

Quantum Leap for Bahamian Tourism

With an unprecedented collaboration of the hospitality industry's most recognised brands, the proposed *Baha Mar* development draws a new blueprint for Caribbean resorts. Robert Sands tells FOCUS about the project's likely impact on The Bahamas

FOCUS On Commercial Transactions

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Artist's rendition of the Baha Mar resort metropolis at Cable Beach in The Bahamas

A live primetime broadcast from the Bahamas Cabinet office is nothing to scoff at.

Preparing themselves for an announcement of epic proportions, viewers tuning in to local television on 6 April 2005 watched as the government of The Bahamas, from this chamber, blazoned the signing of an agreement with Baha Mar Resorts Ltd to revitalise three ailing hotel properties along 3,000 feet of continuous beachfront, and out of them create a resort metropolis unparalleled in The Caribbean.

The brainchild of longtime Bahamas resident, Sarkis Izmirlian who serves as the company's Chairman and CEO, the vision of Baha Mar comes with a price tag of upwards of \$2 billion. It would be the largest single phase investment of its kind in the region with a 1,000 acre boundary to encompass 3,000 hotel rooms, the largest Las Vegas style casino in the Caribbean, exclusive *Bliss* and *Remede* spas, and a one-of-a-kind 18-hole championship golf course from famed designer Jack Nicklaus.

But becoming the biggest requires a precise planetary alignment. Among other negotiations, the identification of the Starwood Hotels & Re-



Robert D. L. Sands, Senior Vice President, External/Government Affairs

sorts Worldwide and Harrah's Entertainment Inc brands as hotel and casino operating partners, respectively did much to usher in tourism's new 'age of aquarius'.

"It was important for us to be able to bring together world class brands Harrah's, Starwood and Nick-

laus to offer multiple brands within one identity," says Robert D. L. Sands, Senior Vice President of External and Government Affairs at Baha Mar Resorts Ltd. and veteran Bahamian hotelier. "Using a world leader like Harrah's, for example, we will be able to leverage global distribution, brand recognition and databases."

In another first, Baha Mar will also feature the only grouping of four Starwood brands at a single resort: the W, St. Regis, Westin and Sheraton will complement the Caesar's Palace Hotel, making Cable Beach and The Bahamas a leading resort destination *Cont'd pg. 10*

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.

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Behind the Wheel of Complex Investment Vehicles

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The Bahamas has an extensive complement of vehicles suitable for holding assets and investments including companies, partnerships, purpose trusts and foundations. This article will focus on these structures and provide some insight into what type of vehicle is most suited to various business and investment needs. It will also provide an outline of the practical steps which need to be taken in order to establish and maintain each entity.

An IBC is considered to be a very user-friendly and flexible corporate tool. The International Business Companies Act permits IBCs to engage in any activity provided that it is not prohibited under the laws of The Bahamas.

Companies Act Companies

A company established under the Companies Act, 1992 ("CAC") can be used by both foreigners and Bahamians, but is ideal for those wishing to establish a company with which to do business with the general public in The Bahamas. Certain entities which are licensed by regulators, banks and trusts or insurance brokers/dealers must be formed as CACs.

A CAC can be limited by shares or limited by guarantee. A company limited by shares has shareholders whose liability in the event of the winding up of the company is limited to the amount unpaid on the shares held by them; in the majority of cases this will be nothing. The personal assets of the shareholder will remain safe from any creditors of the company. A CAC limited by guarantee operates similarly to a company limited by shares, but has no share capital. The members of such company guarantee the payment of a specified amount (usually nominal) towards the debts of the company in the event of an insolvency on the cessation of business. A CAC limited by guarantee is sometimes structured to allow voting rights to be held by one class of members and profits to be paid to another class. An advantage of this structure is that control over assets can be achieved without the use of shares. On the death of a member of a CAC limited by guarantee, his membership ceases to exist.

