THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

NINTH EDITION

Editor
John Riches

THE LAWREVIEWS

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PREFACE

I would like to focus my remarks on some of the key trends that might be expected to affect the world of high net worth individuals in the immediate aftermath of the covid-19 pandemic.

I ISSUES DURING THE PANDEMIC

During the pandemic, we have seen a relatively consistent pattern among OECD countries of measures that are mainly focused on delaying obligations to file tax returns and make tax payments to reflect the turmoil in some business and personal finances that these exceptional circumstances have wrought. Interestingly, at the beginning of April the OECD issued an analysis examining double tax treaties and the impact of the crisis on individuals' presence, which may have been constrained as a result of the pandemic. The following were notable conclusions.

i Permanent establishments

For individuals constrained to work in a different location and, in particular, for those working from home, provided the state of affairs is regarded as temporary and exceptional it would not generate the required degree of permanency to create a fixed place of business.

ii Corporate tax residence

The view from OECD is that the temporary relocation of board members to different locations will not generally impact a company's tax residence.

iii Personal tax residence generally

In considering where an individual's centre of vital interest may be, any exceptional circumstances generated by the covid-19 pandemic should not, by themselves, cause an individual's residence to change.

One specific area where countries have taken steps to introduce exceptional guidance is in the context of a day count test. Specifically, Australia, Ireland and the UK have given guidance in the context of disregarding days of presence where this is used as a factor in determining residence. Clearly in all these cases, significant care needs to be taken to ensure that a temporary, exceptional circumstance does not become a permanent state of affairs. Where any tax analysis is dependent upon an individual being constrained in their ability to travel, it is likely to be prudent to keep contemporaneous records of attempts to travel to show that an individual has not changed his or her behaviour or residence in consequence of

the crisis on a more permanent basis and taken the opportunity to leave the relevant country as soon as possible. Difficulties may arise if an individual in Country A is unable to travel to Country B but could have gone to other locations. Will it be possible to argue that all steps were taken to leave if the individual waited until it was possible to travel to Country B?

II POSSIBLE RESHAPING OF TAX POLICY POST COVID-19

There have been many pronouncements and speculations appearing in the media about how national governments will look to finance the deficits they have incurred during the crisis. A significant degree of speculation has focused on the extent to which high net worth individuals will be targeted with an increased tax burden as one of the mechanisms for financing government deficits. Speculation varies between the possible introduction of some form of annual wealth tax to increased estate taxes.

One interesting example is a proposal in Argentina for a one-off tax levy on ultra-high net worth individuals (UHNWI). The bill being promoted in Argentina proposes a one-time tax on wealth calculated on personal assets of Argentine residents as at 31 March 2020. For individuals with a personal asset base of US$3 million, the proposed rate of tax would fall in the range of 2 per cent to 5.5 per cent. This would be in addition to the current annual wealth tax burden of 2.25 per cent for individuals on wealth that is held outside of Argentina. An article published by an Argentine think tank in April 2020[1] sets out an interesting array of proposals that have been advanced, principally by opposition parties, in South America and Europe. One additional strand that has emerged in Europe is the exclusion from state aid programmes for companies that are headquartered in 'tax havens'. This has been promoted in countries including the United Kingdom, Denmark and France.

A pan-European tax for UHNWIs in the EU has been suggested by economists, Gabriel Zucman and Emmanuel Saez (University of California at Berkeley) and Camille Landais (London School of Economics).[2] The suggested parameters they advance would be to tax those holding assets of more than €2 million (the top 1 per cent) at 1 per cent, those holding assets of more than €8 million (the top 0.1 per cent) at 2 per cent above that threshold and those holding more than €1 billion at 3 per cent above that threshold. They also argue that by making the tax EU-wide, there will be no incentive for individuals to relocate within the EU to avoid the tax.

Historically, one of the objections that has been raised, certainly in Europe, to wealth taxes is the relative inefficiency in the collectability of wealth tax because of the significant degree of compliance work required in checking an individual's filings and valuing their net worth to calculate the levy.

