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The International Comparative Legal Guide to:

Private Client 2019

8th Edition

A practical cross-border insight into private client work

Published by Global Legal Group with contributions from:

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
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Printed by
Stephens & George
Print Group
January 2019

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ISBN 978-1-912509-52-2
ISSN 2048-6863

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FOREWORD

Welcome to the 2019 edition of The International Comparative Legal Guide to Private Client which I am delighted to introduce this year. The Guide covers a comprehensive and diverse range of articles that would pique the interest of any domestic or international practice client adviser. The publication is designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

The Guide is divided into two sections and the first section contains seven general chapters. Each topical chapter is written by a different firm which will be most helpful for advisers with international clients.

The second section contains insightful country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 35 jurisdictions.

As an overview, the Guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work. The articles are provided by some of the most authoritative and respected advisers in the private client industry and I trust that you will find them just as valuable.

George Hodgson, CEO, STEP (Society of Trust & Estate Practitioners)

Bahamas

Heather L. Thompson



Higgs & Johnson

Kamala M. Richardson



1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

The Bahamas does not have a system of direct taxation. Taxes imposed within the Bahamas such as stamp duty, customs and excise duties, VAT and real property taxes are levied upon all individuals within the jurisdiction of the Bahamas, regardless of their domicile or habitual residence.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable to the Bahamas.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Residence is only relevant to the extent that it is determinative of whether a person is subject to the Exchange Control Regulations imposed in the Bahamas. Bahamian Exchange Control prohibits those deemed non-resident (e.g. visitors and permanent residents (not having the right to work) of the Bahamas as well as companies incorporated in the Bahamas having resident and/or non-resident owners and carrying on business outside of the Bahamas) from engaging in Bahamian currency transactions or holding Bahamian securities without prior approval from the Central Bank of the Bahamas. Similarly, residents (e.g. Bahamian citizens, permanent residents with the right to work, and companies incorporated in the Bahamas having resident and/or non-resident owners carrying on business in the Bahamas) may not engage in foreign currency transactions or hold foreign securities without the prior approval of the Central Bank of the Bahamas.

1.4 If residence is relevant, how is it defined for taxation purposes?

See the answer to question 1.3 above.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

See the answers to questions 1.1 and 1.3 above. Nationality determines whether exemptions may be granted from certain taxes, such as stamp duty, VAT and real property tax.

1.6 If nationality is relevant, how is it defined for taxation purposes?

Broadly speaking, under the Stamp and Real Property Tax Acts, “Bahamian” means a Bahamian citizen or a company in which not less than sixty per cent (60%) of the shares are beneficially owned by Bahamians.

1.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?

There are no other connecting factors.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

The Bahamas does not levy estate or gift taxes. However, stamp duty is levied where a voluntary transfer of real (and some personal) property is made. Under the Stamp Act, 1925 (as amended), stamp duty is chargeable on the instrument (e.g. deed, conveyance or other document) effecting the transfer, certain exceptions permitted.

Please also see the response to question 4.3 below.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

The Bahamas has no income or capital gains tax regime.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

The Bahamas does not have a system of direct taxation.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

The Bahamas imposes indirect taxes by way of customs duties and excise duties, real property taxes and VAT.

Pursuant to the Value Added Tax Act, 2014 the consumption of certain goods and services within the Bahamas subject to VAT at a standard rate of 12%. Notably, certain financial products/services are exempt from VAT such as life and annuity insurance policies as well as financial services supplied to persons outside of the Bahamas.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are no such provisions enacted in the Bahamas.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Generally speaking, where indirect taxes are unlawfully avoided, the relevant legislation pursuant to which the tax is levied will provide for the imposition of penalties for non-payment of taxes or, in certain instances, a term of imprisonment *in lieu* thereof.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

There are no such arrangements in place in the Bahamas.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

The Bahamas does not levy estate or gift taxes.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

The Bahamas does not have an income or capital gains tax regime.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

