



THE MODERNISATION OF THE GAMING INDUSTRY IN THE BAHAMAS

Christel Sands-Feaste

IN THIS ISSUE

- 1 The Modernisation of the Gaming Industry in The Bahamas
- 3 Enforcement of Foreign Judgments
- 5 New Regulations Aimed at Preventing the Misuse of Non-Profit Organisations
- 6 FOCUS on Influential Figures of the Firm
- 8 New Senior Associate in The Bahamas
- 9 Euromoney's Airfinance Forum

Gaming has been conducted in The Bahamas for well over a century. Casino gaming began in the 1920's with the opening of the *Bimini Bay Rod and Gun Club* in Alice Town, Bimini. Nassau's first casino, *The Bahamian Club*, opened in 1920. During the 1960's, The Bahamas established itself as home to several large scale casinos including *The Monte Carlo* in the Lucayan Beach Hotel, Grand Bahama and *The Paradise Island Casino* (which was more recently named the Atlantis Paradise Island Casino).

The "numbers" game dates back to the beginning of the Italian lottery in the 16th Century and has reportedly been carried out in The Bahamas since the 18th Century.

From a regulatory perspective, initially all gambling was illegal in The Bahamas and the first casinos were permitted to operate by way of limited exemptions granted by the Governor. The first comprehensive regulatory framework for gaming in The Bahamas was established by the *Lotteries and Gaming Act* and accompanying Regulations (the "LGA") which came into force in 1969. The LGA provided for:-

- the licensing of casinos meeting the prescribed criteria;
- the establishment of the Gaming Board ("The Board"); and
- the criminalizing of lotteries and related activities subject to certain exemptions.

In the decades following the enactment of the LGA, the global gaming industry evolved from casinos with table games and slot machines, and bookies accepting wagers on slips of paper, to a multi-billion dollar industry comprised of state-of-the-art casinos and gaming houses offering a broad range of gaming activities and amenities. More recently, with technological advances, internet and mobile gaming have also emerged. Whilst the LGA was amended from time to time to include activities such as sports betting and pari-mutuel wagering, it became apparent that the LGA was inadequate to regulate 21st century gaming activities and restricted the ability of Bahamian casinos to offer many of the modern gaming amenities which sophisticated gamers have come to expect.

The Gaming Act, 2014 (the "Act") was passed on 1 October, 2014 and brought into force on 24 November, 2014 with the objectives of modernizing the gaming regulatory regime in The Bahamas in accordance with international best practices, establishing a comprehensive framework for the licensing and regulation of the gaming industry and elevating the global standing of The Bahamas as a leading gaming jurisdiction. The *Gaming Regulations*, *Gaming House Regulations* and the *Financial Transactions Reporting (Gaming) Regulations* (together the "Regulations") were promulgated immediately following the passage of the Act.

The information contained in this newsletter is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This newsletter can in no way serve as a substitute in such cases.

For additional copies of FOCUS, please contact Antonia Burrows at 242 502 5200 or at aburrows@higgsjohnson.com.

A summary of a few of the key amendments introduced by the Act and Regulations follow:

The extension of credit and the enforcement of gaming debts in a court of law are now permitted and a prescribed procedure has been introduced for the resolution of patron disputes.

- The licences held by casinos have been renamed “gaming licences”.
- The scope of gaming activities that may be conducted by gaming licensees has been expanded to include:-
 - (i) mobile gaming (i.e., gaming using a computer or mobile electronic device, within a defined geographical area of premises of a gaming licensee);
 - (ii) proxy gaming (i.e., the placement of wagers by persons located in a licenced casino in The Bahamas and not prohibited from participating in proxy gaming by any other law or in any permitted foreign jurisdiction, to a licenced employee of a proxy gaming licence holder); and
 - (iii) restrictive interactive gaming (i.e., internet gaming by persons located in a licenced casino in The Bahamas and not prohibited from participating in restrictive interactive gaming by any other law or in any permitted foreign jurisdiction).
- Establishments operating gaming web shops are required to obtain:-
 - (i) a gaming house operator’s licence to conduct those activities;
 - (ii) a gaming house premises licence in respect of any dedicated premises where those activities are conducted; and
 - (iii) a gaming house agent’s licence in respect of premises of any third party agents.
- The holder of a gaming licence, mobile gaming licence, restrictive interactive gaming licence or a gaming house operator’s licence is a “financial institution” for the purposes of the *Financial Transactions Reporting Act* and therefore required to comply with the obligations thereunder to verify identity of gamers, report suspicious transactions and retain records.
- Suppliers’ licences are required by persons distributing or supplying gaming devices (including software or hardware), for use in The Bahamas or repairing gaming devices in The Bahamas, subject to certain exemptions.
- Employees of licenced gaming establishments must obtain gaming employee licences, and executives, directors or agents exercising direct control over gaming operations must obtain key employee licences.
- Enclosed gaming suites and private gaming areas (e.g. VIP gaming suites) may be established on the premises of licenced casinos.
- The licensing process is now more transparent, with provisions for the Board to conduct hearings and investigations in respect of any licence application and suspension or revocation of a licence; and the enforcement and investigative powers of the Board have been expanded.
- The extension of credit and the enforcement of gaming debts in a court of law are now permitted and a prescribed procedure has been introduced for the resolution of patron disputes.
- The use of registered independent gaming laboratories to provide certification, authorization and approval of gaming devices, based on approved standards, has been introduced.
- Gaming licensees are now required to

