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The Bahamas: Trends & Developments
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Trends and Developments

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Current Perspective

In our previous Trends and Developments report in 2021, we stated that the Bahamian economy “remain[ed] challenged” amid a global surge in confirmed cases resulting from the Delta variant of the COVID-19 virus. Fast-forward 12 months and the Bahamian economy has continued to steadily recover, driven by the economic growth of key trading partners and encouraging levels of tourism activity, foreign direct investment, and foreign investment in real estate. In testament to this, the Central Bank of The Bahamas (“Central Bank”) recently estimated that the Bahamian economy will grow at a rate of at least 5% in 2022 and that this growth trend will continue into 2023 (see [“Remarks by Governor Rolle on the Monthly Economic and Financial Developments \(MEFD\) June 2022” – Central Bank of The Bahamas, 2 August 2022](#)).

While the worst of the COVID-19 pandemic is seemingly behind us, its legacy remains – the pandemic has accelerated the adoption of new practices and technologies, highlighted areas for reform in the financial services sector and exerted considerable economic pressure on consumers, financial institutions, and the public purse. In this last regard, a recent Inter-American Development Bank report pegged the total cost of the pandemic to The Bahamas at an estimated BSD9.5 billion – nearly 85% of The Bahamas’ estimated nominal GDP in 2021 (see [“COVID-19 Effects and Impacts on The Bahamas Estimated at \\$9.5 Billion” – IDB, 6 July 2022](#)).

The themes that have recently dominated the Bahamian legal and regulatory framework relating to financial services include the following:

- an increased focus by the government of the Commonwealth of The Bahamas on improving revenues;
- the relaxation of measures adopted by the Central Bank during the height of the COVID-19 pandemic to preserve the country’s foreign currency reserves;
- modernising the Bahamian credit system;
- modernising the Bahamian payment system;
- enhancing the robustness of The Bahamas’ AML/CFT regime; and
- an increased focus by the government on the regulation and growth of the digital assets space.

Increased Focus by Government on Improving Revenues

In an effort to improve the state of the country’s public finances, the government has pursued a programme of enhancing revenue collection and has introduced new fees as part of its 2022–2023 Budget Legislation. With respect to financial institutions in particular, the Business Licence (Amendment) Act, 2022 reintroduced business licence taxes for financial services entities, after banks, insurance companies and other regulated financial entities were exempted from paying business licence taxes by the Business Licence (Amendment) Act, 2019. Under the most recent amendment, financial services entities must now pay a business licence tax of BSD2,500 in addition to an annual tax based on turnover.

Relaxation of Measures to Preserve Foreign Currency Reserves

When the Bahamian economy was closed in March 2020 due to the COVID-19 pandemic, the Central Bank proactively introduced a number of measures designed to preserve the country's foreign currency reserves and the fixed parity of the Bahamian dollar with the United States dollar. These measures included the suspension of approval for commercial banks to remit dividend payments outside of The Bahamas from May 2020 to March 2021 and for Bahamian residents (for exchange control purposes) to purchase foreign currency for overseas investments in securities and real estate. The suspension of the approval of applications by Bahamians to purchase foreign currency to fund overseas investments in securities and real estate was lifted by the Central Bank effective from 1 October 2021.

Modernising the Bahamian Credit System

The Credit Bureau

To reduce delinquency and instability in the financial services sector by improving the availability of credit information for market participants, the Credit Reporting Act, 2018 was enacted to establish a legal framework for a national credit reporting system and to regulate the operation of credit bureaus. The Italian-based CRIF S.p.A. was chosen by the Central Bank as its preferred credit bureau operator in 2019 and CRIF Information Services Bahamas (the "Credit Bureau") launched its operations in 2021. The Credit Bureau is in the process of acquiring data from credit information providers for the purposes of generating credit reports. As of the end of April 2022, all but one local commercial bank had started submitting data to the Credit Bureau (see [Neil Hartnell's "Entrenched reduction?": Bad loans down \\$22m" – The Tribune, 4 May 2022](#)).

Proposed legislation to modernise the secured credit transactions system for movables

The Central Bank released a draft Movable Property Security Interests Bill, 2022 for consultation after a diagnostic study was conducted to identify gaps in the existing Bahamian legal framework for movable property security interests. The Bill is modelled on the UNCITRAL Model Law on Secured Transactions with some adjustments (eg, to some of the terminology) to make the proposed legislation more suited to The Bahamas. The Bill is intended to regulate the way most security interests in movable property in The Bahamas are created, perfected and enforced, as well as other issues such as priority between competing creditors and third parties. The Bill also contemplates the creation of a centralised, online-accessible, searchable electronic collateral registry system which will permit the registration of security interests in movable property.