Clearly there is a paradox for tax authorities in considering any form of one-off, or permanent, tax measures that are targeted on high net worth individuals, namely the concern that such measures do not detract from the efforts of business entrepreneurs to create employment and prosperity for others. Furthermore, there will clearly be concern about measures that could be seen as targeting wealthy individuals from other jurisdictions who are looking to locate in the relevant country where increased tax measures could both discourage

1 https://centrocepa.com.ar/files/informes/20200502-wealth-tax.pdf.

2 https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response.

high net worth migrants from relocating to the jurisdiction or, in some cases, might create an incentive for such individuals to give up their residence.

If new measures of this character are proposed, it will be very interesting to see, in countries such as the UK or Italy that have special regimes for non-domiciliaries, how those regimes will be impacted, if at all, by tax-raising measures targeted at wealthy individuals.

Turning to estate taxes, one recent proposal that is worthy of note in the UK is a report published in January 2020 by a cross-parliamentary group of politicians that considered the UK's inheritance tax policy in the context of intergenerational fairness.[3] Notable conclusions from the report were to highlight the extent to which the UK's rule exempting gifts between individuals that occurred more than seven years before the death of the donor as allowing the very wealthy to mitigate their estate tax burden in a way that is not open to those of more modest means who do not have significant surplus to donate to future generations. The central proposal from the report was to scrap a 40 per cent inheritance tax burden levied on gifts occurring on death or within seven years with a flat rate 10 per cent tax that would apply to all gifts giving each individual a lifetime allowance for gifts that were exempt. Part of the thinking behind switching to a donee-based tax system is to encourage senior generations to make wealth transfers to younger generations (potentially from grandparents to grandchildren) in a manner that rebalances the distribution of wealth towards the young. While such measures are unlikely to be central in financing any deficits arising from the covid-19 pandemic in the short term, it will be interesting to see whether a flat rate tax, at a lower level, will find favour with policy makers in the UK. The thinking of the group issuing the report was that the overall unpopularity of the current regime, where taxes are levied on death could be overcome by one that is levied at a much lower rate and is applied uniformly to gifts during the lifetime as well as on death.

Another notable initiative from the EU that is likely to, potentially, impact private clients are the proposals incorporated within the sixth version of the EU Directive on administrative cooperation (DAC6). DAC6 aims to provide the tax authorities of EU Member States with additional information to enable them to close potential loopholes in tax legislation and harmful tax practices. Intermediaries advising on cross-border arrangements involving EU jurisdictions are obliged to report details of the arrangements and the relevant tax payers involved to their Member States who will share the information with other Member States' tax authorities. If there is no intermediary with an obligation to report, the relevant taxpayer will be obliged to do so. For the purposes of DAC6, an arrangement is interpreted very broadly and a cross-border arrangement is reportable if it concerns at least one EU member state and satisfies at least one of the hallmarks described in the Directive.

The hallmarks are very broadly worded and describe certain characteristics which, if satisfied, make the arrangement reportable. The majority of the hallmarks cover arrangements with some form of tax 'benefit' but there are specific hallmarks relating to arrangements that undermine the application of automatic exchange of information agreements such as the Common Reporting Standard and attempts to conceal beneficial ownership. A key concern with this particular hallmark is that the test appears to be wholly objective and the intentions of the parties are arguably not relevant. Intermediaries acting for high net worth individuals

3 www.step.org/sites/default/files/media/files/2020-05/STEPReform_of_inheritance_tax_report_012020.pdf.

and their structures will need to consider the impact of these rules on any arrangements entered into that may concern one or more EU Member States.

Turning away from the tax arena, many jurisdictions have introduced measures during lockdown to facilitate the digital execution of documents, including wills. It will be interesting to see to what extent policymakers will be happy to allow such measures to prevail on a long-term basis. Historically, the very strict measures that prevail on the execution of wills are clearly designed as a protective measure to mitigate the impact of undue influence. It seems likely that such measures will become a permanent part of the overall landscape for the execution of wills going forward. In circumstances where wills are drawn up by professional advisers who have direct contact with a testator or testatrix without the intervention of family members, such measures could well be a welcome relaxation that will make it easier for individuals to make wills in the years ahead in circumstances where it is likely to be less easy to travel to meet, in person, with one's professional advisers for a significant period of time. Given that, in many circumstances, there is a significant degree of 'inertia' that stops individuals from engaging with estate planning, this can only be a welcome development.

