollar credit. Non-residents would also remain subject to all of the permit and approval requirements of the International Persons Land Holding Act, 1993.

This reform departs from current policy, which requires Central Bank approvals on any real estate transaction involving non-residents; and for the conversion out of Bahamian dollar proceeds on sales by non-resident to residents. It extends the process of gradual liberalization, to improve administrative processes and relax controls in ways that still preserve the sustainability of the Bahamian dollar fixed exchange rate.

¹ The “approved” status of a foreign investment, entitles the investor to access to foreign exchange on the future disposal of any part of the investment, where the disposal generated Bahamian dollar proceeds.

The Current Exchange Control Environment

A very regimented process now applies on Exchange Control involvement in real estate transactions involving non-residents. Under the Exchange Control Regulations, non-Bahamians wishing to purchase real estate in The Bahamas in their individual capacity or through an investment vehicle must register their investments with the Central Bank. On registration, a company or investment vehicle, if used, is formally designated as “resident” and the transaction is granted “approved investment status”. The processing time for completed applications is estimated at 5-7 working days.

The minimum documentary requirements for the processing of the application are the following:-

- 1) Proof of identity and nationality of the vendor and purchaser (through copy of a passport);
 - If the vendor/purchaser is a company – constitutional documents on behalf of the company;
- 2) Proof of address and Bahamian immigration status of parties to the transaction;
- 3) Proof that the funds emanated from a foreign currency source (such as evidence of bank check, or wire transfer);
- 4) A copy of the Investments Board approval for the purchaser that is, a permit if the acquisition is 2 acres or more, or a second property;
- 5) Recorded conveyance in favor of the vendor (inclusive of the Investments Board permit/certificate of registration);
- 6) Evidence of payment of stamp tax and/or VAT (i.e. stamped/”vatted” conveyance); and
- 7) Evidence of flow of funds from the purchaser to vendor.

If the purchaser or vendor is a company, the company must be designated “resident” for EC purposes. Processing would require: (i) a copy of the certificate of incorporation &/or registration; (ii) name and address of the company (iii) confirmation of the purpose for which the company was formed; (iv) confirmation of the company’s authorized share capital, number of shares issued/to be issued, consideration for shares and par value; (v) name, address, nationality and Bahamas Immigration status of each shareholder and documentary evidence (i.e. passports, permits, etc.) to confirm same; (vi) details of how the company’s activities would be/have been financed (e.g. loan, debenture, etc.) and any additional details or comments pertinent to consideration of the application.

With respect to applications for approved investment status, the non-Bahamian investor would have to provide a recorded conveyance in favor of the non-resident purchaser. This confirms occurrence of the investment and that title to the property passed to the investor. The Exchange Control Department also inspects that VAT has been paid.

Proposed Change to Exchange Control Regime

Under the amended framework, no application would be required to the Central Bank for any aspect of the residential real estate transaction, involving a non-resident as either vendor or purchaser. Additionally, the “approved investment status” would be automatically acquired by the

purchaser on the execution of the transaction.² Restriction would remain against Bahamian dollar lending to non-residents to purchase the residential real estate

Where a vehicle formed under the Companies Act (1992) or the International Business Companies Act (2000) is used to hold residential property, the issuance/transfer of shares for the benefit of non-residents, would also be exempted from EC approval. Under the EC Regulations, this authority is currently vested in the Minister of Finance and granted by the Central Bank, under delegated authority from the Minister.

The Central Bank further proposes to delegate the authority to authorised dealers to sell foreign exchange, against Bahamian dollar proceeds of residential real estate sales, for remittance abroad to/by non-resident vendors. In this case, commercial banks would be required to rely on documentary evidence such as the passport to determine non-residency; executed conveyances as evidence of sale; and any other evidence that would confirm that the intended recipient of the proceeds (if they are natural persons) are ultimately and beneficially the divesting owners. The transactional value of real estate transactions and transfers of funds to non-residents will also remain subject to any due diligence, which commercial banks undertake to satisfy regulatory obligations for anti-money laundering (AML), countering the financing of terrorism (CFT) and anti-proliferation.