FOCUS Editorial Committee

Portia J. Nicholson (Chair)

Nadia J. Fountain

Tom Mylott

Audley D. Hanna, Jr.

Ja’Ann M. Major

Theo Burrows

Ava M. Rodland

Lisalette T. Gibson

Antonia Burrows

implement a responsible gaming program.

- Provisions have been introduced for the exclusion of persons from gaming activity.

With the first applications for many of the new licences under the Act still under

consideration by the Board, the practical implementation and enforcement of the Act and Regulations remain to be seen. However, the Act and Regulations represent a renaissance in gaming regulation and oversight in The Bahamas.

Christel Sands-Feaste is a Partner in the Commercial Practice Group and a member of the International Association of Gaming Advisors. She has extensive legal experience in corporate and commercial law, asset financing, legal issues relating to resort development and operations as well as gaming law and regulation.



ENFORCEMENT OF FOREIGN JUDGMENTS

Vann P. Gaitor

Proceedings for enforcement of a foreign judgment are generally uncomplicated, and defences to an action for enforcement are limited. In most cases, after an appearance is entered by a defendant to a specially indorsed writ of summons, a Plaintiff will make an application for summary judgment on the basis that there is no meritorious defence to the action and generally judgment is obtained in the terms of the foreign judgment. The foreign judgment at that stage would have been domesticated and may be acted upon in the same manner as a judgment of a court of first instance in The Bahamas.

Despite the straightforward nature of enforcement proceedings, the Bahamian court was recently asked by a defendant to dismiss or strike out an action commenced by a foreign Plaintiff for enforcement of a judgment obtained by her from a court in Florida, her state of domicile. As is the practice, the heading of the action in the Bahamian court was the same as it was in the foreign court, namely, "A. B. (in her capacity as the Personal Representative of the Estate of C. D. deceased)."

The lynchpin of the defendant's application was that before an executrix or administratrix of a foreign court is able to

bring an action in The Bahamas in her capacity as a personal representative, she must first obtain from the Supreme Court of The Bahamas a Grant of Probate or Letters of Administration, as appropriate, or a resealing of the foreign Grant. Counsel for the defendant argued that until there is such a Grant from the Bahamian court, a foreign executrix or administratrix does not have the capacity to bring an action in a Bahamian court. As no such Grant had been obtained, counsel argued, the action commenced by the foreign Plaintiff was null and void from the beginning and could not be cured by a subsequent Grant. Counsel relied on the well-known English authority of **Bowler v John Mowlem & Co (1954) All E R Vol 3 556**, among others, wherein Denning L.J. at p. 557 stated:

"The law on this subject, as laid down by several decisions of this court, is this: If a Plaintiff brings an action in a representative capacity as administratrix, then that act is a nullity if she was not at that date administratrix by law with a proper grant. Even if she obtains a grant within a week, a month or a year afterwards it does not relate back.

The writ is a nullity from the date of its issue.”

Even though the Plaintiff in **Bowler v John Mowlem** described herself as administratrix in the title of her action as well as in the statement of claim, the court found that she did not bring the action in a representative capacity. The Plaintiff's action was brought under the Fatal Accidents Act. As there was nothing in the indorsement of the writ stating that she was suing as administratrix, so stated the court, she had to be taken as having brought the action in her capacity as widow and not in a representative capacity as administratrix.

Justice Milton Evans accepted the Plaintiff's arguments that the question to be determined was whether the action before the court constituted a representative action on behalf of the husband's estate or whether the Plaintiff had a right to sue in her own name. He opined that even if he were satisfied that the Plaintiff's action as formulated was not a representative action, the final question was whether in the circumstances the claim in order to succeed should have been brought as a representative action.