In conclusion, we can expect a significantly changed paradigm to prevail to the planning arena for wealthy families in the months and years ahead once the primary crisis generated by the pandemic concludes. A key area of uncertainty at present is the extent to which enhanced tax measures will be targeted at the wealthy. The wider changes in business practice and greater use of video meetings could, however, provide something of a 'silver lining' in terms of making it easier for individuals to access reliable estate planning and succession advice and measures on digital execution could facilitate the easier execution of documents once that process is concluded. What is certain is that a combination of these various measures is likely to significantly impact the planning environment for wealthy families in the years ahead. It seems likely in this context in particular that the EU will become more assertive in its approach to wealthy individuals and their tax affairs as DAC6 is implemented.

John Riches
RMW Law LLP
London
July 2020

Chapter 7

BAHAMAS

Earl A Cash and Nia G Rolle[1]

I INTRODUCTION

The Commonwealth of The Bahamas (The Bahamas) set its sights on becoming a premier international financial centre more than 40 years ago. With coordination from the Central Bank, the Ministry of Finance, other relevant governmental departments and the banking and financial community, a roadmap was devised to make the country a leading offshore tax-neutral jurisdiction. The Bahamas boasts a familiar democratic government, based on the Westminster system, inherited from its years as a colony of Great Britain. With a bicameral legislature consisting of the House and the Senate and a distinguished judiciary, it provides an attractive environment for business and commercial transactions. The easy communication with the Americas and Europe is a bonus augmented by the proximity of The Bahamas to the United States. Besides being an attractive business centre for the ultra-high and high net worth individuals, The Bahamas is also a place where many of those individuals have chosen to reside. Such choice has been aided by direct flights or easy connections to numerous cities in Canada, the United States, the Caribbean, Central and South America, the United Kingdom and Europe. Indeed, The Bahamas is readily a gateway to the world because of its geographic advantage.

Many of the globally recognised financial institutions have some presence or affiliation in The Bahamas. They exist alongside several boutique institutions that would attract those who prefer banking with smaller institutions. Professionals, including private bankers, lawyers, accountants and other service providers, facilitate the conduct of business on a highly proficient level. Government has taken aggressive steps to liberalise immigration laws to allow the importation of any additional skilled assistance that would be useful in servicing the needs of the ultra-high and high net worth individuals.

The key points that make The Bahamas an important jurisdiction for private client matters are given below.[2]

i Location

The Bahamas is an archipelago spanning 100,000 square miles extending southeast from Florida in the United States to northern Hispaniola. The proximity to the United States makes The Bahamas a hub for regional investment and business in the United States, Canada and Central and South America. It is in the same time zone as New York and Toronto, with office hours that align with most of the major business centres in the Americas.

1 Earl A Cash is a partner and Nia G Rolle is an associate at Higgs & Johnson.

2 'Business in The Bahamas', Bahamas Financial Services Board, www.bfsb-bahamas.com/business-in-the-bahamas.

ii Wealth and asset management services

The Bahamas is home to over 270 licensed banks and trust companies, including seven of the world's top eight private banks and 35 of the top 100 global banks. These financial institutions deliver services involving private banking and trust services, accounting, legal services, e-commerce, insurance, and corporate and shipping registries. The Bahamas North American banks have been doing business in The Bahamas for more than a century and European and Swiss banks have deep roots established over more than 70 years. Financial institutions from other regions with growing economies are recognising the advantages of operating in The Bahamas. Additionally, there is an excess of 800 funds that are licensed in The Bahamas and more than 60 fund administrators.

iii Political and economic stability

The Bahamas has more than 280 years of uninterrupted parliamentary democracy. It has been an independent nation since 1973 and retains a Westminster-based system of government and an English-based legal system. Additionally, its currency is on a par with the US dollar.

iv Taxation

The Bahamas remains a tax-neutral platform where international persons receive the same tax benefits as Bahamians. There are no income, capital gains and inheritance taxes for all residents of The Bahamas.