Modernising the Bahamian Payment System

Cheque elimination project

As a result of the global trend towards the digitisation of payment systems, the Central Bank, the Clearing Banks Association and local supervised financial institutions have committed to cease using Bahamian dollar cheques as negotiable instruments for the acquisition of goods and services and the settlement of legal and financial obligations in The Bahamas on 31 December 2024. The elimination of cheques is one of several initiatives being pursued by the Central Bank to facilitate the adoption of digital and online banking.

Promotion of digital currency

The Central Bank introduced the first digital currency in The Bahamas, the Sand Dollar, nationwide in October 2020. The Central Bank has

continued its campaign to promote the uptake of the Sand Dollar domestically. As of November 2021, there was BSD302,785.04 worth of Sand Dollars in circulation, approximately 28,000 digital wallets using them and approximately 845 merchants that accepted them (see [Paige McCartney's "Central Bank on target to integrate Sand Dollar platform with RTGS, ACH systems" – The Nassau Guardian, 29 December 2021](#)).

Commitment to a Robust AML/CFT Regime

In accordance with The Bahamas' commitment to maintaining a robust AML/CFT regime and complying with international standards, the Financial Transactions Reporting (Amendment) Act, 2022 was enacted to amend the Financial Transactions and Reporting Act, 2018 (FTRA, 2018) to, among other things:

- enhance the penalties regime;
- require financial institutions to undertake measures to make all employees aware of the provisions of statutory provisions relating to money laundering, terrorism, terrorist financing, proliferation and proliferation financing and the procedures maintained by the financial institution for complying with its duties under such provisions;
- require financial institutions to provide all employees who have or may have access to any information which may be relevant in determining whether any person is engaged in money laundering, terrorism, terrorist financing, proliferation and proliferation financing, appropriate training in the recognition and handling of transactions carried out, by or on behalf of, any person who is or appears to be, engaged in money laundering, terrorism, terrorist financing, proliferation and proliferation financing at least once per year; and

- calibrate the circumstances in which the Compliance Commission may disclose information, documents and material it has acquired in the exercise of its functions to overseas regulatory authorities.

The Securities Commission of The Bahamas, which has regulatory responsibility for digital assets and digital asset businesses in The Bahamas under the Digital Assets and Registered Exchanges Act, 2020 (DARE Act), implemented the Digital Assets and Registered Exchanges (Anti-Money Laundering, Countering Financing of Terrorism and Countering Financing of Proliferation) Rules, 2022 to extend the AML/CFT framework applicable to other financial institutions, to registrants in the digital assets space.

Other Innovations in the Digital Assets Space

Another development which is worthy of note is the publication by the government on 20 April 2022 of a Policy White Paper on The Future of Digital Assets in The Bahamas. By way of background, the DARE Act, which was passed in 2020, provides a regulatory framework for the regulation of digital assets in The Bahamas. The White Paper outlines the government's vision and policy position on the regulation of the digital assets space over the next five years, including its objective to grow the sector by 2025.

Conclusion

Despite inflationary pressures and post COVID-19 issues, such as supply chain shortages which are plaguing economies worldwide, The Bahamas is currently undergoing a period of stable economic recovery. With the worst of the pandemic apparently in the rear-view mirror, policymakers have now turned their attention towards addressing some of the financial consequences of the pandemic, advancing initiatives to modernise The Bahamas' credit and payment

THE BAHAMAS TRENDS AND DEVELOPMENTS

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systems, refining the compliance framework in accordance with international best practices, and growing the digital assets space.

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Higgs & Johnson is one of the oldest and largest full-service law firms in The Bahamas, and has been in existence for over 70 years. The financial services practice group has extensive experience in advising domestic and international banks, trust companies, family offices, financial services and securities firms operating

within and/or from The Bahamas on the laws and regulations governing the financial services industry. The team regularly advises clients on regulatory matters, issues relating to licensing, compliance, M&A, KYC, suspicious activity reports, internal policy and procedure manuals, FATCA, CRS and economic substance.

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Christel Sands-Feaste is a partner at Higgs & Johnson, where she leads the firm's practice groups in financial services, securities, investment funds, and fintech. A highly

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