After careful review of the authorities relied on in arguments by both sides and applying the principles enunciated therein, the judge came to the conclusion that the awards in the Florida judgment “rest with the individuals themselves or someone on their behalf who need not necessarily be the Personal Representative” of the deceased. The judge cited the following passage from the judgment of Williams J in **Vanquelin v. Bouard** in support of his conclusion:

Vann P. Gaitor is a Partner in the Ocean Centre office. He is a seasoned litigator who specializes in Commercial Disputes, Real Property Disputes, Banking Law, Employment Law, Personal Injury matters and Matrimonial Law.

“It appears to me to be plain that the right which the Plaintiff is there seeking to enforce is not a right which the deceased ever had. It was not a personal right which formed part of his estate at the time of his death but it was a right which was acquired by the Plaintiff herself since her husband's death... The right, therefore which she is seeking to enforce by that count [a reference to one of several counts in the matter] is not one which was ever vested in the deceased or which could form part of his estate, but a right which the Plaintiff herself had acquired, and which she was entitled to assert in her own name and in her own individual capacity” and on behalf all persons entitled.”

In the penultimate paragraph of his ruling, Justice Evans wrote:

“The fact is she [the Plaintiff] has a judgment inclusive of her entitlement to \$2,413,813.00 and she in my view has a right to enforce the judgment personally. There was therefore in my view no requirement for her to have obtained a resealed Grant in The Bahamas.”

(Editor's Note - Justice Evans' ruling has been appealed. Notice will be given of the ruling of the Court of Appeal when a decision would have been handed down).

After careful review of the authorities relied on in arguments by both sides...the judge came to the conclusion that the awards in the Florida judgment “rest with the individuals themselves or someone on their behalf who need not necessarily be the Personal Representative” of the deceased.



NEW REGULATIONS AIMED AT PREVENTING THE MISUSE OF NON-PROFIT ORGANISATIONS

Ava M. Rodland

The Regulations were specifically designed to comply with The Bahamas' international obligations to adopt measures to prevent the misuse of non-profit organisations for money laundering and terrorist financing.

Section 302 of the Companies Act, 1992 (Ch. 308) (the "CA") empowers the Minister Responsible for Companies (the "Minister") to make rules and regulations in order to give effect to the CA. Under this power, the Minister promulgated the Companies (Non-Profit Organisation) Regulations, 2014 (the "Regulations") on 6 August, 2014. The Regulations were specifically designed to comply with The Bahamas' international obligation to adopt measures to prevent the misuse of non-profit organisations ("NPOs") for money laundering and terrorist financing. In this vein, the Regulations, *inter alia*, prohibit non-profit organisations from carrying on their activities unless they are registered under the CA.

An NPO is defined by the Regulations as "an organisation that primarily engages in raising or disbursing funds for purposes such as religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic purposes not for profit". However, "organisation" is not defined by the Regulations. The Oxford English Dictionary (3rd Edn.) defines "organisation" as: "an organised body of people with a particular purpose". Under this definition, a broad range of bodies are potentially caught by the Regulations, including unincorporated associations, trusts, foundations, partnerships, clubs etc. The question then arises as to whether all of these various bodies are required to change their organisational structure and become incorporated as limited liability companies under the CA (a "CAC").

On a strict reading of the Regulations, the

answer is yes. In the absence of any definition of "organisation", the term must be given its ordinary meaning, which typically is its dictionary definition. Therefore, provided that the body in question satisfies the other requirements included in the definition of non-profit organisation set out in the Regulations (i.e. its activities primarily involve raising or disbursing funds for one or more of the specified or similar purposes on a not-for-profit basis), it would fall within the purview of the obligation to register under the CA. In fact, this interpretation of the Regulations is clearly within the ambit of what is contemplated by The Bahamas' international obligations (and the Regulations clearly indicate that they are intended to comply with the country's international obligations). For example, the Financial Action Task Force in its publication entitled "Combating the Abuse of Non-Profit Organization Recommendation 8", acknowledges that non-profit organisations take a variety of legal forms such as companies, bodies corporate, foundations, partnerships, associations, trusts and other similar legal arrangements. It recognises the need to identify, capacitate and monitor all such organizations in order to prevent their misuse for money laundering and terrorist financing.

On the other hand, a strong argument may be made that the Regulations cannot require a non-profit organisation that is not a CAC to change its organisational structure. The CA is an Act regulating the incorporation, management and control of

If the Government's intention is to impose obligations on a variety of different bodies, this should be done by way of primary legislation that regulates a specified activity so as to capture all bodies carrying out that activity...

companies incorporated or registered under its provisions. The scope and reach of the CA is therefore limited to those matters. The powers of the Minister to make regulations thereunder are, by extension, also limited to those matters. This is supported by section 302 of the CA which states that “[t]he Minister may make rules and regulations generally in order to give effect to this Act”. Regulations made by the Minister must therefore be restricted to matters affecting CACs, and cannot extend to matters affecting entities or bodies that are not CACs. To impose obligations on other bodies would be to exceed the powers reserved to the Minister under the CA.

