



THE RACE FOR AVIATION OFFSHORE PREMINENCE

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The newly appointed Minister of Financial Services the Hon. Hope Strachan has flagged aviation as one of the areas of focus for her Ministry as she takes responsibility for directing its affairs. Speaking at the International Business and Finance Summit, 2015, the Minister expressed her commitment to the development of aviation within the context of financial services. Her pronouncement prefigures the beginning of a fresh initiative to explore the expansion of aviation related services with a view to broadening the already impressive array of financial services and products on offer to both the domestic and international market.

Participants in the Bahamian aviation industry are engaged in a broad range of issues across a number of aviation sectors. These involve matters related to airports, airline operations, travel agencies, cargo, ground services, air navigation services, and accounting/finance. Active aviation sectors also include the civil aviation authority (with responsibility for regulations including safety regulations, registration and licensing) and aircraft acquisition and financing, including finance lease structures.

Arguably The Bahamas has of late distinguished itself in the aspect of aviation concerned with airports. The Bahamas is able to boast of its recently

constructed and celebrated world class Lynden Pindling International Airport with enviable high marks for user satisfaction. Reportedly The Bahamas has also enjoyed a top position amongst private charter jet destinations with very attractive consequential benefits for the local economy throughout and in particular the peak winter season of 2014.

Perhaps lesser known however is the jurisdiction's history of participation in aircraft finance lease structures; typically involving one or more special purpose companies (SPC's) established under the International Business Companies Act. At center stage is the availability of the International Business Company, a stellar corporate vehicle known for its simplicity and flexibility. The use of the IBC along with trust and/or foundation options to create a desirable shareholding structure, together with the proven reputation of The Bahamas as a well regulated, tax neutral and responsible offshore jurisdiction provides the perfect context to support the offshore requirements for the finance lease structures.

In addition to the commitment to the aviation industry expressed by the Minister of Financial Services, the Minister of Transport and Aviation has within the month of February 2015 indicated the selection of consultants to assist in the review and further

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development of the jurisdiction's aircraft related registration regime. The Minister has also foreshadowed the creation of provisions to regulate the use of drones within The Bahamas. All of this demonstrates an awareness of and sensitivity towards domestic and international issues impacting the industry which is a necessary and welcome feature to the proper growth of the sector.

Progress in advancing aviation related services will test the resolve not only of the Ministry of Financial Services and the Ministry of Transport and Aviation but

also, where required, the Ministry of Foreign Affairs and the Office of the Attorney General. The opportunity to display acumen, agility and a facility for collaboration between Ministries with the support of industry is once again presenting itself. There is a certain optimism that The Bahamas will be true to its historically demonstrated propensity to seize the day and in the present environment, provide prudent, creative and effective responses to opportunities within the aviation industry and the financial services sector.

Michael F. L. Allen is the chair of the Aviation group and his practice involves acting as a transactional lawyer in aviation matters. Other areas of professional expertise include commercial law, corporate law, aviation law, real estate & development, wealth management, and financial services law.



US FATCA UPDATE IN THE CAYMAN ISLANDS

Rob Humphries

The U.S. Foreign Accounts Tax Compliance Act ("FATCA") was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act on 18 March 2010, with the object of reducing tax evasion by US persons through the implementation of a new tax information reporting and withholding regime. To this end, FATCA requires Foreign Financial Institutions ("FFIs –discussed below) to report certain information on financial accounts held by their US customers to the US Internal Revenue Service ("IRS"). If a FFI fails to comply with the US Regulations then a 30% withholding tax may be imposed on that FFI's US sourced income.

In order to facilitate reporting and compliance with FATCA, the Cayman Islands have entered into a Model 1B Inter-Governmental Agreement with the US (the "US IGA"). The US IGA allows for

Cayman Islands entities which qualify as FFIs to comply with the reporting obligations imposed by FATCA without having to enter into a separate agreement directly with the IRS. Instead, a Cayman Islands FFI which has registered and been issued with a Global Intermediary Identification Number (discussed below) may report directly to the Cayman Islands Tax Information Authority (the "TIA") and will be treated as a deemed compliant FFI not subject to any automatic withholding on US sourced income.

To understand the extent of any compliance obligations with FATCA, a Cayman Islands entity will first need to determine its FATCA classification and, most importantly, whether or not it will qualify as a FFI.

WHAT IS A FFI?