v Highly educated workforce

Most Bahamians who desire to be wealth management practitioners receive their qualifications from universities in the United States, Canada and the United Kingdom.

vi Infrastructure

The Bahamas has developed infrastructure suited for the facilitation of international business, with some 21 international airports, 10,000 acres on Grand Bahama Island earmarked for an industrial and commercial zone (along with one of the deepest harbours in the region), and modern facilities connected globally.

vii Regulation

The Bahamas displays its dedication to the growth of its financial sector by adhering to all international regulatory principles and participating in multilateral organisations established to set and monitor standards for regulation and Anti-Money Laundering and Countering of Terrorist Financing (AML/CFT). Regulators in The Bahamas are subject to independent assessments conducted by the Caribbean Financial Action Task Force and the Internarial Monetary Fund.

viii Immigration

The Bahamas has a flexible immigration policy that encourages companies to develop Bahamian talent but recognises the needs of international firms, individuals and families to recruit additional human resources abroad. Such policy provides non-Bahamians with the opportunity to apply for economic permanent residency. The minimum residential

investment threshold for application for permanent residency is B$750,000; for accelerated consideration an investment of B$1.5 million or greater enables the application to be considered within 21 days.

II TAX

All individuals, whether international or residing in The Bahamas, may benefit from the tax regime in The Bahamas. When using Bahamian structures, persons need not worry about income, capital gains, gift or succession taxes in this jurisdiction. The few taxes imposed in The Bahamas include the following:

a 10 per cent value added tax (VAT) on the purchase of real estate;

b 12 per cent VAT on the purchase of certain goods and services; exemptions to VAT on certain financial services and products are offered to individuals outside of The Bahamas, such as life insurance policies;

c although we have no corporate taxes, businesses (excluding bank and trust companies) operating in The Bahamas pay business licence fees; and

d customs duties which, owing to recent initiatives to streamline the tax system in The Bahamas, have recently decreased.

Notably, the city of Freeport (the Port Area) on the island of Grand Bahama is a free-trade zone, which incentivises investments by offering all of its licensees exemption from most custom duties, real property taxes and inventory taxes.

i Issues relating to cross-border structuring

Confidentiality and the right to privacy remain of paramount importance within the realm of private wealth services in The Bahamas, even as the jurisdiction experiences pressure to increase regulatory transparency at the expense of such confidentiality and right to privacy. For example, when cooperating with foreign jurisdictions to improve international compliance as encouraged by the Organisation for Economic Co-operation and Development (OECD) standard for tax information exchange, requests for the disclosure of information from foreign regulatory bodies will only be complied with if such requests are in accordance with a relevant tax information exchange agreement (TIEA). Each request is vetted and The Bahamas reserves the right to deny any such request for the reasons hereinafter described.

In addition, any company incorporated under the laws of any foreign jurisdiction may continue as a Bahamian company under the International Business Companies Act 2000 (IBCA).[3]

ii Regulatory issues relevant to high net worth individuals generally or that impact the general market of private wealth services

The OECD has established standards on transparency and exchange of information for tax purposes and has strongly encouraged countries to adopt these standards to be regarded as cooperating in matters of tax information exchange transparency. In full cooperation with the OECD, The Bahamas has signed 34 TIEAs that provide for the exchange of information upon request and is in negotiations for several additional agreements. Most TIEAs are based

3 Section 84, International Business Companies Act 2000 (Chapter 309, Statute Law of The Bahamas, Revised Edition 2009).

on an OECD model agreement, entitled 'Agreement on Exchange of Information on Tax Matters'. A TIEA is not an automatic information exchange between the two signatory jurisdictions; only upon request will information be exchanged, and each TIEA sets specific guidelines for such requests. The Bahamas may decline a request for tax information where:

a it is believed that the requesting party has not exhausted all avenues in their own jurisdiction;

b the request was not sufficiently specific;

c the request was not made in accordance with the TIEA; and

d the disclosure of the requested information would be considered contrary to the public policy of The Bahamas.