According to this line of reasoning, the definition of non-profit organisations in the Regulations should be construed so as to limit the type of bodies affected solely to

CACs. In this case, the Regulations would not apply to unincorporated foundations, trusts, foundations, partnerships, clubs or other similar bodies. If the Government's intention is to impose obligations on a variety of different bodies, this should be done by way of primary legislation that regulates a specified activity so as to capture all bodies carrying out that activity, as opposed to subsidiary legislation which may only be capable of regulating one type of body carrying on that activity.

At present, no guidance has been made available to clarify the uncertainties created by the Regulations, nor is there any jurisprudence on the matter. Thus, it remains to be seen whether or how these uncertainties will be dealt with by the legislature or the courts.

Ava M. Rodland is an Associate in the Ocean Centre office. Her main areas of practice include Corporate and Commercial law as well as Private Client and Wealth Management. Ava has also co-authored a chapter on Bahamian foundations for an Oxford University Press publication, Private Foundations World Survey.



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 Heather L. Thompson, Partner in the Ocean Centre office of The Bahamas.

What are the events that led up to you becoming a Partner in the Private Client &

Wealth Management Group (“PCWM”)?

Prior to joining Higgs & Johnson, I was involved in trust administration at Roywest Trust Corporation (Bahamas) Ltd, the first trust company in The Bahamas, CIBC Trust Company (Bahamas) Limited and Swiss Bank Corporation Trust (Bahamas) Limited. At Swiss Bank, I was responsible for setting up the trust company as a legal entity separate from the Bank and whilst there, I worked under David J. Brownbill, now a Queen's Counsel at the English Bar. I benefitted greatly from his tutelage although I was not a lawyer at the time, and found that I enjoyed the legal aspects of the job more than I had anticipated. David's enthusiasm for the law motivated me to obtain my LLB degree from the

Exposure to international developments is a key component in ensuring that the quality of legal services in The Bahamas continues to improve.

University of London, after which I articulated at Higgs & Johnson in 1992, was called to The Bahamas Bar in April of 1994, and thereafter became an Associate of the firm. Peter Higgs was my first mentor at Higgs & Johnson; however, I was also privileged to assist Sir Geoffrey Johnstone and now Queen's Counsel Philip Dunkley, our current senior Partner. During my time with the firm I have also worked closely with Dr. Earl Cash, the current chair of the firm's Private Client & Wealth Management Group.

How has the PCWM group changed during your time at Higgs & Johnson?

This practice area has grown organically during my years at the firm and we have become more specialised. When I first came to Higgs & Johnson, Dr. Earl Cash was the only attorney dedicated to the practice area but we now have three Partners and three Associates in the team in Nassau and an attorney in the Cayman Islands as well.

What in your view has contributed to the success of the PCWM group at Higgs & Johnson?

One of the key contributing factors is the mentoring of Associates within the group. Other factors are: increasing our collective knowledge by attending conferences; researching and writing articles for local and international publications; and remaining up-to-date with worldwide developments. In addition, our attorneys in this field are members of STEP, which is the worldwide professional association for practitioners dealing with family inheritance and succession planning. Being involved with STEP has also contributed to the success of the group.

From your vantage point what are the issues that The Bahamas as a jurisdiction should focus on to ensure that the quality of legal services is progressively

improving?

Exposure to international developments is a key component in ensuring that the quality of legal services in The Bahamas continues to improve. Creating more specialists in various aspects of the law helps to enhance the output of the jurisdiction as well.

What threats if any do you anticipate, to the healthy development of the PCWM practice area?

In recent times this area of the law has been under serious challenge due to initiatives from onshore jurisdictions seeking to increase transparency as it relates to financial services and to enforce their tax laws, but I believe that there are good reasons for wealthy persons to set up Bahamian structures aside from tax mitigation and that they will continue to need our services. There may be additional focus on providing services to clients who are based in The Bahamas, and we may be required to deal with increasingly more complex structures. In this regard, we as experienced practitioners have a responsibility to seize opportunities and mentor those up and coming attorneys who will carry the mantle in the future.

As a member of STEP, what would you say are some ways this organization impacts this practice group?