FATCA legislation can be complicated in

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its application and it is difficult to provide a definitive list of entities or institutions which will or will not fall within a certain category for purposes of determining their FATCA classification and compliance obligations. With this in mind, FFIs may be broadly defined as non-US entities falling within any one, or more, of the following categories:

Custodial Institution

A Custodial Institution is any entity that earns a substantial portion (at least 20%) of its gross income from the holding of financial assets for the account of others and from related financial services.

Depository Institution

Depository Institutions are broadly defined as entities engaged in banking or similar business.

Investment Entity

Broadly, an Investment Entity is an entity that conducts as a business, or is managed by an entity that conducts as a business, investment activities for or on behalf of a customer which may include portfolio management, money market instruments, foreign exchange, transferable securities, commodity futures trading and otherwise investing, administering or managing funds or money on behalf of other persons. As a general rule, the vast majority of investment funds will qualify as FFIs and will need to register and report. Investment managers on the other hand will likely fall within an exemption provided in Annex II of the US IGA and will be classified as Certified Deemed Compliant Financial Institutions not being required to register or report.

Specified Insurance Company

Broadly, a Specified Insurance Company is an insurance company where it, or its holding company, issues, or is liable

under, certain cash value or annuity contracts.

CAYMAN FFI OBLIGATIONS IN TERMS OF FATCA

Existing FFIs should already have registered with the IRS and been issued with a unique Global Intermediary Identification Number ("GIIN"). This will be used by FFIs to report prescribed information on financial accounts held by their US customers to the TIA (and indirectly on to the IRS) through the TIA's Automatic Exchange of Information Portal ("AEOI Portal"). FFI's should be registered with the TIA by no later than 30 April this year with a view to filing their 2015 FATCA reports before the deadline on 31 May.

OBLIGATIONS OF OTHER CAYMAN ENTITIES NOT FALLING WITHIN THE DEFINITION OF AN FFI

Any Cayman Islands entity which is not a FFI will be classified as a Non-Financial Foreign Entity ("NFFE").

There are two categories of NFFE:

- Active NFFE
- Passive NFFE

A NFFE whether Active or Passive, has **no** registration or reporting obligations to the TIA. However, the entity is required to determine its FATCA/IGA classification and, where necessary, self-certify and confirm its classification to any FFI or other withholding agent that maintains financial accounts held by that NFFE.

Most Cayman FFIs are already well aware of their obligations in terms of FATCA, have registered and attained their GIINs and are ready to file the prescribed reports with the TIA before the deadline of 31 May this year. Save for determining their FATCA classification and any required self-certification to financial institutions where they hold accounts, it is

Most Cayman FFIs are already well aware of their obligations in terms of FATCA, have registered and attained their GIINs and are ready to file the prescribed reports with the TIA before the deadline of 31 May this year.

likely to be business as normal for the vast majority of NFFE's. Readers should also keep a close eye on developments relating to the roll out of UK FATCA which seeks to implement a similar regime to its US namesake, with financial institutions currently conducting due diligence in respect of reports due to be filed for the first

time during the course of 2016.

More detailed guidance notes on the impact of the US and UK IGA's with the Cayman Islands have been issued by the TIA and may be located on their website by clicking the following link:

http://tia.gov.ky/pdf/FATCA_Guidance_Notes.pdf

Rob Humphries is a Senior Associate in the Cayman Islands. He specializes in corporate and commercial law, investment funds, M&A and general commercial transactions.



PROMOTING EQUAL OPPORTUNITIES FOR THE DISABLED IN THE BAHAMAS

Andrea M. Moultrie

The Persons with Disabilities (Equal Opportunities) Act, 2014 (the "Act"), which was passed on 16 July, 2014 but which has not yet come into operation, aims to achieve, in part, the equalization of opportunities for persons with disabilities, the ending of discrimination on the basis of disabilities, the provision of rights, rehabilitation and habilitation of persons with disabilities, and the establishment of the National Commission for Persons with Disabilities (the "Commission").

A person with disabilities is defined in the Act as a person "with a long term disability including physical, mental, intellectual, developmental or sensory impairments, which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others".

Once the Act has come into operation and is properly enforced, it will undoubtedly have a tremendous, positive impact on the lives of persons with disabilities and their loved ones. As a necessary consequence to the rights and privileges it affords to persons with disabilities, the Act has

certain implications for members of the business community, which in some instances are quite onerous. Such persons should be aware of the effect that the Act will have on their businesses, and prepare accordingly.