The Bahamas entered into an intergovernmental agreement with the United States, following the passing of the United States Foreign Accounts Tax Compliance Act (FATCA), to improve international tax compliance for accounts established in The Bahamas that involve US persons. Bahamian financial institutions will provide automatic reporting to the Bahamas Competent Authority. By way of the Automatic Exchange of Financial Account Information Act, The Bahamas has also put into effect automatic exchange reporting with several other jurisdictions deemed to have implemented sufficient safeguards to protect the confidentiality and security of the reports exchanged.

III SUCCESSION

The rules of succession in The Bahamas are closely modelled after those of the United Kingdom, with the added benefit of the absence of succession taxes. By virtue of the Wills Act 2002, The Bahamas codified the value it places on testamentary freedom. An individual may dispose of his or her estate, consisting of both movable and immovable property, as provided in a validly executed will. After the lifetime of such individual, taking possession of such deceased person's property situated in The Bahamas requires applying to the Bahamian courts for a Grant of Probate.[4] Where an individual dies without a will in a common law jurisdiction, the court will issue a grant of letters of administration in respect of his or her estate to the surviving spouse or to such other persons according to law, vesting in an administrator powers and duties similar to those of an executor.[5]

i Relevant cross-border developments

Where there has been a grant of probate or a grant of letters of administration (or its respective equivalent) in a foreign country regarding a deceased person having property in The Bahamas, the personal representatives would then obtain a resealing of the foreign grant by the Bahamian courts to administer or dispose of the portion of the estate of such deceased person that is situated in The Bahamas.[6]

4 Section 7, Probate and Administration of Estates Act 2011 (PAEA).

5 Section 8, PAEA.

6 Section 26, PAEA.

ii Applicable changes effecting personal property

The statute law of The Bahamas is silent on the impact of pre-nuptial and post-nuptial agreements. Therefore, as a common law jurisdiction, the case law of the United Kingdom and The Bahamas gives direction on these matters. The Supreme Court case of *M v. F*[7] confirmed that the general position in The Bahamas is that a pre-nuptial agreement will be upheld where such agreement was entered into freely and voluntarily by both parties having full appreciation of its implication, and where it would be fair to give effect to that contractual arrangement. This position is consistent with the judicial trend the United Kingdom.[8]

Civil partnerships and same-sex marriages are not legally recognised in the jurisdiction.

IV WEALTH STRUCTURING AND REGULATION

i Commonly used vehicles for wealth structuring

International business companies

An international business company (IBC) is a versatile corporate entity, incorporated under the IBCA, designed to facilitate the operation of legitimate business anywhere in the world with the additional benefit of tax neutrality from a Bahamas perspective. The flexibility and cost-effectiveness of an IBC lends to a wide variety of uses such as holding companies, investment funds, family offices, private trust companies and captive insurance companies.

IBCs are required to maintain a registered office and appoint a registered agent that is licensed under the Banks and Trust Companies Regulation Act or the Financial and Corporate Service Providers Act 2000.[9] Such registered agent has regulatory and compliance obligations of its own. An IBC is not required to file an annual return; however, it is required to pay an annual fee that is based on the size of its authorised capital. Also, an IBC may have to demonstrate certain substance requirements.

Trusts

Generally, trusts are a well-recognised vehicle for wealth structuring in The Bahamas. The Supreme Court of The Bahamas has an abundance of experience deciding matters of equity. Trust legislation in the jurisdiction introduced strong protective statutory provisions favouring the preservation of a trust. For example, the fundamental trust legislation, The Trustee Act 1998, allows a settlor of a trust to retain certain discretionary powers without invalidating such trust. Notably, these discretionary powers include:

a the power to revoke the trust or trust instrument;
b the power to add or remove trustees, protectors or beneficiaries; and
c the power to give trustees investment directions.[10]

Other unique features found in complementary trust legislation include:

a the Trusts (Choice of Governing Law) Act 1989, which enables trusts governed by the laws of The Bahamas to be administered anywhere in the world notwithstanding

7 [2011] 2 BHS J No. 13.
8 *Radmacher v. Granatino* [2010] UKSC 649.
9 Section 38, IBCA.
10 Section 3, Trustee Act 1998 (Chapter 176, Statute Law of The Bahamas, Revised Edition, 2009).

the domicile of the settlor, the beneficiaries, the assets. As a result, the Act provides protection for assets held in such trusts from forced heirship claims or the enforcement of other foreign law rules; and

b the Rules Against Perpetuities (Abolition) Act 2011, which abolished the rule against perpetuities in the jurisdiction.