STEP provides a plethora of information frequently to its members. It offers ongoing training with monthly lunches, webinars and annual conferences. You have the opportunity to network and make many contacts in all of the jurisdictions. The exposure received from publishing articles and presenting at lunches and conferences is very beneficial. The availability of numerous persons able to assist you, and STEP's advocacy for trust practitioners and their clients on a global

I enjoy all aspects of the work, but I do like interaction with individual clients and charities...it gives me the opportunity to see the direct effect of my own contributions.

basis also reflect the positive impact of being a member.

Having served as a consultant on several important pieces of financial services legislation, what would you say is the future for wealth management?

The only path to the future is through innovation, which we have demonstrated with the SMART Fund 007, Bahamas Executive Entities (“BEE”) and updates and amendments to our statutes that relate to Trustees, Private Trust Companies and Foundations. As long as we stay up-to-date and present an increasing array of services that reflect the needs of our clients, our

competitiveness as a jurisdiction will be ensured.

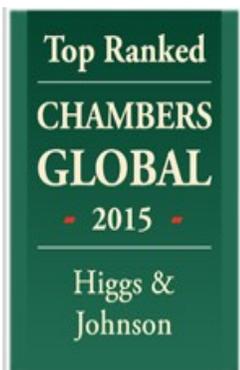
Under the umbrella of PCWM, what type of work do you particularly enjoy and why?

I enjoy all aspects of the work, but I do like interaction with individual clients and charities. This type of work gives me the opportunity to see the direct effect of my own contributions.

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

Young attorneys should focus on becoming masters of the law through continuing their education on a daily basis and taking advantage of experiences that others can give to them.

2015 RANKINGS BY IFLR1000 & CHAMBERS GLOBAL



Higgs & Johnson has been ranked as a Tier 1 law firm by both IFLR1000 and Chambers Global for 2015. The firm was ranked in the Financial/Corporate category by IFLR1000 and in General Business Law by Chambers Global. The firm has maintained its Tier 1 standing in The Bahamas for the past eight years and is continually recognized globally as a leading commercial firm. Chambers Global noted, “The team handles a high volume of corporate and commercial mandates for domestic and international clients, with notable experience in the finance, tourism and telecoms sectors.”



NEW SENIOR ASSOCIATE IN THE BAHAMAS



Sharmon Y. Ingraham has joined the firm’s Private Client and Wealth Management team. Her practice includes advice to trust companies on matters concerning trust administration and creation, estate administration, private client wealth management, wills, company law and international commercial contracts. She also has experience in trust, commercial and maritime litigation, ship financing and registration matters and banking and insurance regulatory matters.

Sharmon holds a dual honours degree in law and international politics from the University of Keele and qualified as a non-practicing Barrister in England and Wales. She has completed the STEP Diploma.

EUROMONEY'S AIRFINANCE FORUM

(L-R):- David Cotton, Group Analyst at Macquarie Rotorcraft Leasing; Oonagh Hayes, Managing Director of Corporate and Institutional Services, First Names Group; John F. Pritchard, Partner at Holland & Knight and Michael Allen.



Higgs & Johnson Partner and chair of the newly formed Aviation practice group, Michael Allen, attended the Euromoney's Airfinance event at the New York School of Aviation Finance. This event provided a broad exposure to a variety of current issues relative to aviation finance. Attendees represented a diverse cross section of industry participants representing financial institutions, airframes and engine manufacturers, attorneys, export credit agency personnel and aircraft leasing companies.

IATA TRAINING ON AIRCRAFT ACQUISITION & FINANCING

Francine Bryce, (front row, second from the left) with other participants in the IATA training from Columbia, South Africa, Canada, New York, California and Chicago.



Francine Bryce, Associate with Higgs & Johnson, Cayman Islands and Deputy Chair of the newly formed aviation practice group participated in the Aircraft Acquisition and Financing course given by the IATA Training and Development Institute. The firm's participation was designed to ensure a high level of training and on-going interaction with, aircraft acquisition and finance related issues.

IBA LITIGATION FORUM

Tara Archer with Mr. David W. Rivkin, IBA President and Partner at Debevoise & Plimpton



Higgs & Johnson Partner, Tara Archer and Associate, Audley Hanna attended the annual IBA Litigation Forum in Paris, France. The forum, Meeting the Challenges of Corporate Litigation in a Global Economy, was organized by the IBA Litigation Committee of which both attorneys are members. As litigation attorneys, they joined corporate counsel, managing partners, heads of law firm litigation departments and policymakers at the forum. The sessions highlighted a number of topics including:- Ethical aspects of multi-jurisdictional litigation; Managing the interplay between regulatory investigations and litigation; and Group actions.