Bahamian law requires at least two shareholders for a CAC limited by shares. Shares to be issued to or beneficially owned by non-Bahamians require prior approval of the Exchange Control Department of the Central Bank of The Bahamas. If the company is non-Bahamian owned and is to trade exclusively outside of The Bahamas it must be designated as 'non-resident', which will enable it to operate

foreign currency accounts without further reference to the Exchange Control Department. A company which is to conduct business in The Bahamas will be deemed 'resident' and will be able to hold foreign assets and operate foreign currency accounts only for specifically approved purposes. A non-Bahamian shareholder in a resident company should apply for 'approved investment status', which will assist in the conversion and repatriation of funds from any sale of the shareholder's investment in The Bahamas. A CAC is required to file an annual return which will list the registered shareholders, directors and officers of the company.

A CAC is required to have a registered office in The Bahamas and must have a minimum of two directors.

International Business Companies

International Business Companies ("IBCs") are generally incorporated by persons wishing to do business outside The Bahamas but, with the approval of the Exchange Control Department of the Central Bank of The Bahamas, can also conduct business in the domestic market. IBCs can be used as holding companies for real property located anywhere in the world, intellectual property, title to ships, securities and luxury items. They can also be employed for international trading and to hold offshore investments. They are also used for investment funds and segregated accounts companies.

An IBC is considered to be a very user-friendly and flexible corporate tool. The International Business Companies Act permits IBCs to engage in any activity provided that it is not prohibited under the laws of The Bahamas. They can be incorporated inexpensively within 24 hours. IBCs can have shares without par value and the authorized capital may be designated in any currency. There are minimal filing requirements and only registers of officers and directors must be filed with the Companies Registry. Information on the shareholders is not shared with the public. Further, there is no requirement for annual shareholders' meetings or audit of accounts. IBCs need only have one director and corporate entities can act as directors or officers. All IBCs are required to have a registered office and registered agent in The Bahamas, a service which is provided by regulated corporate service providers, bank or trust companies operating within the jurisdiction. It is also possible to incorporate a company as a Limited Duration Company, which has a lifetime of 30 years or less.

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Behind the Wheel of Complex Investment Vehicles cont'd

Exempted Limited Partnerships have proven to be attractive to potential investors in venture capital type situations.

IBCs and their shareholders are exempted for a period of 20 years from the date of incorporation from paying income tax and capital gains taxes, business license fees and stamp duty on transactions pertaining to the IBCs. However, stamp duty is payable on transactions pertaining to Bahamian real estate owned by IBCs. Much of the legislation refers to exemption from taxes, however, it is important to note that at the moment, there are no income or capital taxes in place in The Bahamas.

Filing fees of \$330 for the resident business of an IBC are payable for filing the Memorandum and Articles of Association with the Companies Registry. Annual maintenance fees payable to the Registrar General are \$350 where the authorized capital is \$50,000 or less and \$1,000 where the authorized capital is over \$50,000.

Segregated Accounts Companies

Segregated Accounts Companies ("SACs") are registered pursuant to the provisions of the Segregated Accounts Companies Act, 2004 (the "SAC Act") and a company established as either a CAC or an IBC that is engaged in a particular type of activity as set down in the SAC Act, qualifies to be registered as a SAC.

A SAC is comprised of a general account and segregated accounts. The general account is an account comprising all of the assets and liabilities of a SAC which are not linked or restricted to a segregated account. The assets of the general account are the only assets available to meet liabilities of the SAC that are not restricted to a segregated account. A segregated account is a separate and distinct account pertaining to an identified or identifiable pool of assets and liabilities which are segregated or distinguished from other assets and liabilities of the SAC.

In essence, a SAC is a company which allows the assets and liabilities of one account to be restricted or segregated to that individual account as opposed to forming the assets and liabilities of the company as a whole and on a liquidation, the assets of an account can be restricted to

that account and not used to meet the obligations or liabilities of any other accounts.