The Bahamas has no system of direct taxation, therefore there are no pre-entry tax planning strategies to be undertaken prior to arrival in the jurisdiction.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There are no such liabilities.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

The Bahamas levies customs duties on the importation of goods in the Bahamas which are collected by the Bahamas' Customs Department. Customs duties are chargeable at a rate of 0% to 220% depending on the specific goods imported. With respect to goods

accompanying a person on arrival to the Bahamas, visitors may claim an exemption from customs duties up to the value of \$100, while returning residents may claim up to \$500.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

The purchase of real estate in the Bahamas attracts liability for the payment of stamp duty, subject to certain exceptions. If the value of the property purchased is \$100,000 or less, the rate of stamp duty levied is 2.5% of the value of the property. If the property is valued in excess of \$100,000, the rate of stamp duty levied is 10% of the value of the property. Additionally, if the value of the property exceeds \$250,000, real property tax also becomes payable. However, owner-occupied property exceeding this value may be exempted from payment of real property taxes, provided it is not valued at over \$500,000.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

The Bahamas does not have a corporate taxation regime. However, pursuant to the Business License Act, 2010 (as amended) businesses which are licensed to operate in the Bahamas are liable to business licence tax in the following amounts:

- for a new business, \$100;
- 0.5% of turnover if turnover is between \$50,001 to \$500,000;
- 0.75% of turnover if turnover is between \$500,001 to \$5,000,000; and
- 1.25% of turnover if turnover \$5,000,001 or more.

It should be noted that any bank or trust company licensed under the Banks and Trust Companies Regulation Act, 2000 ("BTCRA") which has paid its fees as mandated by the BTCRA is exempt from business licence tax. In addition, family offices which are deemed non-resident for exchange control purposes and which only deal with non-resident clientele are only liable for business licence tax in a nominal amount.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

This question is not applicable to the Bahamas.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

This question is not applicable to the Bahamas.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

There are no tax treaties *per se*; however, the Bahamas has entered into Tax Information Exchange Agreements ("TIEAs") with approximately 30 countries including the Australia, Canada, France, the United Kingdom, and the United States of America. The entry

into these TIEAs was a direct result of the Bahamas' commitment to effecting the mandates issued by the OECD namely, the G20 standard on Transparency and Cooperation in Tax Matters. These bilateral agreements follow the OECD's Model Agreement and allow for tax information to be exchanged upon request made by either party to the agreement provided the information is relevant to the administration or enforcement of the domestic tax laws of one of the parties. Each agreement contains controls that prohibit the requesting party from making unfounded requests. In order to insure against fishing expeditions, requests are thoroughly vetted for their authenticity prior to information being delivered to the requesting party. Generally, the TIEAs provide that a request for information may be denied where i) the request was not made in the manner prescribed by the TIEA, ii) the request was of a general nature and not specific as to the information being sought, iii) it is believed that the requesting party has not exhausted all available means of obtaining the information within its jurisdiction, and iv) the provision of the information would be contrary to public policy. In addition, the Bahamas has implemented FATCA and CRS. As such, the Bahamas is obliged to exchange financial and tax information with the United States under FATCA and with participating jurisdictions under the Convention on Mutual Administrative Assistance in Tax Matters for CRS purposes.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

See the answer to question 6.1 above.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

See the answer to question 6.1 above.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

See the answer to question 6.1 above.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

By and large, the Bahamas' laws regarding succession of property accord with those of the United Kingdom. In short, the succession of moveable property owned by a deceased is governed by the *lex domicilii* (or law of the domicile) of the deceased immediately prior to death, while the succession of immoveable property of a deceased is governed by the *lex situs* of the property, i.e. the law of the jurisdiction within which the property is situated. The Bahamas upholds the doctrine of testamentary freedom and as such does not have a forced heirship regime. By virtue of the Wills Act, 2002, a person may dispose of his estate, moveable or immoveable, as he chooses by Will, provided that the Will has been validly executed.

