FOCUS

HIGGS & JOHNSON COUNSEL & ATTORNEYS-AT-LAW | VOLUME 68, ISSUE 3/2026

WHAT'S INSIDE

> Beyond the Will: How Intestacy, Forced Heirship, and Marital Property Shape Inheritance

> Reasonable Investigations: What Every Employer Should Know Before Dismissing An Employee for Misconduct

> H&J in the News

The Evolution of Bahamian Financial Services: Usufructs and the Future of Wealth Structuring

Christel Sands-Feaste and Julia Koga da Silva



The Bahamas remains a leading international financial services hub and jurisdiction of choice for international wealth planning structures. Overall, according to the Central Bank of The Bahamas Regulatory and Supervisory Update, 4 February 2026, the domestic economy maintained its positive growth trajectory through 2025, driven primarily by the tourism sector. Against this background, a number of global downside risks continue to shape the outlook; including higher tariffs on international trade, uncertainty surrounding global trade policy, elevated geopolitical tensions, global oil price volatility and the existential threat of climate change.

In The Bahamas, several key themes have dominated developments in the legal and regulatory framework for financial services so far in 2026. Among these are the continued refinement of the regulatory framework in keeping with international best practices, the expansion of the digital assets legislative framework to provide for decentralised autonomous organisations, commonly known as DAOs and, central to this article, the enhancement of the financial services product toolkit through the introduction of the usufruct.

Introduction of a new usufruct product

Over the last three decades, The Bahamas has been at the forefront of financial services product innovation, developing new products designed to meet the evolving global environment and client needs. Examples include, smart funds (introduced in 2004), Bahamian foundations (introduced in

FOCUS EDITORIAL COMMITTEE

Portia J. Nicholson (Chair)
Kimberleigh Turnquest (Deputy Chair)
Lori C. Nelson
Ja'Ann M. Major
Rhyan A. A. Elliott
Trevor J. Lightbourn
Nicholas Pennerman
Crystal D. Bleasdell
Antonia Burrows

The information contained in this newsletter is provided for the general interest of our readers, and 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. For additional copies of FOCUS, please contact us at media@higgsjohnson.com or at 242.502.5200.

2004), Bahamian investment condominiums or ICONS (introduced in 2014) (introduced in 2014) and the Sand Dollar (launched in 2020) which was the first digital currency issued by a central bank.

In 2026, the Usufruct Interest Act, 2026 (UA) introduced the concept of the usufruct, a civil law institution established in continental European and Latin American legal systems, including Brazil, into Bahamian law. The UA allows for the creation, registration and termination of a usufruct.

A usufruct is a right in rem (ie, a right that can be enforceable against everyone, not just a specific individual), of limited duration, that allows the usufructuary to use, benefit from and/or hold governing control of property, while the legal owner retains the legal ownership of the property. The usufruct therefore involves the separation of the legal ownership of an asset (which is retained by the owner), from the right to use and enjoy that asset and to collect its benefits (referred to in some civil law jurisdictions as "fruits") which vest in the usufructuary. The usufructuary has the legal right to use and benefit from the legal owner's property and has a duty of care to preserve the property.

A usufruct may be established in writing by an agreement or by will or trust disposition, in the case of a natural person for up to 99 years or in the case of a legal person for up to 30 years, in respect of a wide range of assets located in The Bahamas or to which Bahamian law is applicable; including, among others, movable or immovable assets, debts, shares, receivables and digital assets.

Registration of a usufruct is optional. There is no legal requirement for public registration of the agreement or will by which the usufruct is created. Where a usufruct is created over shares in a Bahamian incorporated or registered company, the company may apply to the Registrar of Companies in the prescribed manner, and pay the prescribed fee to register the usufruct. Where the usufruct is created over any other asset, the application must be made to the Registrar of Records. Registration confers the added benefit of making the usufruct enforceable against third parties from the date of registration, subject to any prior registered security interests or encumbrances, unless otherwise provided by law. It should be noted that while the Regulations under the UA have not been promulgated, as a part of the application for registration, the nature of the usufruct interest will be required to be disclosed.

The UA provides for the register of usufructs that will be maintained by the Registrar of Companies and the Registrar of Records in respect of all usufructs submitted for registration. The following details will be included in the register of usufructs in respect of all registered usufructs:

- the name of the legal owner;
- the name of the usufructuary;
- the nature of the corporate interest;
- the duration of the usufruct; and
- any economic, voting or other rights affected.

While the register is publicly available for inspection for the purpose of verifying registration, detailed economic arrangements regarding the usufruct will not be available for inspection.