A SAC is a single legal entity, and the segregated accounts are not legal entities separate and apart from the SAC.

SAC's have several uses and are commonly used for investment fund structures. SAC's are required to prepare and maintain financial records as per the the SAC Act and are required to maintain a register of account owners.

Exempted Limited Partnerships

Exempted Limited Partnerships ("ELPs") are governed by the Exempted Limited Partnership Act, 1995. They allow one or more partners to limit their liability (the "limited partners") while the other partners have unlimited liability for the debts of the partnership (the "general partners"). There must be at least one general partner who in the case of an individual must be resident in The Bahamas or a local company. ELP's are also required to have a registered office in The Bahamas.

The limited partners should not compromise their limited liability by taking part in managing the partnership; this function must be carried out by the general partners. ELP's are prohibited from undertaking business with the general public of The Bahamas.

ELP's are exempted for 50 years from the establishment of the ELP from all local taxation, business fees and stamp duties and the provisions of the Exchange Control Regulations.

ELP's have proven to be attractive to potential investors in venture capital type situations. The distribution of profits between general and limited partners can be achieved more easily with the flexibility afforded by a partnership compared to the corporate structure. An ELP is registered by filing a brief statement providing the partnership's name, nature of the business, duration, the names and addresses of the general partners and the registered office address.



H&J Provides Legislative Updates to the Bahamas Financial Services Board

H & J partner Dr. Earl A. Cash (right) and legal clerk Christie E. Cash (left) meet with Bahamas Financial Services Board Executive Director Wendy Warren. The H&J personnel provided Ms. Warren with an update on Private Trust Companies for the BFSB's regular member and public briefing on financial service products and services offered in The Bahamas.

Ship-shape: Bahamas Ship Registry Maintains Third Place Position

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Celebrating its thirtieth anniversary this year, the Bahamas ship register is the flag of choice for many top quality ship owners and currently has the world's third largest fleet with some 1700 ships of 47million Gross Tons. The Bahamas Maritime Authority (the "BMA") recently announced plans to swell the register with the addition of 15 vessels by Teekay Corporation, transporter of more than 10 per cent of the world's seaborne oil. Teekay currently has 90 vessels registered with the BMA and is set to transfer eight products carriers and seven suezmaxes before the end of 2007, adding significant tonnage to the Bahamas register.

The BMA was established on 1 July 1995 and is a semi-autonomous, government-owned corporation with offices located in New York, London and Nassau from which it can advise and assist ship owners and their representatives to ensure the highest reputation of the Bahamian fleet and that high standards are maintained on Bahamian flag vessels. It continues to strive to ensure quality and safety at sea as well as a clean maritime environment.

The Bahamas Shipowners Association (The "BSA") which was inaugurated on 11 July 1997 to promote the interests of shipowners of Bahamian registered vessels provides an effective conduit through which ship owners may voice their opinions and concerns and also facilitates dialogue between ship-owners and the BMA. Together the BMA and BSA, based on their tonnage and independence as well as and their large representation of ship owners world wide have a powerful voice in the shipping world.

The Merchant Shipping Act 1976 (Chapter 268, Statute laws of The Bahamas (2000 edition)) (the "Act") provides a comprehensive scheme for the registration of ships under the Bahamas flag and is aimed at encouraging the use of The Bahamas Registry by foreign ship owners. Some of the other main advantages of registering a vessel under the Bahamian flag are set out below:-

Availability of Nautical Inspectors

In addition to the statutory surveys conducted by the Classification Societies, there is a world wide network of nautical inspectors who have

been approved by the BMA to undertake safety and crew condition inspections on board Bahamian ships and are available to assist ship owners, wherever their vessels may be.