Generally speaking, in order for a Will to be validly executed it must: i) be made by a person of eighteen (18) years of age or older and of sound mind; ii) be in writing and signed at the foot by the testator or in his presence and at his direction; and iii) attested to and signed by two (2) witnesses in the presence of the testator both

present at the same time. The marriage of a testator after he has executed a Will shall revoke that Will except where it appears from that Will that the testator intended to marry a particular person and did not intend that the Will should be revoked upon marriage to that person. Furthermore, where a testator divorces after he has made a Will, if he has appointed his former spouse as executor or trustee of the Will or made a gift to the former spouse in the Will, the Will shall take effect as if no such appointment or gift had been made.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

As stated in question 7.1, the law with regard to succession of immoveable property is the law of the jurisdiction within which that property is located. Where a person owns property in the Bahamas, he/she may dispose of that property by way of Bahamian or foreign Will. However, the transfer of the property to those entitled must be effected in accordance with Bahamian law, e.g. by application for a grant of representation to the Bahamian Supreme Court and subsequent transfer of the property to the person(s) entitled by way of Deed of Assent or Conveyance by way of Assent.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

The Bahamas upholds the principle of freedom of testation, meaning that a person who makes a Will is free to leave his estate to the persons he chooses, to the exclusion of persons. However, under the Inheritance Act 2002, a spouse or dependent child of a deceased person who was domiciled in the Bahamas at the time of their death may apply to the court for an order for reasonable financial provision to be made from the estate of the deceased on the grounds that the Will of the deceased does not make such provision.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

As a common law jurisdiction, the Bahamas does recognise trusts and the courts have a long history of deciding trust matters. Trusts established in the Bahamas are governed by the Trustee Act, 1998. Also, the Bahamas departs from the traditional common law position under which purpose trusts are only recognised where they are charitable. The Bahamas recognises the validity of purpose trusts established for both charitable and non-charitable purposes. Purpose trusts are governed by the Purpose Trust Act, 2004.

8.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

There is a nominal tax on the creation of trusts (bare trusts excepted) governed by Bahamian law called "Trust Duty" of \$50 which may be paid by applying Bahamian revenue stamps to the trust instrument. Settlers and beneficiaries of trusts are not subject to taxation.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

The Bahamas has dedicated legislation to insulate trusts governed by Bahamian law from challenges emanating from succession claims and forced heirship regimes in other jurisdictions. The

Trusts (Choice of Governing Law) Act, 1989 provides that no trust which is governed by and deemed valid under Bahamian law is liable to be set aside on the grounds that it defeats heirship rights of another individual acquired under foreign law. This Act restricts the enforcement of foreign judgments based on an heirship claim.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Foundations are recognised in the Bahamas and may be established locally by virtue of the Foundations Act, 2004.

8.5 How are foundations/funders/beneficiaries taxed in your jurisdiction?

Foundations are not liable to tax in the Bahamas.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

The Foundations Act, 2004 contains provisions whereby neither a distribution made to a foundation nor the foundation itself is to be made liable for or deprived of any right for the reason that the disposition or right defeats foreign heirship rights. There are restrictions on the enforcement of foreign judgments.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

The Bahamas does not have in place legislation to permit or to recognise civil partnerships or same-sex marriages.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Prior to the Inheritance Act, 2002, on the death of her husband a wife acquired a right to one-third (1/3) of the real property owned by her husband, known as dower rights. The Inheritance Act, 2002, expressly abolished dower rights in respect of persons dying after the commencement date of 1st February 2002. Therefore, such rights may still be asserted in respect of the estate of a deceased dying prior to that date. Furthermore, in relation to the estate of a deceased person dying after that date, the Act makes provision, for the spouse of a deceased person, male or female, to have a right to occupy the marital home. Also, see the answer to question 9.4 below.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

There is no legislation in the Bahamas giving effect to pre-/post-nuptial agreements; however, UK and local case law in this area is instructive.