There is no system of registration for trust instruments and supplemental documents.

Asset protection trusts

A foreign settlor may place his or her personal assets in a Bahamian trust, making his or her personal assets subject to the terms of the trust. The Fraudulent Dispositions Act 1991 provides significant creditor protection of assets placed in a Bahamian trust that has been in existence for two years or more. When a creditor commences an action seeking to apply assets held in a Bahamas trust to the liability of a settlor, the burden of proof is on the creditor to evidence that the transfer of assets to such Bahamas trust was intentionally fraudulent.

Purpose trusts

The Purpose Trust Act 2004 created a new trust product in The Bahamas that allows capital or income of any property that might have fixed interests, discretionary interests or a combination of both to be held upon trust for non-charitable purposes. This trust, referred to as an authorised purpose trust, may be a trust for one or more authorised non-charitable purposes and one or more individuals, corporations or charitable purposes. While the beneficial interest of the trust property may not be vested in any legal person, the trust instrument designates an authorised person who will have rights to enforce the terms and provisions of a trust by making certain applications to the court including administrative proceedings, proceedings for breach of trust and also rights to information.

Private trust companies

A private trust company (PTC) is a company formed for the exclusive purpose of acting as trustee of a specific trust, or group of trusts. The key distinction between PTCs and professional trust companies is that PTCs can be tailored to suit the needs of a particular family. Generally, the primary allure of PTCs is that they enable families to exercise a greater level of control over the administration of their trusts. PTCs may also appeal to individuals desiring to add an extra layer of confidentiality regarding their financial affairs or otherwise desiring the freedom to hold risky illiquid assets. Further, PTCs may solve any trustee succession issues because PTCs have the advantage of perpetual existence and can serve as trustee indefinitely. PTCs are not ideal for every client but can offer significant advantages for high net worth individuals seeking trust services.

Foundations

A foundation is a separate legal entity, capable of suing and being sued, which is established by a charter and subsequently registered. A foundation is a hybrid of a company and a trust and can be used as a vehicle for the holding of private assets endowed on the foundation for the benefit of purposes, identified persons or classes of persons, in accordance with the objects or purposes specified in the charter. The Foundations Act 2004, as amended from time to time, provides for the creation of a private foundation in The Bahamas.

Once assets are transferred by the founder to the foundation by way of an endowment, they cease to belong to the founder and do not become the property of any beneficiary until they are distributed. The founder can control the foundation by appointing a foundation council to manage the foundation. The founder may be a member of such foundation council or reserve powers to himself or herself. Distribution and specific purposes may be expressed in a confidential letter or memorandum. The registration process requires that a fee of B$125 to B$500 be delivered to the Registrar of Foundations, along with certain information, including the name of and the purposes and objects of the foundation. The charter and articles do not need to be filed with the registrar. Initial assets, which must be at least B$10,000 or the equivalent in any other currency and that could consist of cash, shares or other assets, should be endowed immediately following the registration of the foundation.

Partnerships

Partnership arrangements are governed by the Partnership Act and any agreement negotiated between partners; such partnership agreement may override the provisions of the Partnership Act. In The Bahamas, there is no requirement for partners to be domiciled in the jurisdiction in a general partnership arrangement. Partnership is simply two or more persons carrying on a business in common with a view of profit. The cost for establishing a partnership varies based on the level of complexity of the arrangement and the fees for professional services rendered concerning advisory needs of the partners and the preparation of any relevant documents. Each partner in a firm shares in the profits of the partnership activities as well as in the liability and debts of the partnership.

ii Anti-money laundering regime and other key aspects of regulation of service providers dealing with private wealth

To sustain itself as a reputable international financial centre well-equipped to manoeuvre and compete in an increasingly regulated global environment, The Bahamas has committed to complying with international standards for financial centres and to implementing effective countermeasures to emerging trends in money laundering, terrorism and other related activities. As a member of the United Nations, the Commonwealth of Nations, the Organization of American States and Caribbean Community, The Bahamas is better equipped to adhere to international standards and anticipate regulatory trends.