Foreigners can hold direct title to a Bahamian vessel

As long as the ship is engaged in "foreign going trade" i.e. engaged in trade that is not exclusively within The Islands of The Bahamas or between The Bahamas and the East Coast of Florida, a foreign owner, irrespective of nationality or place of incorporation, can hold title to a Bahamian flag ship either directly or through a corporate entity. Furthermore any ship of 1600 or more net tonnage regardless of the nationality of her owners may also be registered as a home trade ship with the express permission of the Minister responsible for Maritime Affairs.

Tax Exemptions

The Bahamas does not impose any tax on income, capital gains or similar financial revenues. Therefore, the operation or income of a Bahamian- registered ship or any capital gain on her sale is tax-free in The Bahamas. Foreign owned vessels of more than 150 GRT are also exempt from Bahamas custom duties and documentary stamp taxes, whether they call at local ports or not. In addition, all instruments used for carrying into effect Part II of the Act, such as the prescribed forms required for the registration of ships and mortgages of Bahamian vessels, are exempt from stamp duty.

Competitive fees

The Bahamas offers competitive registration and annual fees for vessels engaged in commercial foreign trade as follows:

	Registration fee	Annual fee
2000 NRT or less:	\$2,000	\$2,552
2001 to 5000 NRT:	\$1 per ton	\$2,090 plus 0.20 per ton
5001 to 25000 NRT:	\$0.90 per ton	\$2090 plus 0.17 per ton
Over 25000 NRT:	\$22,500	\$12090 plus 0.17 per ton

A scheme of discounts has been introduced with regard to registration of vessels (with a net tonnage over 500), where an owner registers numerous vessels within a 12 month period.

Crewing flexibility

Foreign officers and crew members may serve on Bahamian vessels provided the officers hold foreign professional certification acceptable to the

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Ship-shape cont'd

Bahamas Maritime Authority and a licence has been issued to them by the Bahamas Maritime Authority. Upon production of the officers' Certificate of Competency granted by a competent recognised foreign authority and upon payment of a prescribed fee, a Bahamian licence of qualification will be issued to the officers.

Dual Registration

Where The Bahamas is the primary country of registration, bareboat or dual registry is allowed between the owner of a Bahamian ship and a secondary country that allows for dual registry. Therefore, ships may operate under another flag in accordance with the bareboat charter requirements whilst maintaining registration under the Bahamian flag. The Bahamian registration will be deemed suspended for the duration of the bareboat or dual registration, although mortgages may continue to be recorded on the Bahamas Register, for the period of the charter.

Reciprocally, ships may also be bareboat chartered into The Bahamas Register thus enjoying the privileges of a Bahamian ship, if the following criteria are met:-

1. the laws of the primary country allow it; and
2. a bareboat charter is entered into with a body corporate in The Bahamas.

However mortgages can only be recorded in the original register.

Simple process for the registration of Mortgages

The Act provides a simple, inexpensive and expe-

dient procedure for the registration and discharge of mortgages. The Registrar may record a mortgage or discharge of mortgage in respect of a vessel in the Register of Bahamian Ships as soon as the vessel is registered, upon production of the prescribed statutory form, duly executed and notarized. Brief details of the mortgage are entered in the register and a transcript of register can be issued evidencing the date and time of the registration of the mortgage as well as the name of the Owner and details of the Vessel, upon the payment of a prescribed fee. Mortgages are recorded in the order of date and time in which they are produced to the Registrar. Where more than one mortgage is recorded on a vessel, the order of priority between mortgages is the order in time of recording and not the order of the date of the mortgages.

Registration Requirements

Foreign-owned vessels may be registered in The Bahamas if they are less than 12 years old, at least 1,600 net registered tons (NRT) and engaged in foreign trade. If a ship is more than 12 years old and is under 1,600 NRT, special permission has to be obtained from the Minister responsible for Maritime Affairs for the ship to be registered on the Bahamas Register. Permission is usually granted subject to a satisfactory inspection conducted by a nautical inspector (if the vessel is not in class) or if a certificate is obtained from one of the 7 Classification Societies recognised by The Bahamas.