The UK Supreme Court case of *Radmacher v Granatino* [2010] UKSC 649 confirmed that when considering whether to uphold a pre-nuptial agreement, the court should have regard to whether it would be fair to hold both parties to the agreement. The Bahamian Supreme Court case of *M v F* [2011] 2 BHS J. No. 13 affirmed this position *vis-à-vis* the upholding of pre-nuptial agreements in the

Bahamas. In that case, the court agreed to uphold an agreement but to vary its terms in fairness to both parties as opposed to ruling that it was void and of no effect.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The law with regard to financial provision on divorce in the Bahamas is set out in the Matrimonial Causes Act, 1879 (as amended). By virtue of the Act, Bahamian courts have discretion to order that temporary financial provision be made for either spouse commencing from the date of filing of the petition for divorce to the date of determination of petition. Thereafter, if a divorce is granted, the court may make further permanent orders whereby financial provision is to be paid by one spouse to the other by way of lump sum or periodical payments. The court may also make an order whereby one party must transfer property to the other. In making an order, the court will have regard to the surrounding circumstances of each case.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Visitors to the Bahamas entering on a valid passport and with a return ticket to their destination of origin or ticket to another country which will accept them are permitted to stay in the Bahamas for a period of up to eight months without applying for any formal Bahamian immigration status. If a person wishes to remain in the Bahamas for a period exceeding eight months, they may acquire either one of three categories of residency status, namely a homeowners card, annual residency permit or permanent residency certificate by applying to the Director of Immigration.

By acquiring either a homeowners card or annual residency permit a person is entitled to remain in the Bahamas for a period of up to one (1) year. A person may become eligible for a homeowners card or annual residency permit by satisfying the Director of Immigration that he/she is of good character and has the financial means to support him or herself while staying in the Bahamas. It should be noted that neither a homeowners card nor annual residency permit entitles a person to engage in gainful employment within the Bahamas. Additionally, as the name suggests, an applicant for a homeowners card is required to adduce evidence that he/she has purchased a home in the Bahamas which should be of a minimum value of \$250,000. Applicants for a homeowners card or annual residency permit may also endorse their spouse and children (or other dependants) on their application acquiring for them the same status. Both the homeowners card and annual residency permit must be renewed on an annual basis.

Should a person wish to remain in the Bahamas on an indefinite basis, he/she may apply to the Director of Immigration for a permanent residency certificate. Generally, permanent residency may be granted on the following basis: i) marriage to a Bahamian citizen; ii) being born legitimately outside of the Bahamas to a Bahamian woman married to a non-Bahamian man; iii) medical professionals working in the Bahamas for a consecutive period of twenty (20) years or more; iv) having held Bahamian residency status or a work permit for a period of 20 years or more; and v) persons making a minimum investment in the Bahamas of \$750,000.

Permanent residency acquired under the latter category listed above is known as economic permanent residency which has proved popular amongst investors. Though it is not a requirement to obtain

economic permanent residency, many choose to evidence their investment in the Bahamas by purchasing Bahamian real estate. Special treatment is given to investors investing a minimum of \$1.5 million by accelerated consideration of their application.

Persons granted a permanent residency certificate acquire some rights akin to Bahamian citizenship, such as unrestricted land ownership and an uninterrupted right to reside in the Bahamas. However it must be remembered that the Director of Immigration retains discretion to revoke the residency status granted to any person, however, this is only exercised in extreme circumstances.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