The usufruct structure is a useful option for clients who wish to incorporate the separation of use and ownership rights into their governance or intergenerational wealth planning strategies, or who reside in jurisdictions where the concept is more widely recognised and understood. While a usufruct arrangement shares certain objectives with a trust, particularly in facilitating succession planning and the transfer of wealth across generations, it is not intended to replace a trust structure. Rather, it provides an additional tool that may be better suited to the legal, cultural, or practical objectives of certain clients.

One of the most common use cases in Brazil, for example, is for parents to transfer legal ownership of property to their children during their lifetime. This achieves certain financial and estate planning objectives, while enabling the parents to retain the use, enjoyment and control of the property for the remainder of their lives.

Conclusion

The legislative developments in the financial services sector in 2026 illustrate the continued evolution of the Bahamian regulatory framework to include new products to address evolving client needs, while reinforcing the overall commitment to compliance with global standards.

include chairmen, directors, chief executive officers, chief operating officers, chief financial officers, legal counsel, compliance officers, accountants, auditors, actuaries, controllers, analysts and managers. The Government has indicated that this program should facilitate the ease of doing business in The Bahamas.

Excerpt taken from Chambers Banking & Finance Global Guide, 2026



Christel Sands-Feaste is Deputy Managing Partner and leads the Firms practice groups in financial services, securities, investment funds, and Fintech. She is a highly regarded lawyer for her specialist expertise in advising on financing transactions, securities, securitisations and investment fund structuring.

csands-feastehiggsjohnson.com



Julia Koga da Sands-Feaste, Of Counsel, is a corporate and commercial attorney with over 13 years' experience in cross-border corporate and financial transactions.

jkoga@higgsjohnson.com

Beyond the Will: How Intestacy, Forced Heirship, and Marital Property Shape Inheritance

Sharmon Y. Ingraham



Succession planning in The Bahamas is significantly influenced by a desire to ensure family wealth created by earlier generations is sustained and used to maintain successive descendants. The current family representatives who are growing and maintaining family businesses are also focused on ensuring the businesses are retained by and transferred to lineal descendants.

Intestacy and Forced Heirship Laws

Intestate Succession

In circumstances where a person dies without having created a will, the Inheritance Act, Chapter 116, Statute Law of The Bahamas, directs the distribution of the estate among certain categories of recipients; principally among a spouse, descendants or antecedents and remoter relatives surviving the person. In particular, Section 4 of the Inheritance Act equally divides the estate among the surviving spouse and children, allocating 50% of the estate to the spouse and dividing the remaining 50% equally among the children. If there is no surviving spouse, the intestate person's estate is shared equally among any surviving children. Where there is neither spouse nor children, but there are grandchildren, the estate is shared equally among the grandchildren.

In the event the deceased person is not survived by a spouse or descendants, the Inheritance Act provides that the estate be paid out to any parents surviving the intestate person. In circumstances where there is neither a spouse nor descendants or ascendants, the statute enables the estate to be distributed among siblings, nieces and nephews, grandparents and ultimately next of kin in alternative provisions.

Similarly, if any provision or gift under a will fails, or if the entirety of a will fails and an asset or part of (or the entire) estate is or comes within the scope of intestacy provisions, the foregoing beneficiary designation imposed by the Inheritance Act is applicable.

Forced Heirship

Pursuant to the Wills Act, Chapter 115 of the Statute Law of The Bahamas, the testamentary freedom of every person is recognised in The Bahamas. The legislation expressly provides that a person may dispose of all real estate and personal property that is personally owned by them at the time such person dies. Consequently, forced heirship or

family rights do not form a part of the law of The Bahamas.

Marital Property and Succession

Property Regimes During Life and Deathtime Rights and Protections

Generally, having regard to testamentary freedom in The Bahamas, spouses may gift or dispose of their personal property without restrictions. However, if by the will of one spouse, such spouse fails to make "reasonable financial provision" for the surviving spouse, or if the surviving spouse considers insufficient provision has been made in the deceased spouse's will, an application to court may be made seeking to have some part of the net estate appropriated for the maintenance of the surviving spouse, provided the deceased spouse was domiciled in The Bahamas (see Part III of the Inheritance Act, Chapter 116, Statute Law of The Bahamas).

There are a few exceptions that limit the freedom of disposition under the law of The Bahamas.

If property is jointly owned by spouses and the right of survivorship applies, on the death of the first of the spouses to die, the surviving spouse becomes the owner of the whole property by operation of law. The jointly held asset would not form any part of the estate of the deceased spouse or be subject to the probate process.

Additionally, under Section 24 of the Inheritance Act, Chapter 116, Statute Law of The Bahamas, a surviving spouse, who does not have an entitlement to occupy the home that served as the marital residence during the lifetime of the spouse, is given conditional protection against eviction from the residence. Specifically, the surviving spouse's right to reside in the marital home continues until the death, remarriage or an order varying the right to reside.