Did You Know: Pitfalls of Unregistered Land

Okay; so you know all about selecting premium real estate. But did you know that there are potential pitfalls for the ill-advised buyer when purchasing unregistered land? In general, a buyer's interest in property will only be as good as that of the seller. When purchasing land therefore, it is essential to examine the seller's title to ensure that there are no defects and that the title is 'good and marketable'. In a system of unregistered land (such as we have in The Bahamas), title examination is not a job for the amateur as there are hazards for the purchaser who does not seek legal advice. For example, is the property subject to restrictive covenants, easements or rights of way? Are there outstanding mortgages secured against the title? Are there subsisting leases? Are there relevant estate contracts or rent charges? Does any person have rights that arise by operation of law (e.g. dower rights)? Are there outstanding judgments against the seller or outstanding real property taxes, which constitute charges or liens against the

property?

A specialist in real estate law will not only ensure that recorded encumbrances such as those referred to above and others are identified and where possible removed, but will ensure that the seller has a "good root of title" going back at least thirty years as evidenced by a continuous chain of legally valid transfers. With an investment as important as your home, it is definitely worthwhile to obtain the right legal advice even though it may at times appear to be somewhat expensive. A defective title may be worth little or nothing and it may be difficult, if not impossible, to either rectify the title, reverse the transaction, or obtain compensation.

Think of it this way - beautiful beachfront property: \$500,000; constructing your dream home: \$1,000,000; having a great real estate lawyer to secure your interest: priceless.

With an investment as important as your home, it is definitely worthwhile to obtain the right legal advice even though it may at times appear to be somewhat expensive.

Case Report: Lady Henrietta St. George et al and Sir Jack Hayward et al

Patrick Ryan

Introduction

In a case which illustrates the importance of accurate documentation, Senior Justice Anita Allen ruled on Thursday, 30th August 2007 that Sir Jack Hayward was not the owner of 75% of the shares in Intercontinental Diversified Corporation (“IDC”), the company that owns most of the shares in the Grand Bahama Port Authority (“GBPA”).

The case had been before the courts since 12 November 2006 when proceedings were commenced against Sir Jack and six other defendants by the executors of the estate of the late Edward St. George. Included in these proceedings were claims for declaratory relief in respect of the ownership of IDC and another company called Fiduciary Management Services Limited (“FMS”). FMS, the fifth defendant in the action, was described in the judgment of Allen Sr. J as:

“... a Cayman company allegedly used by Mr. St George and the first defendant [Sir Jack] as a vehicle to hold their assets and investments as well as those of their families and friends ...”.

The matter was ordered continued under Order 28 rule 8 of the Rules of the Supreme Court on 30 May 2007 and the trial of the ownership dispute began on 1 August 2007.

The Plaintiffs sought declarations by the court that: (1) fifty per cent of the shares in IDC and held by FMS as nominee/bare trustee for Mr. St. George were beneficially owned by Mr. St. George, (2) upon his death the entire beneficial interest in that shareholding devolved upon his estate, (3) all monies paid out thereunder to Mr. St. George or his estate were properly so paid and (4) any monies derived therefrom and still undistributed were held by FMS as nominee/bare trustee for and to the account of Mr. St. George’s estate. As further or alternative relief, the Plaintiffs sought court orders requiring FMS to transfer all shares held by them on account for Edward St. George to the executors of the St. George Estate and all assets or monies held by FMS as nominee or bare trustee for the Plaintiffs or any of them to be transferred to the Plaintiffs.

Sir Jack was not present for the proceedings and the court was informed by his attorney, Gregory Moss, that Sir Jack was ill in England

and unable to travel. Sir Jack had instructed counsel not to participate further in the proceedings as he was unable to get an adjournment and, when the remaining defendants indicated that they would remain neutral, the action was left undefended.