See the answer to question 10.1 above in relation to economic permanent residency.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Bahamian nationality, or citizenship rather, may be acquired either automatically or by way of grant. Automatic citizenship is acquired by persons who are: i) born in the Bahamas, to Bahamian parents (or with one Bahamian parent) legitimately; ii) born to a unmarried Bahamian woman, either inside or outside of the Bahamas; iii) born to a Bahamian man outside of the Bahamas; or iv) adopted by either a single Bahamian woman or married Bahamian man. Persons falling outside of these categories who wish to acquire Bahamian citizenship may be granted Bahamian citizenship upon application to Department of Immigration provided they are either: i) a person born in the Bahamas to non-Bahamian parents; ii) a person with at least one (1) parent who is a Bahamian citizen; iii) a woman married to a Bahamian citizen; or iv) a person having Bahamian permanent residency for a period to ten (10) years, including a period of one (1) year immediately prior to the date of their application and having resided in the Bahamas for a period of six (6) years immediately prior to that one (1) year period. It is by way of the latter category that foreign nationals may acquire Bahamian citizenship.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There are no adverse tax implications arising from the acquisition of Bahamian nationality emanating from Bahamian tax law or policy. To the contrary, a person acquiring Bahamian citizenship would be entitled to all of the tax and other fiscal benefits that go along with Bahamian citizenship such as stamp duty and VAT exemptions on the purchase of a first home and exemption from the payment of real property taxes on unimproved property or property on one of the out islands of the Bahamas.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The Bahamian government has indicated that it is considering the institution of a tax residency certificate to be granted to foreign nationals who reside in the Bahamas for a consecutive period of one hundred and eighty (180) days. It is believed that the tax residency certificate may be implemented in the coming months.

Additionally, there is accelerated consideration of permanent residency for applicants making an investment of \$1.5 million as discussed in question 10.2 above.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

In 2015, the Bahamas enacted the Bahamas and the United States of America Foreign Account Tax Compliance Agreement Act, 2015 thereby facilitating the entry of the Bahamas into an inter-governmental agreement with the United States of America to provide for the automatic reporting of accounts established in the Bahamas and owned by US taxpayers to hold non-US securities. The first reports made by the Bahamas under the agreement were completed in August of 2016 with respect to information for the year 2015.

On the 1st January 2017, the Automatic Exchange of Financial Account Information Act came into effect in the Bahamas and established the initial framework for the automatic exchange of information between the Bahamas and other countries who have formally agreed to implement CRS. The reports of financial account information were made to the Competent Authority by financial institutions in the Bahamas on the 31st July 2018 and were in respect of financial account information for the year 2017. The first exchanges of financial account information were made by the Competent Authority to other participating jurisdictions of the 30th September 2018. As at August 2018, the Bahamas had committed to exchange financial account information with 72 jurisdictions.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

There are no such reporting requirements imposed.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

There are no public registration requirements for trusts in the Bahamas. However, companies incorporated in the Bahamas are required to provide the Registrar General's Department with a list of their directors and officers, whilst a foundation is required to provide a list of its officers.

**Heather L. Thompson**

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Heather L. Thompson, Of Counsel with Higgs & Johnson, has extensive experience in international trust and company administration giving her a unique perspective in counselling clients on the creation of trusts and ownership structures. Her practice includes wills, applications for probate, estates administration, foundations, private trust companies, issues in company law and international commercial contracts. She advises trust companies on the development of new services and issues arising in trust administration.

Heather is a founding member and past chairperson of STEP Bahamas and a former member of STEP's Council. She has served as a consultant on several important pieces of financial services legislation and received numerous awards including the Bahamas Financial Services Board 'Executive of the Year' and the STEP Founder's Award for Outstanding Achievement. She is ranked as a leading lawyer in her field by *Chambers Global* and has been included on the IFC Power Women Top 100 list.

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Kamala Richardson is an Associate in the Private Client & Wealth Management practice group at Higgs & Johnson. She specialises in matters relating to trust and company law. Her practice includes the creation and review of trusts, wills, foundations and other wealth planning structures. In addition, she advises clients on all aspects relating to international and domestic commercial transactions and their regulatory requirements. She also advises on matters relative to company formation and corporate governance.

Kamala received a B.A. (Hons.) in Law and Business Administration from the University of Kent, completed the Bar Professional Training Course at the University of Northumbria and was called to the Bar of England and Wales as a member of Inner Temple. Subsequently, she completed an LL.M. in International Maritime Law at the University of Swansea.

Kamala is a member of the Bahamas Bar, a STEP Affiliate and a member of the Bahamas Financial Services Board's Trust Working Group.



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