The Bahamas is also a member of the Caribbean Financial Action Task Force (CFATF), the Caribbean sub-group of the Financial Action Task Force (FATF). The CFATF conducts peer assessments of its members' AML/CFT laws, policies and procedures and reviews the extent to which countries comply with the FATF's 40+9 Recommendations for preventing money laundering and countering the financing of terrorism. The jurisdiction's efforts to assess and strengthen its AML/CFT framework are ongoing.[11]

Since 2000, the government of The Bahamas has enacted several laws relating to anti-money laundering. These laws provided more comprehensive and enhanced supervision of financial institutions, corporate service providers and IBCs and established a more synchronised system of deterrence against money laundering and other criminal activities within the financial sector. These laws include:

a the Banks and Trust Companies Regulation Act 2000;

11 'Regulation'. Bahamas Financial Services Board, www.bfsb-bahamas.com/theindustry/regulation.

b the Central Bank of The Bahamas Act 2000;
c the Financial Intelligence Unit Act 2000;
d the Proceeds of Crime Act 2000;
e the Financial and Corporate Service Providers Act 2000;
f the International Business Companies Act 2000;
g the Evidence (Proceedings in other Jurisdictions) Act 2000;
h the Criminal Justice (International Cooperation) Act 2000;
i the Financial Transactions Reporting Act, 2018;
j the Financial Transactions Reporting Regulations, 2018;
k the Proceeds of Crime Act, 2018;
l the Anti-Terrorism Act, 2018; and
m the Anti-Terrorism Regulations, 2019.

The anti-money laundering legislation in The Bahamas is considered to be as advanced as that of any other OECD member country.

The following are the primary regulatory agencies in The Bahamas.

Central Bank of The Bahamas

The Central Bank of The Bahamas (the Central Bank) is the central financial institution in the jurisdiction, playing the lead role among the country's regulatory agencies. Its stature within The Bahamas is reinforced by its long-standing presence in the jurisdiction, which has placed The Bahamas in the position to have been regulating banks and trust companies since 1965. As supervisor of banks, the Central Bank promotes the soundness and integrity of the banking and financial system through the effective application of international regulatory and supervisory standards.[12]

The Central Bank fills the traditional roles as issuer of legal tender, banker to both domestic banks and the government, and regulator and supervisor of the banking sector. The Central Bank also fosters confidence in the financial system by implementing policies and standards that are in keeping with international best practices for supervision and regulation; by maintaining the external value of the Bahamian dollar, which is fixed at a 1:1 parity with the United States dollar; by compiling financial statistics; and by promoting monetary stability and a sound financial structure.

Securities Commission of The Bahamas

Since its establishment in 1995, the Securities Commission of The Bahamas (SCB) has dedicated its efforts to contributing to the growth and development of a financial services sector by identifying the evolving demands of our regulatory landscape and by responsively adapting and modernising its technology, facilities, employees and work processes and procedures. The mandate of the SCB involves the formulation of principles:

a to regulate investment funds, securities and capital markets;
b to maintain surveillance over investment funds, securities and capital markets safeguarding fair and equitable dealings; and

12 'About Us'. *Central Bank of The Bahamas News RSS*, www.centralbankbahamas.com/about.php.

c to create and stimulate conditions to encourage methodical advancement and evolution of the capital markets in The Bahamas.

The SCB also advises the Minister of Finance regarding investment funds, securities and capital markets.

The SCB is well-positioned to maintain awareness of such aforementioned evolving regulatory demands as a member of the following international, regional and national bodies: the International Organization of Securities Commissions; the Council of Securities Regulators of the Americas; the Offshore Group of Collective Investment Scheme Supervisors and the Group of Financial Services Regulators.