The Factual Background

Sir Jack Hayward and Edward St. George were business partners in the Grand Bahama Port Authority, the entity which, under the Hawksbill Creek Agreement, exercised quasi-governmental control over the city of Freeport. The two men had, to all outward appearances, always maintained an amicable and mutually-supportive relationship. The GBPA operated through a group of companies, most of the shares of which were owned by IDC Panama - later to become IDC.

The Proceedings

The Plaintiffs’ position was strongly supported by witness testimony and documentary evidence. All of the witnesses, most of them former or current senior management personnel of the Port group of companies, stated that it had always been their understanding, based on both their dealing with corporate documents and correspondence and their personal knowledge of the two men, that the relationship was that of equal partnership. As this evidence was presented, a clearer picture of the nature of their business relationship began to emerge.

In 1982, under an oral agreement and, subsequently, by a letter dated 11 March 1982 and signed by both parties, Sir Jack and Mr. St. George agreed that, in exchange for his management services to the group of companies, Mr. St. George would receive a 50% shareholding in IDC Panama. The share capital in IDC Panama, the predecessor of IDC, was increased and those shares were then equally divided between Sir Jack and Mr. St. George. IDC Panama was wound up in 1984 and IDC was later incorporated with the same capital structure, the same shareholders and the same number of shares as IDC Panama.

According to the testimony of Mr. Donald de la Rue, a former chief financial controller of the GBPA, Sir Jack was paid in preferential dividends in exchange for equating the shareholding between himself and Mr. St. George. Shortly thereafter, Mr. St. George instructed Mr. de la Rue to issue the shares in IDC Panama to FMS to be held by that company for Mr. St. George’s benefit. Mr. de la Rue was uniquely positioned

Continued pg. 7

All of the witnesses... stated that it had always been their understanding, based on both their dealing with corporate documents and correspondence and their personal knowledge of the two men, that the relationship was that of equal partnership.

Case Report cont'd

to attest to this as he had set up and managed FMS from its incorporation. In her judgment, Allen Sr. J noted:

" 35. He [de la Rue] identified the minutes of the board of directors meeting dated 22 November 1984, which authorized the transfer of 1,735,143 to FMS and an equal number to the first defendant and Variant Industries Ltd on behalf of the first defendant. He identified the original of share certificate #6 dated 22 November 1984, which shows FMS as holder of 1,735,143 IDC shares. He confirmed that after the transfer of the shares from IDC to FMS, he considered those shares still to be held beneficially for Mr. St George. He was adamant that at no time after 11 March 1982 until October 2006 did the first defendant question Mr. St George's ownership of 50% of IDC Panama and subsequently IDC."

When IDC Panama was ultimately wound up and its assets transferred to IDC, the shares in IDC were split 50-50 and one half of them were transferred to FMS to the account of Mr. St. George and the other half went into Seashell Investments Limited ("Seashell") where, according to the Plaintiffs' Statement of Claim, they were held for the benefit of Sir Jack.

This was confirmed by Mr. Ian Barry, who took over as chief financial officer of the Port group in 1990 after the retirement of Mr. de la Rue. In regard to this point, Allen Sr. J, observed in her judgment that:

"He [Ian Barry] told the Court that eventually the first defendant's shares in IDC were transferred to Seashell and as far as he knew he [Sir Jack] remained the beneficial owner of those shares."

Mr. Barry further stated in his evidence that the shares of IDC held by FMS, were allocated, both during the tenure of Mr. de la Rue and himself, to Mr. St. George's portfolio. He also testified that, at a meeting held on the 23 October 2006 with Sir Jack and his attorney, Gregory Moss, he attempted to explain how FMS was structured but neither of them had any interest in what he had to say.