Discrimination and Employers

Pursuant to the Act, no person shall deny a qualified person with a disability equal access to opportunities. A person with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives and allowances as qualified able-bodied employees.

Part III of the Act prohibits employment-related discrimination against persons with disabilities, including in the areas of recruitment, the determination or allocation of wages, salaries and pensions, or the choice of persons for posts, training, advancement or promotion. However, no discrimination by an employer will be deemed to occur if the alleged discrimination is not wholly or

mainly caused by the person's disability, if the particular requirements of the type of employment make the disability a relevant consideration, or if accommodating the person will require special modifications or facilities that the employer cannot reasonably be expected to provide.

Persons with disabilities who feel discriminated against by an employer or prospective employer may bring a complaint to the Commission, and may also apply to the Industrial Tribunal in the regular manner for the hearing of an employment-related dispute.

Any employment contract or other agreement which purports to deny a person his rights or privileges conferred under the Act or to limit the operation of the Act in any way will be void insofar as it attempts to do so.

Number of Employees and Register of Persons with Disabilities

Importantly, every employer having more than one hundred employees shall employ not less than one percent of qualified persons with disabilities.

Once established, the Commission will maintain a record of persons with disabilities along with their levels of skills and training, and will provide to employers a list of "employable persons" with disabilities. Where such employable persons are not available for employment, the Commission may issue to an employer a "certificate of exemption" from this requirement.

Accessibility, Mobility & Adjustment Orders

Every person with a disability is entitled under the Act to a barrier-free and disabled friendly environment, and shall not be denied admission to any premises or provision of any services or amenities

solely on the ground of his disability. In the workplace, employers must provide facilities and make such modifications, whether physical, administrative, or otherwise, as are reasonably required to accommodate persons with disabilities.

Section 21 of the Act provides that proprietors of public buildings are to adapt such buildings to accommodate persons with disabilities, in any manner specified by the Commission. This includes providing parking for persons with disabilities. Parking for persons with disabilities must be designated within six months after the Act comes into operation. Proprietors of buildings must comply with any directions made by the Commission either within two years after section 21 comes into operation, or on the date appointed for compliance.

Under section 41 of the Act, persons providing telephone services must install and maintain telephone devices for persons with hearing disabilities, and tactile marks on telephones to enable persons with visual disabilities to use the telephone services.

The Commission is empowered by Part IV of the Act to serve an "adjustment order" on the owner of public premises (whether or not payment of a fee is required for admission) or provider of services or amenities to the public, where it considers that such premises, services or amenities are inaccessible to persons with disabilities. The adjustment order will set out the grounds upon which the Commission considers that the premises, services or amenities are inaccessible to persons with disabilities, and will require the owner or provider to undertake at his own expense specified action to secure reasonable access to persons with disabilities, within the time period

In the workplace, employers must provide facilities and make such modifications, whether physical, administrative, or otherwise, as are reasonably required to accommodate persons with disabilities.

Discrimination against a person with disabilities in an employment context...and failure to comply with an adjustment order, are all offences under the Act.

specified in the order.

A person who receives notice that an adjustment order is to be served on him, is given the opportunity to make representations to the Commission as to why the action and/or time period specified by the order is not appropriate or reasonable, and after hearing these representations the Commission may refrain from, or defer, issuing the order.

Within thirty days after issuance or confirmation of an adjustment order, a person may appeal to the Court against the order, and upon hearing an appeal, the Court may either confirm, verify or set

aside the order.

Offences for non-compliance

Discrimination against a person with disabilities in an employment context, denying a person with disabilities admission to premises or provision of services and amenities, and failure to comply with an adjustment order, are all offences under the Act. A person convicted of an offence under the Act is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months, or to both a fine and imprisonment.

Andrea M. Moultrie is an Associate in the Ocean Centre office. Her main areas of practice include commercial and corporate law.



FOCUS on Influential Figures of the Firm

Higgs & Johnson has a decidedly rich history of providing high quality legal services both locally and internationally. Its success has been accentuated by past and present accomplishments of individual attorneys within the Firm who have distinguished themselves among their peers. FOCUS is pleased to provide its readers with insight into the personalities who formed the traditions, established the culture, and who are the current custodians of the ongoing legacy of providing the finest in legal professional services. We trust that you will enjoy reading a record of the informal interviews and direct quotes designed to focus on the life and times, the character and experiences of influential Higgs & Johnson attorneys. This issue features Gina M. Berry the Country Managing Partner in the Cayman Islands.