One spouse has no legal entitlement to deal with or dispose of assets that are jointly owned with the other spouse. Where one spouse purports to dispose of or transfer any part of marital property that is owned with the other spouse without the consent of that spouse, such disposition or transfer is liable to be invalidated or set aside under provisions like those contained in the Fraudulent Dispositions Act, Chapter 78, Statute Law of The Bahamas, or the Trusts (Choice of Governing Law) Act, Chapter 170, Statute Law of The Bahamas, as applicable.

Lifetime transfers, which result in a change of ownership, would likely attract transfer taxes while transfers to surviving spouses, arising through the probate process, are not subject to estate or inheritance taxes.

Prenuptial and Postnuptial Agreements

While there is presently no legislation in The Bahamas that recognises and enforces nuptial agreements, M v F [2011] 2 BHS J. No 13, relying on English case law, held that prenuptial and postnuptial agreements may be considered in the exercise of the court's discretionary jurisdiction contained in the Matrimonial Causes Act, Chapter 125, Statute Law of The Bahamas.

Conclusion

The law of The Bahamas strikes a balance between broad testamentary freedom and limited statutory protections for surviving family members. While forced heirship is not recognised and individuals are generally free to determine the disposition of their assets by will, the Inheritance Act provides a clear framework for the distribution of estates where a person dies intestate and affords important safeguards for surviving spouses. Considerations such as joint ownership arrangements, occupancy rights in the matrimonial home, and the ability of a surviving spouse to seek reasonable financial provision can significantly affect succession outcomes. Accordingly, careful estate planning, coupled with a clear understanding of the legal rights and protections that apply on death, remains essential to ensuring that a person's wishes are effectively implemented and potential disputes among beneficiaries are minimised.

Excerpt taken from Chambers Succession & Estate Planing Global Guide, 2026



Sharmon Y. Ingraham serves as Deputy Chair of the firm's Private Client & Wealth Management practice group and her practice focuses on trusts, estates, private wealth, and related commercial matters.
singraham@higgsjohnson.com

Reasonable Investigations: What Every Employer Should Know Before Dismissing An Employee for Misconduct

Miguel A. Darling



Allegations of employee misconduct often require employers to make difficult decisions. Whether the issue involves dishonesty, harassment, insubordination or breaches of company policy, there can be understandable pressures to act quickly. However, recent Bahamian authorities serve as important reminders that, before deciding to summarily dismiss an employee, employers must first conduct a reasonable investigation.

The Employment Act 2001 permits an employer to summarily dismiss an employee, that is dismissal without notice or pay in lieu of notice, for misconduct that amounts to a fundamental breach of the contract of employment. However, summary dismissal will only be justified where the employer honestly believes, on reasonable grounds, that the employee committed the alleged misconduct. That belief must be formed after carrying out a reasonable investigation into the circumstances. In other words, the law is concerned not only with the decision reached, but also with the process by which that decision is made.

What does the law require?

The Bahamian courts have consistently recognised that an employer is not required to prove that an employee actually committed the alleged misconduct before terminating employment. Rather, the employer must establish that it had an honest belief, based on reasonable grounds, following a reasonable investigation.

The courts have also made clear that a reasonable investigation is not measured against a standard of perfection. Rather, the reasonableness of the investigation will be assessed objectively and in the context of the circumstances of the particular case. It is for the employer to prove that it gathered sufficient reliable information to make an informed and fair decision.

Equally, the courts have emphasised that not every procedural defect in the investigative process will render a dismissal unfair. The adequacy of an investigation must be considered as a whole, taking into account the substantial merits of the case and whether the employer acted reasonably throughout the disciplinary process.

What makes an investigation reasonable?

Although there is no universal checklist, certain principles consistently emerge from the recent authorities.

First, employers should clearly identify the allegations and ensure they understand precisely what conduct is being investigated. At this stage, unless it would interfere with the integrity of the investigation, the employee should be informed of the suspected misconduct and the potential for summary dismissal.

Secondly, all relevant evidence should be gathered and preserved. This may include documents, emails, CCTV footage, electronic records or any other material capable of assisting with the investigation.

Thirdly, employers should interview those with direct knowledge of the suspected breach. While the law does not require every conceivable witness to be interviewed, it does require employers to make reasonable enquiries and consider the available evidence objectively.

Fourthly and perhaps most importantly, the employee must be given a meaningful opportunity to respond to the allegations. An investigation should not simply seek to confirm an assumption that misconduct has occurred. Rather, employers should genuinely consider the employee's explanation before reaching any final determinations.

Finally, the entire investigative process should be properly documented. Contemporaneous notes of interviews, copies of relevant documents, detailed accounting of the employee's explanation/response, and clear records of the employer's reasoning may prove invaluable if the decision is later challenged before the Industrial Tribunal or the Supreme Court.