During the proceedings, a great deal of supporting evidence was produced by the Plaintiffs. Certainly one of the more cogent and persuasive pieces of evidence adduced by the Plaintiffs was the testimony of Mr. Barry concerning a meeting on 30 December 2004 during which a memorandum was signed by Sir Jack confirming that he and Mr. St. George were indeed equal owners of

the shares in IDC. As Allen Sr. J noted:

"He [Barry] told the court that on 30 December 2004, he met with the executors of the estate and went through Mr. St George's portfolio in FMS with them and showed them the IDC certificates. He said he was asked to confirm the ownership of Mr. St George in writing and he produced a document and asked both the first plaintiff [Lady Henrietta St. George] and the first defendant to confirm the ownership of the shares in IDC. He said the first defendant signed the original ... That memorandum provides:

'Intercontinental Diversified Corporation (ICD) is the owner of:-

- A) 92.5% of the issued shares of Grand Bahama Port Authority Limited**
- B) 100% of the issued shares of Port Group Limited**

ICD has issued share capital:

3,470,286 fully paid US \$2.00 Ordinary shares

ICD shares are owned:-

- A) 1,735,143 shares by Seashell Investments Limited (Sir Jack Hayward Trust)**
- B) 1,735,143 shares by Fiduciary Management Services Limited (for the account of Edward P St George)**

Confirmed on 6 day of January 2005:

**Sir Jack Hayward
Lady Henrietta St George'**

He confirmed that after the document was signed, a large dividend was declared and he reiterated that the first defendant never questioned the 50-50 division of the shares or dividends."

Mr. Barry then told the court that, on 23 October 2006, Sir Jack called him to his office at which time Sir Jack demanded to know why Mr. Barry had induced him to sign the memorandum of 30 December 2004 and accused him [Barry] of hood-winking him. Sir Jack then said that on the following day he would make an announcement stating that he owned 75% of the shares

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Bahamian Senator and US Tax Attorney Draw Over 130 for H&J Private Wealth Seminar

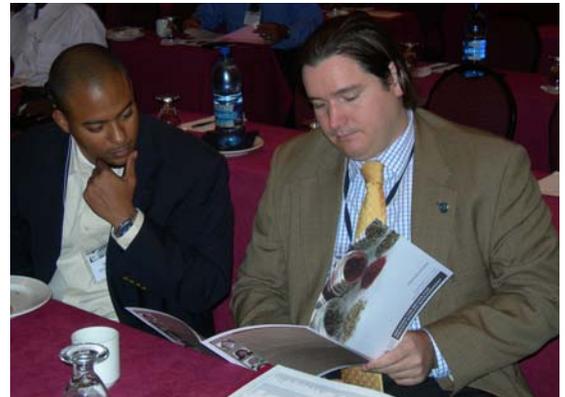


Minister of State for Immigration, Sen. Hon. Elma Campbell, recently delivered the keynote address at the firm's private wealth seminar, ***Refining the Recipe for Private Wealth Management***, on 7 November at the British Colonial Hilton. The seminar was designed to update and educate financial services professionals on the growing number of developments taking place in the industry and the subsequent increase in opportunities available to their high net worth clients.

Anchoring the programme was US tax attorney Stephen L. Cantor, Managing Partner of Cantor & Webb P.A., a Miami, Florida law firm specialising in tax, estate planning and property matters for high net worth international clients. Mr. Cantor closed the seminar with an update on the status of the proposed Stop Tax Haven Abuse Act (STHAA) introduced by US Senators Carl Levin, Norm Coleman and Barack Obama.



H&J Senior Partner, Philip C. Dunkley offers a thank-you gift to Senator Campbell



"An interesting lineup!"



Guests included trust companies, private banks and others.



H&J Managing Partner John K. F. Delaney (right) closes the programme with a token to Stephen Cantor

FOCUS On Our Commercial Transactions Group

The Bahamas is a premier international financial centre having a real connection with many large international financing projects. The Firm has substantial experience as advisers on all Bahamian aspects of such financing projects, including:

- Syndicated loan agreements;
- Swap agreements;
- International Swap Dealers Association Agreements;
- International Foreign Exchange Agreements;
- Re-invoicing agreements;
- Bond issues;
- Security interests;
- Credit transactions; and
- Share Purchase Agreements.