The Central Bank will amend, as appropriate, authorised dealers' reporting requirements on foreign currency sales to capture transfers abroad of real estate sale proceeds.

Governmental Approvals

The relaxation of exchange controls would not relieve the non-resident vendor or purchaser from obtaining all other approvals that would be required to process the property transaction. These include requirements under the International Persons Landholding Act (including permits and certificates of registration); and the Companies Act and the International Business Companies Act (concerning incorporation and registration as foreign entities).

Balance of Payments Implications and Monitoring

The balance of payments risks from a liberalization initiative of this nature are not projected to increase for The Bahamas. In particular, the potential for unmanageable capital (foreign exchange) outflows on liquidated real estate does not arise in any material sense, nor would it hamper the ultimate ability of the Central Bank to comprehensively monitor foreign real estate transactions for statistical and policy making purposes.

The domestic demand for real estate remains tied to local credit financing conditions, which the Central Bank is able to manage through its monetary policy tools. In particular, the Central Bank retains the flexibility to vary institutions' ability to lend to finance real estate purchases. Over the medium-term, there is no indication that domestic buyers would be in any significant position to finance (via credit) a material increase in real estate purchases from non-residents. The likely need for policy-led tightening in lending conditions affecting this market—where the alternative would be a depletion of the Central external reserves—is therefore negligible. In addition, the higher average unit valuation of non-resident real estate holdings, constrains the subset of resident investors that would qualify as eligible counterparties. Taken together with the medium to longer-term outlook for real estate, it is anticipated that there will be net inflows of capital into The

² This is the clearance needed for repatriation of any foreign currency proceeds on subsequent sale to a resident.

Bahamas, and no materially plausible scenario where resident investors could finance a large divestiture flow by non-residents.

On the transactions monitoring side, the Central Bank is shifting to an enhanced position, in view of the amended framework to apply value added taxes (VAT) on real estate conveyances. The responsibility to collect taxes on conveyances has shifted exclusively to the Department of Inland Revenue (DIR), where administrative processes are already automated. With a proposed online process to apply for and process taxes on conveyances, the Central Bank will coordinate with the DIR to capture the residency information of buyers and sellers on filed tax applications. This will provide access to regular statistical summaries of the real estate market, and enable more comprehensive valuation of the stock of holdings by non-residents.³

Definitions

The following definitions apply in respect of the above outlined property transactions:

Non-resident: foreign individual not residing in The Bahamas, a Bahamian emigrant, a holder of a permit to reside issued by The Bahamas Immigration Department, or other persons so designated by The Central Bank.

Non-resident entity: a business that operates from inside The Bahamas, but conducts business with non-residents. Normally, the shares in a non-resident entity or company are owned wholly by non-residents.

Designated resident: a company incorporated under the Companies Act, 1992, or the International Business Companies Act, 2000, by non-residents to hold local real estate and/or conducting business within The Bahamas with residents. The designation of “resident” permits the entity to engage in business in The Bahamas.

Residential property: land zoned for development of single family dwellings or multi-family units (duplexes and row housing) of no more than four attached dwellings.

Dwelling: means a building, premises, structure, or other place, intended to be used as a place of residence or abode of a natural person together with any appurtenances belonging thereto or enjoyed therewith.⁴

³ The Central Bank is preparing to produce data on the stock of foreign investments in The Bahamas using the international investment position (IIP) format, now in use internationally. As part of this process, the Bank will have to track the valuation of real estate assets, as well the stock of other cross-border assets held by residents and non-residents. Production of IIP statistics is also a necessary deliverable to improve trade statistic availability under The Bahamas' WTO accession process.

⁴ Stamp Act (Amendment), 2018, No. 11 of 2018.