You are assuming responsibility for the Cayman office in an unprecedentedly challenging global economic climate. What do you see as important for the firm to achieve within the next few years?

Challenges are not necessarily a bad thing

– they often cause greater introspection and planning to assist with tapping into the reservoirs of creativity, innovation and dexterity. I therefore prefer to regard a challenging global economic climate as one that brings with it fresh opportunities. The firm that is nimble and open to change, while retaining a stable foundation, is more likely to be able to capitalize on these newly packaged opportunities.

So, a stable core is important – and the Cayman office does not stand alone in this respect - we have the benefit of the long history of legal excellence that “Higgs & Johnson” has been (and continues to be) synonymous with in The Bahamas. We also have the benefit of a solid foundation in the Cayman legal arena, which spans back to our earlier existence as Truman Bodden & Company – a well-respected law firm, with strong Caymanian

leadership. In thinking about the firm as “one cohesive international firm” rather than a Cayman office, I think we are better able to perform on a global stage and seize our rightful share of the market.

Thoughtful growth is also important – to ensure that we remain relevant and poised to tackle the emerging opportunities with the greatest professionalism against the backdrop of a supportive and collegial working environment.

Thoughtful growth has also meant being discerning about our client base and ensuring that our reputation remains unblemished.

Increased visibility is another key objective – the wealth of legal know-how which our firm has at its disposal must not remain a hidden gem.

Not to be forgotten is the focus on client care – a core value of the firm which has undoubtedly contributed to our ability to punch well above our weight. Going forward, there must be an active re-commitment to this crucial part of who we are. Our eyes need to remain firmly fixed on exceeding clients’ expectations and adding value to their business.

In what ways do you think that Higgs & Johnson’s client service exceeds that of our competitors?

Clients can speak to their lawyers and other professional personnel. As simple as this may sound, many other firms lose the personal touch and clients feel “lost in the law firm machinery”. H&J has very firmly retained the personal contact as part of its client service, clearly recognizing that clients have choices.

What factors in your view have contributed to the growth of the Cayman office?

The firm-wide support of Partners and staff to a Cayman office which offers first rate legal advice in a first rate

environment!

The Cayman office has also grown thoughtfully. This has meant carefully identifying accomplished professionals who complement each other, bring value to clients AND share in the H&J ethos. Our highly skilled team of lawyers and other professionals bring their diverse international experience to the Cayman office, which is also deeply rooted in Cayman. Our commitment to service excellence has resulted in clients continuing to instruct us over many years and recommending us to others.

Thoughtful growth has also meant being discerning about our client base and ensuring that our reputation remains unblemished.

From your vantage point what are the issues that the Cayman Islands as a jurisdiction should focus on to ensure that the quality of legal services is progressively improving?

I think it is widely acknowledged that the Cayman Islands must focus on modernizing our legal regulatory regime, with the major emphasis being on the implementation of a Code of Conduct which, it is hoped, will put us on an equal footing with other sophisticated financial centres. This balanced framework would better allow local firms to successfully compete on a global basis, especially if we wish to preserve our reputation as one of the leading offshore jurisdictions. Our Bar Association and Law Society have repeatedly underscored the need for increased focus and speedy resolution of these issues, which include the proper regulation and discipline of the legal profession both within and outside of the Cayman Islands.

What threats if any do you anticipate, to the healthy development of the Cayman legal profession?

The current failure to modernize our own Legal Practitioners Law, highlighted above, is undoubtedly one of the major threats to the healthy development of the Cayman legal profession.

Another major threat is the often skewed approach to Caymanian ownership, management and participation in law firms. While recognizing the huge benefits of the diverse makeup of the Cayman legal profession, if sufficient resources are not committed in tangible ways to correct this imbalance, then the profession, with all its other bells and whistles, will have unfortunately failed a critical component of its health check.

How does the firm's membership in TerraLex, impact the delivery of client services?

TerraLex is currently comprised of more than 155 top independent law firms and more than 17,000 attorneys in 100 countries. The firm's membership in this worldwide network is one that is treasured, especially as we are uniquely placed as founding members in both The Bahamas and the Cayman Islands.

The networking opportunities afforded to the firm have allowed for synergies to be established and friendships to be formed with many other member firms across the globe. This greatly impacts the delivery of client services in enabling us to provide

legal resources and expertise needed to conduct seamless business worldwide. Our clients can therefore be assured that wherever in the world they need top quality legal assistance, we can collaboratively work with our TerraLex partners (who are familiar with local laws and customs) to meet their needs.