Through its historic strong connections with leading law firms in New York, London and other foreign commercial centres, and in conjunction with Terralex, an international association of independent law firms, the partnership is attuned to a variety of related international matters.

Specialty Areas include:

1. Financing;
2. Sales; and
3. Acquisitions

The firm has been involved in most of the major mergers and acquisitions in the jurisdiction over the past five years.

The members of the Group are:

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 Lisa R Benjamin
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 Sterling H Cooke
 Tara E Cooper
 John K F Delaney
 Philip C Dunkley
 Zarina M Fitzgerald

Vann P Gaitor
 Vivienne M Gouthro
 Oscar N Johnson
 Stephen J Melvin
 Portia J Nicholson
 Léon R Potier
 N Leroy Smith
 Heather L Thompson
 Shasta J Treco-Moxey
 Tessa L Turnquest

Case Report: cont'd

in IDC.

That announcement was made and the family and Estate of Edward St. George filed suit.

The Judgment

Having heard the evidence, Allen Sr. J found that the Plaintiffs had proven their case. In an elegant and metaphoric summation of the case, she said:

"I am convinced that the plan to take over the control of GBPA and PGL was hatched in someone's fertile imagination in late 2006. Alas, however, there was too much water under the bridge, too long a paper trail and too many persons with intimate knowledge of the relationship, for the plan to be successful. The figures don't add up, they don't support a 75-25 shareholding, neither does the paper trail. There is no evidence of any such assertion prior to 2006 and, indeed, on one occasion after 2006, the first defendant contradicted that

assertion. The preponderance of evidence points to a shareholding of 50-50 between the first defendant and Mr. St George and to a trust of Mr. St George's IDC shares by FMS ... In the circumstances, I enter judgment for the plaintiffs and grant the declarations sought ... and the orders sought ..."

Costs in the action were awarded to the Plaintiffs on a full indemnity basis.

Matters have not, however, ended there. According to a press release by Frederick R. M. Smith, one of the attorneys for the St. George Estate:

"The confusion surrounding the ownership of Sir Jack Hayward's shares is of grave public importance. Mr. [Frederick] Smith on behalf of the Estate has made representations to the Prime Minister inviting the Government to investigate the matter."

It appears – perhaps unfortunately for Freeport – that the battle has only just begun.

Quantum Leap for Bahamian Tourism cont'd

as hosts to the most prestigious collection of hospitality brands in the world.

"We have seen the success of competing properties and saw that there was something to be done in western New Providence to complement that level of success," says Sands. "Our principals then made the commitment to pursue that dream and Baha Mar was realised. We will create an unobstructed contiguous resort campus with integrated water and beach amenities that incorporate the spirit of The Bahamas.

"Hotels by themselves do not make destinations; there must be other features to give us an edge. We will be a complete destination with diverse dining opportunities, beaching and shopping. The Nicklaus course will also bring increased credibility to golfing in The Bahamas and put us in a position to attract a larger cadre of golfers and world class tournaments in the future."

Still in the early stages of its five-year expansion plan, Baha Mar has already completed a \$135 million capital development programme that enabled it to celebrate the grand opening of the recently refurbished and newly branded

694-room Sheraton Cable Beach Resort.

This construction has started the ball rolling on the economic benefits in the pipeline, says Sands. "To date, over 600 local contractors and suppliers have been engaged. Direct construction jobs are expected to average out at 2,000, peaking at 4,000 at the height of construction. Construction wages will generate about \$354 million."

Beyond construction salaries, direct and indirect employment will mean about 7,000 new incremental jobs and \$7 billion in local salaries over 20 years, Sands adds, referring to a study conducted by leading economic forecasting agency, Global Insight.

Says Sands: "Baha Mar will have an unparalleled economic impact on the Bahamas, injecting \$578 million in spending and direct taxes in its first year of operation and contributing \$14.8 billion to the GDP over 20 years."



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