While the regulatory duties of the SCB does have a compliance component concerning adherence to the laws of The Bahamas and the promotion of satisfactory disclosure and fair dealing, the SCB is not concerned with and does not intend to be concerned with the endorsement of the merits of any investment. The SCB is responsible for ensuring the accuracy and comprehensive nature of information required to be disclosed and that such information is provided in a timely matter.

Insurance Commission of The Bahamas

The Insurance Commission of The Bahamas (ICB) is responsible for the prudential regulation of all insurance activity in or through The Bahamas. It is concerned with the ongoing surveillance and control of insurers, agents, brokers, salespeople, underwriting managers and external insurers. The ICB's mandate includes promoting and encouraging sound and prudent insurance management and business practices and advising the Minister of Finance on insurance matters.

It is the directive of the ICB to undertake all of the due diligence necessary to guarantee that companies interested in operating in The Bahamas are reputable and of high-quality. It is also the supervisory responsibility of the ICB to ensure that it safeguards the interests of the policyholders associated with such companies. The ICB has developed a risk-based supervisory methodology, and a principles-based approach that allows flexibility.

The Bahamas is a member of the International Association of Insurance Supervisors, which is recognised as the standard-setting body for insurance regulators. The Bahamas is also a member of the Group of Offshore Insurance Supervisors and a member of the Caribbean Association of Insurance Supervisors. Organisations such as these aim to instill a consistent and frequent exchange of regulatory information that helps the regulator to draft and enhance world-class legislation.

V OUTLOOK AND CONCLUSIONS

It would be inappropriate to risk leaving the reader with the impression that The Bahamas does not have its challenges in maintaining its status as a noteworthy international financial centre. Like many other similar jurisdictions, The Bahamas has faced various strictures from the OECD, FATF, FATCA, Common Reporting Standard and the myriad rules and directives promulgated by or under the foregoing. This has resulted in centres like The Bahamas having to reassess how they will function to comply with the international norms of the larger, developed, onshore countries, including signing on to the requisite TIEAs. At the same time, The Bahamas has had to refashion itself, no longer as a total tax-free environment with bank secrecy, but as an internationally compliant jurisdiction that continues to conform to the

transparency and best practices expected by the global financial community. The goal is that The Bahamas will shed the beleaguered image of being a haven for providing sinister means for hiding wealth. Ultimately, The Bahamas should emerge stronger for being an esteemed, well-regulated jurisdiction.

Appendix 1

ABOUT THE AUTHORS

EARL A CASH

Higgs & Johnson

Specialising in trusts and estates and banking law, Dr Earl A Cash, PhD is a partner and chair of the private client and wealth management practice group of Higgs & Johnson and services major trust companies in The Bahamas. He has been a member of the Florida Bar since 1979, and The Bahamas Bar since 1982.

Earl spent the 1990s as a temporary stipendiary and circuit magistrate for night court in the Bahamas, and served as a member of the ethics committee and of the disciplinary tribunal of the Bahamas Bar Association. He is ranked as a leading lawyer by legal directories *IFLR1000*, *Chambers Global*, *Chambers High Net Worth* and *WWL: Private Client*.

Earl has lectured and written articles on the Trustee Act and related legislation. His publications include articles in *International Financial Law Review*, *Journal of International Planning* and *Trust and Trustees*. He has made contributions to the text, 'Asset Protection: Domestic and International Law and Tactics'.

Earl has lectured at the College of The Bahamas and the University of Miami in Business Law and Literature and has served as chairman of the board of trustees of the University of The Bahamas.

NIA G ROLLE

Higgs & Johnson

Nia G Rolle is an associate in the private client and wealth management practice group of Higgs & Johnson, specialising in wills, estate planning and matters related to trust law and company law.

Nia obtained a Bachelor of Laws Degree with Honors from the University of the Kent in 2016. She participated in the mentorship programme as an academic peer mentor in public law and volunteered at the Kent Law Clinic, while pursuing her LLB (Hons). She went on to complete the Bar Professional Training Course at BPP University in London in 2017. In that same year, she obtained the ADR-ODR Accredited Civil-Commercial Mediator accreditation.

Nia was called to the Bar of England and Wales and the Bar of the Commonwealth of The Bahamas in 2017. She became an associate of the firm in 2018 following the completion of one year of pupillage.

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