What aspect of your legal practice do you particularly enjoy and why?

I most enjoy problem solving and client contact, as these both reinforce why I became an attorney. I also must admit that I enjoy drafting documents – perhaps it “feeds the ego” a little to look back on a well-crafted document!

What advice would you give to young attorneys wishing to excel?

Work hard; put in the hours; be willing to learn; listen more than you speak; keep your feet firmly placed on the ground, don't be afraid to ask questions; trust your gut instinct; understand that clients have choices; learn your client's business and what matters to them; guard your reputation fiercely.

Anything additional you wish to add?

Law is a jealous and unrelenting partner. It requires many hours of undivided attention. Perhaps the most important bit of advice is to love what you do and respect who you do it with...as this profession will absorb most of your life. It therefore helps immensely when one is surrounded by a supportive team, as we have at Higgs & Johnson.

I most enjoy problem solving and client contact, as these both reinforce why I became an attorney.



KAREN S. BROWN JOINS PARTNERSHIP

Oscar N. Johnson, Jr., Managing Partner of Higgs & Johnson, is pleased to announce that Karen S. Brown has joined the firm's partnership. Based in our Freeport office in Grand Bahama, Karen's areas of practice include Admiralty Law, Family Law, commercial and civil litigation, with a particular focus on Industrial Relations & Employment law.

She also has experience in a broad range of matters including residential and commercial property acquisitions, domestic mortgages, subdivision, resort and hotel development, advising on real property tax matters and other regulatory matters including applications to The Bahamas Investments Board and other governmental entities. She has also assisted in the conduct of international financing transactions.

Karen holds a Bachelor of Laws Degree (LL.B Hons.) from the University of the West Indies and obtained a Legal Education Certificate from the Eugene Dupuch Law School. She was called to The Bahamas Bar in 2002. She is an active member of HOPE Worldwide Bahamas and a part-time lecturer at the College of The Bahamas CEES Northern Bahamas Campus.

FIRM'S NEWEST PRACTICE GROUP— AVIATION

Higgs & Johnson is pleased to announce that it now has a dedicated practice area of Aviation chaired by partner Michael F. L. Allen. This area was first added on to the Maritime & Shipping practice in 2009 and since that time the demand has grown so much as to warrant its own named practice area within the firm. The firm's aim is to provide seamless service to the aviation clients with onshore and offshore requirements and to be in the position to assist clients with all of their aviation needs.

Attorneys within the practice area are involved in a wide range of aviation related activity including supporting and coordinating local aspects of airline operations, providing advice on best structures for aircraft ownership based on the requirements of financing parties and providing opinions on companies' participation in finance lease structures. Client types serviced by personnel within the aviation practice group include, aircraft owners, major international airlines, financial institutions providing aircraft financing, export credit agency lenders and aircraft leasing and management companies.

Michael Allen noted that, "The Bahamas is currently moving through an exciting phase in the development of the aviation industry which has the promise of positively impacting a number of sectors within the local economy. We at Higgs & Johnson are committed to ensuring the quality of service to both the domestic and international markets and wish to ensure that we are well placed in both The Bahamas and The Cayman Islands to respond to the growing needs of the industry."

CAYMAN OFFICE RELOCATES TO WILLOW HOUSE, GRAND CAYMAN



Higgs & Johnson, now in its 7th year of operation in the Cayman Islands, is pleased to announce that its Cayman Islands office has relocated from Anderson Square Building to Willow House, Cricket Square. Located in Grand Cayman, this office is a full service legal practice with particular expertise in mutual funds, offshore investment vehicles, insolvency, civil litigation and real estate.

Global Managing Partner, Oscar N. Johnson, Jr. noted, “We were the first Bahamian law firm to expand to the Cayman Islands through our merger with the Cayman law firm Truman Bodden & Company. We have consistently provided exceptionally high quality service to clients in both jurisdictions as well as international clientele. Our objective with this move is to remain at the forefront of the profession, providing clients with innovative, quality and pro-active services.”

Gina M. Berry, Country Managing Partner for the Cayman Islands stated, “This move to the enhanced premises at Willow House highlights the growth of the firm over the years and shows our continued commitment to providing professional and reliable legal advice, underscored by a client-centered approach that secures outstanding results for our clients. We are confident that operating from Willow House will further help us to achieve our goals.”