Practical lessons for employers

Recent Bahamian decisions demonstrate that courts will generally support employers who have acted reasonably, even where an investigation is not flawless. Conversely, employers who rush to judgment, overlook relevant evidence or approach an investigation with a predetermined outcome expose themselves to the risk of successful wrongful and/or unfair dismissal claims.

Before taking a decision to dismiss summarily for misconduct, employers should therefore ask themselves the following questions:

- Have we clearly identified the allegations?
- Have we notified the employee of our concerns?
- Have we gathered the relevant evidence?
- Have we spoken with the individuals who can provide relevant information?
- Has the employee been given a fair opportunity to respond?
- Have we considered the employee's explanation objectively?
- Have we kept an adequate record of the investigation and our decision-making process?

A reasonable investigation lies at the heart of any defensible decision to summarily dismiss an employee for misconduct. By ensuring that investigations are fair, objective and proportionate, employers will be better positioned to make informed decisions, minimise the risk of litigation, and defend those decisions should they later come under judicial scrutiny.



Miguel A. Darling is an Associate and a member of the firm's Litigation, Financial Services, Insurance Law & Regulation, and Insolvency & Corporate Restructuring practice groups.

mdarling@higgsjohnson.com

A Decade of Excellence: Top-Tier Offshore Trusts Ranking



N. Leroy Smith



Sharmon Y. Ingraham



Philip C. Dunkley, KC



Earl A. Cash, Ph.D.

Higgs & Johnson is proud to have been ranked Band 1 in the Chambers High Net Worth Guide 2026 for the tenth consecutive year. This decade-long recognition reinforces our position as a trusted adviser to high-net-worth individuals and families and reflects the strength of our Private Client & Wealth Management practice, the dedication of our team, and our commitment to excellence.

The Guide commended the Firm for its expertise in advising wealthy individuals, families and fiduciaries, noting its strong reputation in the trusts sector and the high regard in which it is held by its longstanding institutional clients.

Our team continues to earn industry recognition, with **N. Leroy Smith** praised as a standout practitioner, **Sharmon Y. Ingraham** recognized for advising trust companies and private clients on trust and wealth management matters, **Philip C. Dunkley, K.C.** ranked as a Senior Statesperson for his counsel to high-net-worth individuals and fiduciaries, and **Earl A. Cash, Ph.D.** acknowledged as a leading trusts and estates expert.

Managing Partner, **Sterling H. Cooke** commented:

"Achieving a Band 1 ranking from Chambers High Net Worth for ten consecutive years is a remarkable milestone for our Firm. This recognition is a testament to the outstanding talent within our Private Client & Wealth Management practice and our steadfast commitment to delivering outstanding service. I extend my sincere thanks to our team for their dedication and to our clients for their continued trust and confidence in Higgs & Johnson."

H&J News

AIBT Bootcamp and Nassau Conference







Deputy Managing Partner **Christel Sands-Feaste** and Of Counsel **Julia Koga da Silva** were featured speakers at the Association of International Banks and Trust Companies (AIBT) Financial Services Bootcamp and Nassau Conference, which brought together more than 200 local and international delegates.

At the Nassau Conference, Christel participated in the panel discussion, *Competing in a Complex Environment: Growth, Retention and Market Focus*, where she shared insights alongside fellow industry leaders on sharpening market focus, strengthening value propositions, and positioning The Bahamas for sustainable growth in an increasingly complex global environment.

Julia spoke during a *Product Deep Dive Session* at the Financial Services Bootcamp, providing an overview of the recently enacted Usufruct Interest Act, 2026. The session explored evolving financial services products, market developments, and emerging opportunities driving innovation across the sector.

Also representing the Firm at the events were Partners **Tara Archer-Glasgow** and **Andre Hill**, together with Senior Associate **Knijah Knowles** and Compliance & MLRO Officer, **Crystal Bleasdell**.

The Firm was pleased to support this year's conference as a coffee break sponsor, reaffirming its commitment to the continued development and promotion of The Bahamas' financial services industry.

EDLS PRESENTATION OF GRADUATES 2026







Tara Cooper-Burnside, KC, Partner and former lecturer at the Eugene Dupuch Law School (EDLS), delivered the keynote address at the 2026 Presentation of Graduates Ceremony, sharing insights and words of encouragement with the graduating class as they embarked on the next stage of their legal careers. Partners **Audley D. Hanna, Jr.** and **Trevor J. Lightbourn** presented the Higgs & Johnson Prize to Ms. Nicole Martin, a 2026 graduate recognized for academic excellence in Conveyancing Practice & Procedure, Civil Practice & Procedure I and II, as well as her contributions to student life. The Firm congratulates Ms. Martin and the graduating class and remains committed to supporting legal education and the next generation of legal professionals.

Be sure to follow us on LinkedIn, Facebook & Instagram to stay up-to-date with all H&J related news and articles.